

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

OA No.1124/2014

Order Reserved on: 21.04.2016

Order Pronounced on: 10.11.2016

**Hon'ble Mr. Sudhir Kumar, Member (A)**  
**Hon'ble Mr. Raj Vir Sharma, Member (J)**

Amarjeet Singh  
S/o late Shri Sohan Singh  
R/o 3072/2-CA/7, Street No.10,  
Ranjeet Nagar, New Delhi-110008.

-Applicant

(By Advocate: Shri Arun Dhawan)

**Versus**

1. Union of India  
Through Secretary  
Ministry of Human Resource Development  
Shastri Bhawan, Dr. Rajendra Prasad Marg,  
New Delhi-110001
2. Shri Jagmohan Singh Raju  
Joint Secretary  
Ministry of Human Resource Development  
Shastri Bhawan, Dr. Rajendra Prasad Marg,  
New Delhi-110001

-Respondents

(By Advocate: Shri Rajesh Katyal)

**ORDER**

**Per Sudhir Kumar, Member (A):**

The applicant of this OA has approached this Tribunal because he is aggrieved by the respondents having rejected his representation vide Office Memorandum dated 03.04.2013 [Annexure A-1(A)] in regard to his Annual Performance Appraisal Report (APAR, in short) relating to the broken period from 24.12.2010 to 31.03.2011 for the year 2010-11, and the broken period from 01.04.2011 to 18.11.2011 for the year 2011-12, stating his representation to be time barred. The respondents have also

rejected his prayer for condonation of delay in filing his representation in regard to his APARs for these two periods through OM dated 28.06.2013 [Annexure A-1(B)]. The applicant is also aggrieved that the respondents have through OM dated 11.07.2013 [Annexure-A-1(C)] informed him that the Reviewing Officer has refused to review his APAR for the period from 18.09.2010 to 23.12.2010, as due to late submission of the APARs, both the Reporting and Reviewing Officers had forfeited their rights for recording the APAR for that period. He is further aggrieved that through the OM dated 08.01.2014 [Annexure A-1(E)] the respondents have rejected his representation in regard to his final grading in APAR for the broken period from 01.05.2012 to 31.08.2012 for the year 2012-13. Hence this OA.

2. The applicant was working as Deputy Secretary to the Govt. of India in the Ministry of Health and Family Welfare at the time of filing of the OA on 28.03.2014. As mentioned above, his grievances related to four broken periods mentioned in the impugned OMs at Annexures A-1 (A) to A-1(E), with which he is aggrieved. His case is that he had on 24.04.2012 submitted his self-appraisal for his APAR for the first broken period from 16.09.2010 to 23.12.2010, on which the comments were recorded by the Reporting Officer and were sent to the Reviewing Officer on 09.05.2012. He has submitted that the Reviewing Officer signed the same with the comment "date not mentioned", and signed it on 21.04.2012, which could not have been possible, since he had himself submitted his self-appraisal on 24.04.2012, and the Reporting Officer had sent the same to the Reviewing Officer on 09.05.2012.

3. In respect of the second broken period from 24.12.2010 to 31.03.2011, the applicant claims to have submitted his self-appraisal on 22.05.2012, on which comments were recorded by the Reporting Officer on 21.09.2012, and reviewed by the Reviewing Officer on 03.12.2012. However, the applicant has chosen to name that Reviewing Officer by name as Respondent No.2 in this OA.

4. In respect of the third broken period from 01.04.2011 to 18.11.2011 also, the applicant claims to have submitted his appraisal on 22.05.2012, on which the comments were recorded by the Reporting Officer on 21.09.2012, and by the Reviewing Officer on 03.12.2012, the same dates as in respect of the second broken period.

5. In respect of the fourth broken period from 01.05.2012 to 31.08.2012, the applicant claims to have submitted his self-appraisal on 31.08.2012, on which comments were recorded by the Reporting Officer on 31.08.2012 itself, and by the Reviewing Officer Respondent No.R-2 on 02.07.2013.

6. Through communication dated 11.07.2013 (Annexure A-8), the applicant was informed that the Reviewing Officer has refused to review his APAR for the first broken period from 16.09.2010 to 23.12.2010 due to expiry of time lines. However, the applicant has himself admitted that the Reporting Officer concerned had retired on superannuation on 31.08.2011, and he could get his APAR commented upon by the already superannuated Reporting Officer only on 09.05.2012, after locating him with great efforts. The applicant is aggrieved that the respondents have wrongly treated that the Reporting Officer and the Reviewing Officer had

actually forfeited their rights for recording their comments on the applicant's APAR for the first broken period from 16.09.2010 to 23.12.2010, as was communicated to him through OM dated 17.09.2013 (supra).

7. In respect of the second and third broken periods also, the applicant represented on 12.02.2013, but still the Respondent No.1 had, through OM dated 03.04.2013 (supra), informed him that such representation could not be considered since it was time barred, and not submitted either within the prescribed time limit or even within the grace period allowed thereafter.

8. The applicant represented on 16.04.2013 against this decision, praying for condonation of delay in filing the representation, and praying for deciding his representation on merits, and not on the technical basis of delay, but that request of his was also turned down, through OM dated 28.06.2013 (supra), without going into the merits of the case. On 24.07.2013, the applicant had represented against the entries and final gradings given to him for the assessment year 2012-13 but that representation of his was also rejected on merits, through the OM dated 08.01.2014 (supra).

9. The applicant has taken the ground in assailing the actions of the respondents that the criteria adopted by private Respondent R-2 for reviewing the APAR is totally arbitrary and in contravention of the Rules, and he had wrongly refused to review the applicant's APAR for the first broken time period due to expiry of time lines, when he himself had

reviewed his APARs for the second broken time period after the expiry of time lines in that case, which the applicant admitted to have expired on 01.08.2011, while he had submitted his self-appraisal on 22.05.2012. The applicant has further taken the ground that his self-appraisal for the third broken period from 01.04.2011 to 18.11.2011 had also been submitted by him late, on 22.05.2012, but it was reported upon by the Reporting Officer on 21.09.2012, and was reviewed by the Private Respondent No.R-2, as the Reviewing Officer, on 03.12.2012, both of which were also after the expiry of the prescribed time line for that period, i.e., 01.08.2012.

10. The applicant has, therefore, assailed that the Private Respondent No. R-2 has adopted different criteria in respect of different broken periods, which action is not only arbitrary, but has led to the applicant's mental harassment. He has further assailed the action of private respondent No.R-2 in reviewing his APARs and lowering his overall grading from that as graded by the Reporting Officer, which he has alleged to be on account of bias, on the strength of certain comments made by the Reviewing Officer in his APARs, which he has termed to be baseless and unfounded. He has submitted that the remarks of the Reporting Officer on APARs were true and accurate, but the bias of private respondent No.R-2 is evident from the gradings accorded by him, as well as with his other comments.

11. The applicant has also assailed the action of Respondent No.R-1 in not considering his representations on merits, and rejecting it on the

plea of delay of few days as being arbitrary and biased. In the result, he has prayed for the following reliefs:-

“8.1 Call for the records of the case and quash/set aside the action of Respondent No.2 in assessing the APARs for the period 24-12-2010 to 31-03-2011 and 01-04-2011 to 18-11-2011 on the same premise of the APAR for the period 16-09-2010 to 23-12-2010 which the Reviewing Officer refused to assess due to expiry of time lines and the action of Respondent No.1 stating that the Reporting Officer and the Reviewing Officer forfeit the right to assess the APAR due to expiry of time lines.

8.2 The respondents be directed to place a No Report Certificate for the periods mentioned in para 8.1 above.

8.3 Call for the records of the case and quash / set aside the action of the Respondent No.2 in assessing the APARs for the period 01-05-2012 to 31-08-2012 having assessed the APAR in a biased manner.

8.4 Pass such other or further order(s) as may be deemed fit and proper in facts and circumstances of the present case.

8.5 Allow costs.”

12. In the Annexures to the OA, the applicant had annexed copies of his APARs for the relevant periods as communicated to him. But, still, at the same time he had at Annexure A-7 (pages 56 to 28 of the paper book of the OA), reproduced a photocopy of the Note Sheet file from 29.05.2012 to 01.03.2013, without disclosing as to how he came to be in authorized in possession of the same. The other Annexures were his representations and communications from the Respondent No.1 in response to the representations upto Annexuure-12 apart from the impugned OMs as mentioned above, produced at Annexure-13 (page-99), Annexure-14 (page-100), Annexure-15 (page-101), Annexure-16 (page-102), Annexure-17 (page-103), and Annexure-19 (page-113 of the paper book of the OA). The applicant had also produced photo-copies of Note-Sheet file of Respondent No.1 Ministry of Human Resource Development,

without disclosing as to how he came to be in lawful possession of the said Note Sheet.

13. The counter reply on behalf of Respondent No.1 was filed on 14.01.2015, wrongly purporting to have been filed on behalf of Respondent No.2 also, who had been named by name. They had pointed out that the applicant belonged to the Central Secretariat Service (CSS, in short), posted on rotation transfer with Respondent No.1 from 16.02.2006 to 08.01.2014 (Forenoon), during which period, from 16.09.2010 onwards, he had been posted in the Adult Education Bureau of Department of School Education & Literacy, and had reported to different Officers at different Reporting/Reviewing levels. They had pointed out the DoP&T OM dated 14.05.2009 (Annexure R-IV), issued in the light of the judgment of the Hon'ble Supreme Court in **Dev Dutt vs. Union of India & Ors. (2008) 8 SCC 725**, which system of preparation and maintenance of APARs had been further reviewed by Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training) OM dated 23.07.2009 (Annexure R-V), prescribing a time schedule for completion of all activities relating to completion of APARs, as per Annexure-III of that OM, produced at Annexure R-VI by the respondents.

14. It was submitted that ever since the issuance of DoP&T OM dated 23.09.1985 (Annexure R-VII), a time-schedule has been prescribed, and if the self-appraisal is not received as per the time schedule prescribed, the Reporting Officer should take it upon himself to remind the officer to be reported upon in writing, asking him to submit his self-appraisal. If

no self-appraisal is received by the stipulated date, the Reporting Officer can obtain another blank APAR form and proceed to write the report on the basis of his experience of the work and conduct of the officer reported upon. While doing so, he can also point out the failure of the officer reported upon to submit his self-appraisal within the stipulated time. The extant instructions also provide for allowing Reporting Officers to report on their subordinates' APARs within a month of their own retirement or demission of office. However, Reviewing Authority cannot review APAR after retirement.

15. The respondents had thereafter explained the relevant dates for completion of APARs under which by 15<sup>th</sup> of April, submission of Self-Appraisal Reports has to be done by the Officer to be reported upon to the Reporting Officer, and the Reporting Officer has thereafter submitted his report by 30<sup>th</sup> June, and the Reviewing Officer has thereafter to complete his report by 31<sup>st</sup> July, and appraisal by Accepting Authority, wherever provided, has to be completed by 31<sup>st</sup> August. It was submitted by the respondents that in respect of the first broken period of the applicant from 16.09.2010 to 23.12.2010, when the report by the former Dy. Secretary Shri P.R.A. Nair had been submitted, the then Joint Secretary Shri Jagmohan Singh Raju (Respondent No.2 herein) had raised queries regarding filling up the APAR on 22.05.2012, asking as to whether Shri P.R.A. Nair could have written the APAR of the applicant 8 months after his superannuation, and could the applicant have submitted his APAR for the period from 16.09.2010 to 23.12.2010 on 24.04.2012, and can the Reviewing Authority record his remarks at that



stage. The Administration Section had then clarified the Rule position that as per the Rule Reporting Officer can write CRs of his subordinates only within one month of his retirement, and that the applicant should have submitted his APAR before 15.04.2011, as per the time schedule for fixation of APAR, and, therefore, as per the Rule position, Reviewing Officer cannot record its remarks at this stage. Therefore, the requisite certificate dated 11.07.2013 was prepared and sent to the applicant through Note dated 01.08.2013 (Annexure R-XIII).

16. The applicant still represented on 12.08.2013 through Annexure R-XIV, requesting for his APAR to be sent to the Reviewing Officer (Respondent No.2), but that request was rejected through the OM dated 17.09.2013, since the time limit for recording remarks by the Reporting/Reviewing Officers had elapsed. Similar explanations have been provided by the respondents in respect of the next two broken periods from 24.12.2010 to 31.03.2011, and from 01.04.2011 to 18.11.2011, in which the self-appraisal itself had been submitted by the applicant on 22.05.2012, and the Reporting Officer was the same for the two periods, who had completed her report, which was reviewed by the Reviewing Officer, Respondent No.2, and the contents of the APAR were disclosed to the applicant through Memorandum dated 07.12.2012 (Annexure R-XVIII).

17. It was submitted that even discounting the fact that the applicant was in training, and had re-joined his duties on 21.01.2013, the time limit of 15 days for making representation against such remarks was 04.02.2013, but the applicant submitted his representation against such

remarks and grading only on 12.02.2013, which was rejected on the ground of being time barred. His subsequent representation dated 16.04.2013 (Annexure R-XXII) for condonation of delay was also rejected since the applicant had not made any request for extension of time limit with any sufficient and cogent reason.

18. In respect of the 4<sup>th</sup> broken period from 01.05.2012 to 31.08.2012, the reporting was completed on 31.08.2012, and review was completed on 02.07.2013, which was disclosed to the applicant vide the impugned OM dated 10.07.2013, with advice to submit representation, if any, within 15 days.

19. The applicant made a representation against the remarks and grading, but the Competent Authority, concerned i.e., Secretary, School Education & Literacy, decided to reject the representation on the ground that the same is devoid of any merits for upgradation, which was communicated to him through the impugned OM dated 08.01.2014 (Annexure R-XXVII). It was, therefore, submitted that, as per the records, no wrong had been committed by the respondents in dealing with the four broken period APARs of the applicant, and the OA deserves to be dismissed with exemplary costs.

20. Para-wise replies were then provided by the respondents on the grounds taken by the applicant on the same lines, in great detail, and any bias on the part of Respondent No.1 was denied altogether.

21. Respondent No.2 did not file any separate counter reply in his personal capacity.

22. The applicant filed a rejoinder to the counter reply of Respondents No.1 on 21.04.2015. In this he had more or less reiterated his contentions, and had repeated his allegation regarding the element of bias on the part of Respondent No.2 on various grounds, including the ground of his refusal to review the APAR for the first broken period due to expiry of time lines. It was further submitted that it is a common practice in the Secretariat that in certain cases APARs are written after the expiry of time lines by the Reporting Officers and the Reviewing Officers, and in certain cases even the self-assessment is not provided by the concerned officer reported upon due to various reasons. It was reiterated that since the Reporting Officer for the first broken period had superannuated, the applicant had to make a lot of efforts to locate him, and to get his comments recorded by making personal efforts.

23. The remaining other explanations provided by the applicant were repetitions of his contentions as already discussed while discussing the contents of his OA, and need not be repeated here once again.

24. Heard. After the advancement of arguments, learned counsel for the applicant also submitted written submissions, seeking shelter behind the Hon'ble Supreme Court judgment in the case of **S.T Ramesh vs. State of Karnataka (2007) 9 SCC 436** regarding the importance of Annual Confidential Reports, and the Larger Bench judgment in the case of **Sukhdev Singh Vs. Union of India & Ors. (2013) 9 SCC 566**, reiterating the aspect of communication of every entry in the ACR to be communicated to the officer reported upon. The applicant had further

sought shelter behind the Hon'ble Supreme Court's Constitution Bench judgment in **R.S. Deodhar vs. State of Maharashtra AIR 1974 SC 259**, in which it was held that the Rule which says that the Court will not inquire into belated and stale claims was not a rule of law, but a rule of practice, to be based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay, the Court must necessarily reject the petition, and that if there was reasonable explanation for the delay, relief for protection of fundamental rights cannot be refused solely on the ground of delay and laches.

25. It was submitted that the respondents never communicated the entries made in ACR to the applicant in time, and the applicant had, therefore, to obtain the same under the RTI Act, 2005, and in the light of this, this Tribunal may either expunge the remarks, or the same may be quashed in the interests of justice.

26. On the other hand, learned counsel for the respondents stoutly defended their actions and submitted that the applicant had himself delayed submission of his APAR formats beyond reasonable time, and had even obtained the signatures of a superannuated officer, much after the one month's period permitted to initiate the APAR of his subordinates had elapsed. Learned counsel, therefore, again emphasized that no procedural wrong had been committed by the respondents in dealing with the case of the applicant, and that he cannot be allowed to assail any of the five OMs, which he had impugned through this OA.

27. We have given our anxious consideration to the facts of this case. It is obvious that the applicant ought not to have delayed submission of his self-appraisal report, for which he himself is at fault. Further, it is inconceivable for us that a superannuated officer could right/initiate the APAR of the applicant 7 ½ months after his superannuation, while as a former Government officer he ought to have known that his capacity to right or initiate the APARs of his subordinates had ceased to exist one month after the date of his superannuation. Therefore, no credence whatsoever can be given to the APAR so written by a superannuated officer, much after the date of his superannuation.

28. Respondent No.2 appears to have been unnecessarily dragged by the applicant into allegation in his individual capacity. From the pleadings of both sides, it is seen that applicant has not been able to establish even a *prima-facie* case of bias against the private respondent No.R-2, and whatever he had done, he had done in his official capacity, for which he ought not to have been arrayed as a private party respondent in this OA.

29. Further, in respect of the first broken period APAR, when the Reporting Officer himself had committed a fault, in having lent his signatures to an APAR 7½ months after his superannuation, that APAR itself was *non-est* in the eyes of law, and as the Reviewing Officer, Respondent No.2 was very right to decline to review any APAR, which was *non est* in the eyes of law.

30. In the case of second and third broken periods, the lady Reporting Officer had not taken objection to the delay by the applicant's

submission of his self-appraisal report, and had offered her comments, which was delayed in respect of the second broken period, and in time in respect of the third broken period concerned. The Reviewing Authority Respondent No.2, however, did not object to any such delay on the part of completion of the reporting part of the APAR in respect of the second broken period upto 31<sup>st</sup> March, and had affixed his signatures in time in respect of the third broken period starting from 01.04.2011 to 18.11.2011, which was submitted in time. Therefore, no credence can be lent to the delayed completion of the APAR, which was completed in a delayed manner in respect of second broken period from 24.12.2010 to 31.03.2011, but the APAR for the third broken period from 01.04.2011 to 18.11.2011 was completed in time.

31. There was nothing wrong on the part of the respondents in having refused to review the applicant's representation in respect of his APAR for the period from 16.09.2010 to 23.12.2010 due to the expiry of the prescribed time line, and delay by the applicant in filing his response, without seeking any extension of time. We also find that the applicant cannot derive any sustenance from the judgments in the cases of **S.T Ramesh vs. State of Karnataka** (supra) and **Sukhdev Singh Vs. Union of India & Ors.**, (supra), when he himself has been at fault in not completing his self-assessment reports in time. His contention in the OA, as well as in the rejoinder, that there is a delay in many cases in the Secretariat, and such delays are overlooked, cannot be accepted as a proposition of law. In respect of such delay on the part of the applicant himself in completing his self-assessment report, he cannot be allowed to

seek shelter behind the Hon'ble Supreme Court's judgment in the case of **R.S. Deodhar vs. State of Maharashtra** (supra), because he has not offered any explanation for the delay on his own part in submission of his self-assessment reports in respect of the relevant broken periods concerned.

32. At the end of the arguments, learned counsel for the respondents fairly submitted that the applicant was still free to address a Memorial to the President in accordance with the Govt. of India, DoP&T Circular dated 06.03.1989, when that Memorial to the President would be considered as per the procedure prescribed through that OM.

33. However, since we do not find any merit in the OA, and we find that the applicant has unnecessarily tried to drag Respondent No.2 into the case by making baseless allegations in his personal capacity, when it does not appear that he had done anything with any element of bias, which bias the applicant has failed to prove conclusively and beyond doubt, the OA fails, and a nominal cost of Rs.10,000/- is imposed upon the applicant for trying to mislead this Tribunal, by mis-joinder of parties, by naming the Respondent No.2 by name, instead of in his official capacity, as the Reviewing Officer of his APARs. The O.A. is disposed off accordingly.

**(Raj Vir Sharma)**  
**Member (J)**

**(Sudhir Kumar)**  
**Member (A)**

cc.