

**Central Administrative Tribunal
Principal Bench, New Delhi**

Reserved on : 17.03.2015
Pronounced on : 20.08.2015

OA No.2095/ 2014

**Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Dr. B. K. Sinha, Administrative Member**

Shri Tushar Ranjan Mohanty
Aged 55 years,
S/o Shri Rabi Narayan Mohanty
SAG Officer of the Indian Statistical Service
Deputy Director General
Research and Publication Unit,
Coordination and Publication Division,
Central Statistics Office,
Ministry of Statistics and Programme Implementation
Room No.6, Wing No.6, Ground Floor,
West Block No.8, R. K. Puram,
New Delhi 110 066.
R/o G-31, HUDCO Place Extension
New Delhi-110049.Applicant

VERSUS

1. Union of India through
The Chief Statistician of India and Secretary
Ministry of Statistics and Programme Implementation
Sardar Patel Bhawan, Parliament Street
New Delhi- 110001.
2. Prof. T. C. A. Anant,
Chief Statistician of India and Secretary
Ministry of Statistics and Programme Implementation
Fourth Floor, Sardar Patel Bhawan,
Parliament Street, New Delhi- 110001.
3. Shri Ajay Kumar Mehra
Director General and Chief Executive Officer,
National Sample Survey Office,
Ministry of Statistics and Programme Implementation
Fourth Floor, Sardar Patel Bhawan,
Parliament Street,
New Delhi- 110001. .. Respondents

(By Advocate: Shri R. N. Singh)

O R D E R

Dr. B. K. Sinha, Member (A):-

In the instant OA filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant challenges the below benchmark grading and adverse remarks in the Annual Performance Appraisal Report (APAR for short) for the period from 17.05.2013 to 16.11.2013 communicated to him vide order dated 03.02.2014 **(Annexure A-1)**. He has prayed for the following relief(s):-

- “8.1 to allow the present Application;
- 8.2 to quash and set aside the Adverse Comments and Below Benchmark grading in the Annual Performance Appraisal Report for the period 17.05.2013 to 06.11.2013 (Annexure A-1) of the applicant;
- 8.3 and as a consequence thereto, direct the Respondent Ministry to get the Self Appraisal of the Annual Performance Appraisal Report for the period 17.05.2013 to 06.11.2013 (Annexure A-1) of the Applicant filed by the Applicant and blank out the comments/observations/entries of the Reporting Officer (Respondent No.3) and Accepting Authority (Respondent No.2) made in the Annual Performance Appraisal Report for the period 17.05.2013 to 06.11.2013 (Annexure A-1) of the applicant.;
- 8.4. and as a consequence thereto, direct the Respondent Ministry to upgrade the Annual Performance Appraisal Report for the period 17.05.2013 to 06.11.2013 (Annexure A-1) of the applicant and Grant 10 (Ten) marks out of 10 (Ten) to the Applicant;
- 8.5 to pass suitable strictures against Respondent No.2 and Respondent No.4 and also other officers manning the Indian Statistical Service who are guilty of negligence as evidenced from the official files;

- 8.6 to interdict Respondent No.2 and Respondent No.3 from making any comments/observations/entries in the Annual Performance Appraisal Report of the Applicant in future;
- 8.7 to issue any such and further orders/directions this Hon'ble Tribunal deems fit and proper in the circumstances of the case; and
- 8.8 to allow exemplary costs of the application."

2. The case of the applicant is that he is an Officer of 1981 batch of Indian Statistical Service; presently serving in the senior administrative grade of the Indian Statistical Service w.e.f. 29.05.2009. He has been further granted Non-Functional Financial Upgradation (NFU) w.e.f. 03.01.2006 vide order dated 16.12.2010. On 03.02.2014, he was communicated APAR for the period 2013-14 (from 17.05.2013 to 16.11.2013) inviting representation, if any, against the remarks within 15 days. The applicant submitted a representation to the Hon'ble Minister for State (Independent Charge) for Statistics and Programme Implementation vide its communication dated 28.02.2014 (pages 260 to 581 of the paper book). He has alleged in para 4 of the representation that one A. K. Mehra, the Reporting Officer has engaged himself continuously in corrupt practices in violation of rules. He has charged house rent allowance illegally while staying in the government guest house and had been compelled to return the HRA. He has also charged respondent No.2 of malafides against him on account of his intervenor respondent in OA

No.1653/2010 decided on 20.10.2011 (S. K. Das vs. UOI), whereby his appointment as Statistician General of India had been quashed. In the representation, he has also cited several instances of malafides being harboured against him by the respondents.

3. The applicant also adverts to the history of his long drawn battle with the respondents and makes other allegations of serious nature against them. The applicant after having taken us here and there on the issues of fraud, he had made the prayer as detailed in para 2 of this order which have been summarised into the following grounds. However, we find that in most of his grounds, the applicant has mainly stated that the impugned order 03.02.2014 has been passed without application of mind. In support of his arguments, he placed reliance on the following cases:-

- (i) ***Emperor v. Sibnath Banerji*** AIR 1945PC 156;
- (ii) ***Jagannath vs. State of Orissa*** AIR 1966 SC 1140;
- (iii) ***Abdul Rajjak Abdul Wahab vs. Commissioner of Police*** (1989) 2 SCC 222;
- (iv) ***Reita Rahman vs. Bangladesh*** 50 DLR (1998);
- (v) ***Rina Sen vs. CIT*** (1999) 235 ITR 219,225-26 (pat);
- (vi) ***New Central Jute Mills vs. Dwijen Dralal Brahmachari*** (1973) 90 ITR 4676 (Cal.);
- (vii) ***Jai Singh vs. State of Jammu & Kashmir*** 1985 (1) SCALE 105.

4. While citing the aforesaid judgments, the applicant has not shown to us as to in what manner violations have taken place and what are the points of the judgments which have been violated. It appears that this has been left to the good judgment of the Tribunal to go through and decide. However, during the course of oral submissions, these grounds have been considerably shortened by the applicant. We have tried our level best to glean the grounds from the pleadings as also on the basis of oral submissions and have narrowed down in the following manner:-

- (1) In the first place, the applicant challenges the introduction of the system of accepting authority which has been done according to him *de hors* the ISS Rules and the Transaction of Business Rules and has been introduced against the procedures without the approval by the Indian Statistical Service Board;
- (2) The remarks of the accepting authority have been made beyond the time stipulated;
- (3) The applicant also alleges hostile discrimination and mala fide against the respondents particularly against respondent no.2 on a number of counts, which are:-

- (i) In the first place that his ACR was not submitted before the then Minister In-charge, who was well aware of the working and contributions made by the applicant to the department;
 - (ii) In the second place, the applicant refers that the respondent no.2 harbors a deep malice against the applicant as he had challenged his appointment in OA No.1653/2010, which led to his appointment being quashed. The respondent has since become vindictive against the applicant and these remarks have been recorded out of malice being borne against the applicant.
- (4) The applicant has also submitted that the successor to Hon'ble Minister has decided the representation on the advice of respondent no.2 whom the applicant has accused of malice. Therefore, it amounts to non-application of mind.
- (5) In the second place, the applicant alleges malice, hostile discrimination and malafides on part of the respondents. For this, he has referred to several cases which are as under:-
- (i) ***R. S. Garg vs. State of UP & Others*** AIR 2006 SC 2912;

- (ii) ***P. Mohanan Pillai vs. State of Kerala*** 2007 AIR 2840;
- (iii) ***M. P. State Co-op. Dairy Fedn. Ltd. vs. Rajnesh Kumar Jamindar*** (2009) 15 SCC 221.
- (iv) ***Kalabharati Advertising vs. Hemant Vimalnath Narichania*** (2010) 9 SCC 437;
- (v) ***Swaran Singh Chand vs. Punjab State Electricity Board*** AIR 2010 SC 151;
- (vi) ***Ravi Yashwant Bhoir vs. District Collector, Raigad*** (2012) 4 SCC 407.

5. The applicant further submits in para 5.30 of the OA that the Accepting Authority who is personally involved in the case should have recused himself from dealing with the file where he had a personal interest. The applicant has also urged that the impugned order is bad in law as violative of the cardinal principle of natural justice “Nemo iudex in causa sua”. The applicant further submits that he had not been given personal hearing as requested in his representation dated 28.02.2014. He has also submitted in para 6 of his OA (page 235 of the paper book) that his representation is still pending and the respondents are making their best efforts to get the same rejected by the competent authority.

6. The respondents in their counter affidavit have submitted that the representation of the applicant dated 28.02.2014 had been considered by the competent authority and rejected vide

order dated 14.10.2014. They have further submitted that the applicant has filed his representation beyond the stipulated period and, therefore, it would not be liable to be considered. They have further contended that the competent authority has acted correctly in making consultation with the Reporting/Reviewing Officer as per the DoP&T OM dated 14.05.2009 (pages 455-456 of the paper book). The respondents have further denied there being any vendetta on the part of the reporting authority and the accepting authority. The Reporting Officer after demitting office w.e.f. 06.11.2013 on his promotion to DG & CEO, NSSO vide his letter dated 13.11.2013 (page 371 of the paper book) asked every officer working under him to submit their APARs so that he can report his observation within the time period specified in the instructions, i.e., one month. The applicant did not submit his APAR. Therefore, the respondent No.3 after waiting for the permissible time initiated the APAR without having the benefit of his self appraisal. Learned counsel for the respondents also rebuts the averments of the applicant that he had received the blank format only on 21.12.2013 on the ground that it had been despatched to him on 29.11.2013. The respondents also questioned that it is not clear as to why the applicant marked the letter dated 13.11.2013 (page 371 of the paper book) and his APAR (page 372 of the paper book) to his subordinate like any other receipt. It was the duty and responsibility of the

applicant to fill up his own self- appraisal part instead of marking down the same to his subordinates. The letters have been issued to all the subordinates to respondent No.3 and there was duty cast upon the applicant to submit his form. It is the applicant's non application of mind and lack of care and caution in duty and as such he is not entitled to any relief in this regard.

7. The respondents have further submitted that the instance of irregularity as alleged by the applicant has been examined in the Ministry and it is found to be without any reasonable basis. The respondents have further controverted the submission of the applicant that no reasons have been recorded in support of the remarks given to him by respondent Nos.2 & 3 on the ground that the system of numerical grading used 17 different parameters which is to be awarded on the basis of their assessment of performance during their work period. The Reporting/Reviewing/Accepting Authority have to be precise, specific and limited within the prescribed space. The submission of officer that no reasons have been recorded is contrary to the facts. In part-III (c) of the APAR (copy at pages 251 of the OA), the Reporting Authority has clearly recorded his performance.

8. Learned counsel for the respondents has completely denied the allegation of mala fide levelled by the applicant.

While admitting that the applicant was intervener in OA No. 1653/2010 decided on 20.10.2011 (S.K. Das versus UOI), the respondents denied that the appointment of the respondent no.2 had been quashed on the basis of the arguments of the applicant. The learned counsel further submitted that the applicant had filed more than 200 OAs before this Tribunal and other courts and, therefore, it is easy for him to link each and every decision of any of the courts. The aforesaid decision was challenged before the Hon'ble High Court of Delhi by way of WP(C) No. 8124/2011 wherein the applicant, not being a party, was not permitted to argue the case. Aggrieved, the applicant filed CM Application for recall of judgment dated 17.09.2013 passed by the Hon'ble High Court of Delhi, which was dismissed at the admission stage itself without issuing notice. Therefore, the applicant was not at all a party in these cases and his attempt to make out a case of bias on part of accepting authority by linking the court cases is only an attempt to mislead the Tribunal. The respondents further stated that as per the rules, if the reporting officer is not in position and the review officer is taking work directly from the officer reported upon, then he may initiate the report and submit the same to his own superior for review. Accordingly, the said S.K. Das, the reviewing authority of the applicant initiated the report and submitted the same to the Secretary,

MOSPI. Since Secretary, MOSPI is the accepting authority, in the instant case, the accepting authority accepted the report.

9. We have heard the applicant who appeared in person and Shri R. N. Singh, learned counsel for the respondents.

10. The only matter that deserves our attention here at this point of time is whether the principles of natural justice have been violated in consideration of the representation of the applicant dated 28.02.2014.

11. For the sake of better clarity, we reproduce OM dated 14.10.2014, which reads as under:-

“ Office Memorandum

Subject : Representation against adverse remarks in the APAR for the period 17.05.2013 to 06.11.2013-Disposal of representation reg.

Representation No.M-14011/6(2)/2013-RPU/8462 dated 28.02.2014 submitted by Shri Tushar Ranjan Mohanty, Deputy Director General against adverse remarks in his APAR for the period 17.05.2013 to 06.11.2013 was examined and placed before Hon'ble Minister in the capacity of Appellate Authority, who has rejected the representation as below:-

Since the Annual Performance Appraisal Reports (APARs) relates to period prior to my taking over, I go by advice of the Secretary to reject the representations.

2. The representation of Shri Tushar Ranjan Mohanty, Deputy Director General stand disposed accordingly.”

The DoP&T order dated 14.05.2009 provides as under:-

“Subject: Maintenance and preparation of Annual Performance Appraisal Reports-communication of all

entries for fairness and transparency in public administration.

The undersigned is directed to invite the attention of the Ministries/Departments to the existing provisions in regard to preparation and maintenance of Annual Confidential Reports which inter alia provide that only adverse remarks should be communicated to the officer reported upon for representation, if any. The Supreme Court has held in their judgment dated 12.5.2008 in the case of Dev Dutt vs. Union of India (Civil Appeal No.7631 of 2002) that the object of writing the confidential report and making entries is to give an opportunity to the public servant to improve the performance. The 2nd Administrative Reforms Commission in their 10th Report has also recommended that the performance appraisal system for all services be made more consultative and transparent on the lines of the PAR of the All India Services.

2. Keeping in view the above position, the matter regarding communication of entries in the ACRs in the case of civil services under the Government of India has been further reviewed and the undersigned is directed to convey the following decisions of the Government:

- (i) The existing nomenclature of the Annual Confidential Report will be modified as Annual Performance Assessment Report (APAR).
- (ii) The full APAR including the overall grade and assessment of integrity shall be communicated to the concerned officer after the Report is complete with the remarks of the Reviewing Officer and the Accepting Authority wherever such system is in vogue. Where Government servant has only one supervisory level above him as in the case of personal staff attached to officers, such communication shall be made after the reporting officer has completed the performance assessment.
- (iii) The Section entrusted with the maintenance of APARs after its receipt shall disclose the same to the officer reported upon.
- (iv) The concerned officer shall be given the opportunity to make any representation against the entries and the final grading given in the Report within a period of fifteen days from the date of receipt of the entries in the APAR. The representation shall be restricted to the specific factual observations contained

in the report leading to assessment of the officer in terms of attributes, work output etc. While communicating the entries, it shall be made clear that in case no representation is received within the fifteen days, it shall be deemed that he/she has no representation to make. If the concerned APAR Section does not receive any information from the concerned officer on or before fifteen days from the date of disclosure, the APAR will be treated as final.

- (v) The new system of communicating the entries in the APAR shall be made applicable prospectively only with effect from the reporting period 2008-09 which is to be initiated after 1st April 2009.
- (vi) The competent authority for considering adverse remarks under the existing instructions may consider the representation, if necessary, in consultation with the reporting and/or reviewing officer and shall decide the matter objectively based on the material placed before him within a period of thirty days from the date of receipt of the representation.
- (vii) The competent authority after due consideration may reject the representation or may accept and modify the APAR accordingly. The decision of the competent authority and the final grading shall be communicated to the officer reported upon within fifteen days of receipt of the decision of the competent authority by the concerned APAR Section.

3. All Ministries/Departments are requested to bring to the notice of all the offices under them for strict implementation of the above instructions.”

12. In view of the above, the competent authority has acted rightly in consulting with the Reporting and the Accepting Authority. However, considering the fact that the applicant has levelled serious allegation against respondent Nos.2 & 3 it would be against the principles of natural justice to rely fully upon their version. The Hon’ble Supreme Court in the matter

of **Shabnam vs. Union of India and Ors.**

MANU/SC/0669/2015 decided on 27.05.2015 held as under:-

“Otherwise, there would be violation of the famous rhetoric of Emperor Ashoka who said '*State should not punish with vengeance*'.

(III) Article [21](#) of the Constitution lays down that nobody shall be deprived of his life and liberty except according to the procedure established by law. After long judicial debate, it now stands settled that the procedure established by law has to be '*due procedure*' (See **Maneka Gandhi v. Union of India** : (1978) 1 SCC 248). By judicial interpretation, this Court has read the principle of reasonableness into the said procedure contemplated by Article [21](#), holding that it must be '*right and just and fair*' and not arbitrary, fanciful or oppressive. Even as per the statute book, this procedure does not culminate with the dismissal of appeals of the convicts by the final Court. No doubt, when an accused is tried of an offence by a competent court of law and is imposed such death penalty and the said death penalty is upheld by the highest Court, the procedure that is established by law has been followed up to this stage. However, in the statutory framework, further procedural safeguards in the form of judicial review as well as mercy petitions are yet to be traversed. This would also be covered by the expression '*procedure established by law*' occurring in Article [21](#). Therefore, till the time limitation period for filing the review petition and thereafter reasonable time for filing the mercy petition has not lapsed, issuing of death warrants would be violative of Article [21](#).”

This principle though reiterated in a criminal case would apply across the board in civil disputes as well.

13. In another case of **Devidas Ramachandra Tuljapurkar Vs. State of Maharashtra and Ors.** reported in 2015 (6) SCALE 356, the Hon'ble Supreme Court held that no matter

how offending any publication is; that would be no reason to deny the right of natural justice to the person charged. In the instant case, though the decision of the competent authority has to be based upon its personal opinion formulated on the basis of the documents and the applicant could also be given a personal hearing.

14. We are swayed by the additional fact that as per the decision of the Hon'ble Supreme Court, the courts cannot step into the shoes of the competent authority. As we have not observed the working of the applicant, we do not stand to supplant the competent authority. It is only the competent authority who can decide on the basis of his personal experience and the materials available on record regarding the challenge to the orders of the Reporting and the Accepting Authority.

15. In view of such findings, we are of the opinion that the order dated 03.02.2014 must go with the following directions:-

- (i) The order dated 03.02.2014 is hereby quashed as against the rules of natural justice.
- (ii) The Competent Authority is directed to consider the representation of the applicant on the basis of the material placed on record and otherwise available in the office as he deems fit.

- (iii) The competent authority could also consider to grant personal hearing to the applicant in case so desired by him.
- (iv) The competent authority may pass a reasoned order in respect of representation of the applicant dated 03.02.2014 within a period of three months from the date of production of certified copy of this order.

16. With the above order, the OA stands disposed of but without any order as to costs.

(Dr. B. K. Sinha)
Member (A)

(Syed Rafat Alam)
Chairman

/pj/