

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.2972/2014

Order Reserved on:26.10.2016

Pronounced on:30.11.2016.

**Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)**

S.N. Mudgal,
S/o Sh. Kul Prakash Sharma,
R/o QU-203B, Pitampura,
New Delhi-110034.

-Applicant

(By Advocate Shri Yogesh Sharma)

Versus

1. Mahanagar Telephone Nigam Limited,
Through CMD, MTNL Corporate Office,
5th Floor, Mahanagar Door Sanchar Sadan,
9-CGO Complex, Lodhi Road,
New Delhi-110003.
2. Director (Technical),
MTNL, 5th Floor,
Mahanagar Door Sanchar Sadan,
9-CGO Complex, Lodhi Road,
New Delhi-110003.
3. Executive Director,
MTNL, K.L. Bhawan,
Janpath,
New Delhi-110001.
4. Chief Engineer (BW-1),
Telephone Exchange,
Chorbagh, New Delhi.

- Respondents

(By Advocates Mrs. Rachna Issar Joshi)

O R D E R

Mr. K.N. Shrivastava, Member (A):

This Original Application (OA) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 praying for the following specific reliefs:

- “(i) That the Hon’ble Tribunal may further graciously be pleased to pass an order of quashing the impugned ACR and grading in the ACR of the period 1.9.2008 to 31.3.2009, declaring to the effect that the same are illegal, arbitrary and without any basis and consequently, pass an order directing the respondents either to upgrade the grading of the applicant in ACR of the period 1.9.2008 to 31.3.2009 or same may not be considered for any purpose.
- (ii) That the Hon’ble Tribunal may further graciously be pleased to pass an order of quashing the impugned order dated 7.4.2014, with the further direction to the respondents not to consider the ACR of the period 1.9.2008 to 31.3.2009 for any purpose including for promotion/MACP of the applicant etc and consequently, pass an order directing the respondents to consider and to grant the Non-Functional promotion to E-8 and further scale of pay to the applicant from due date with all the consequential benefits including the difference of pay and allowances.”

2. The brief facts of this case are as under.

2.1 The applicant is a Superintending Engineer (C-S) in MTNL. He is eligible for promotion/financial upgradation to the grade of E-8, which is a Non-Functional Grade (NFG). The benchmark in terms of the ACR grading for the said promotion is ‘Very Good’. The applicant was graded ‘Good’ in his ACR for the period September, 2008-March, 2009 (Annexure A-2). This

below benchmark ACR grading was communicated to him by the respondents. The applicant, vide his Annexure A-3 representation dated 28.01.2014 addressed to CMD, MTNL, has requested for upgrading the below benchmark grading for the reasons stated in the said representation. The Annexure A-3 representation of the applicant was rejected by the Director (Technical), who is Accepting Authority for the applicant, vide his impugned Annexure A-1 order dated 07.05.2014, which reads as under:

“Sub:- Representation of S.N. Mudgal SE(C.S.) GO -90402 for upgradation of below bench mark grading in ACR for the period 01/09/2008 to 31/03/2009.

This has reference to the representation NO.SNM/2013-14/MTNL/ACR/2 dated 28/01/2014 of Shri S.N. Mudgal, staff No. GO-90402 regarding upgradation of below bench mark greeting in ACR for the period 01/09/2008 to 31/03/2009.

The representation of the officer was forwarded to the Reporting officer vide this office letter dated 7/4/2014 for seeking his comments. The Reporting officer vide his letter dated 24/4/2014 has conveyed that there is no ground provided by the officer to change his assessment as Reporting officer in the APAR of the above mentioned period of Sh. S.N. Mudgal. The comments of the Reviewing Officer was not called as he has retired from the service. Further, the remarks of the Review officer against item 4 of part V is as under.

“The officer has capability to perform better. More serious approach towards monitoring the work & regular review can bring in required improvement. I agree with the grading given by Reporting officer.”

Therefore, after examining the representation of the officer and comments of the Reporting Officer and the complete CR for 1/9/2008 to 31/3/2009, the undersigned, i.e., the Accepting Authority does not find any justification for upgrading the overall grading for the period 01/09/2008 to 31/03/2009 and maintains it “GOOD” only.”

2.2 Aggrieved by the Annexure A-1 order of Director (Technical) (respondent No.2), the applicant has filed the instant OA, praying for grant of the reliefs, as quoted in para-1 supra. The main grounds pleaded by the applicant in support of his case are as under:

- i) No warning was given to the applicant before writing the ACR for the period September, 2008-March, 2009. As per the principles laid down by the Chandigarh Bench of this Tribunal in the case of **Fateh Singh v. Chandigarh Admn.**, [2002] (3) ATJ 425] such a warning was mandatory.
- ii) The remarks given by the Reporting Officer are vague and cryptic which cannot be sustained, as per the principles laid down by this Tribunal in the case of **Nanu Singh v. Union of India & Ors.**, [2003 (2) ATJ 281].
- iii) The below benchmark ACR graded was communicated to the applicant after five years, which is not allowed as per the principles laid down in **Fateh Singh** (supra).
- iv) In the case of **Akhilendu Arjariya v. Union of India & Ors.**, [2003 (3) ATJ 470], this Hon'ble Tribunal had quashed the adverse remarks on the ground that the same were communicated to the applicant after a long gap of 16 months. Applying the same principle, the below benchmark ACR of the

applicant for the period September, 2008-March, 2009 deserves to be ignored.

v) During the relevant period, i.e., September, 2008-March, 2009, neither any charge-sheet was issued to the applicant nor any memo/advisory was issued to him. The Chief Engineer (BW) Project vide letter dated 17.02.2009 had issued a warning to the applicant and the same was placed in the ACR of the applicant but after receiving the reply of the applicant, the authority concerned withdrew the said warning from the ACR of the applicant.

3. Pursuant to the notices issued the respondents entered appearance and filed their reply. Controverting the allegations made in the OA, the respondents have made the following averments in their reply:

a) The applicant is not entitled for any relief notwithstanding the fact that his ACR gradings for other years were above the benchmark and only for the period September, 2008-March, 2009 it was below the benchmark. In this regard, the principles laid down by the Hon'le Apex Court in the case of **Amrik Singh v. Union of India**, [(2001) 10 SCC 424] has been relied upon.

b) The applicant has not furnished any reason as to how the impugned order and the ACR for the period September,

2008-March, 2009 are not legally sustainable. It is stated that the ACR has been written by the concerned authorities after duly assessing the performance of the applicant.

c) The representation of the applicant dated 28.01.2014 has been disposed of in terms of the guidelines issued by the DoPT vide OM dated 13.04.2010 (Annexure R-3), which reads as follows:

“.....While considering the representation, the competent authority decides the matter objectively in a quasi judicial manner on the basis of material placed before it. tthis would imply that the competent authority shall take into account the contentions of the officer who has represented against the particular remarks/grading in the APAR and the views of the Reporting and Reviewing Officer, if they are still in service on the points raised in the representation vis-a`-vis the remarks/grading given by them in the APAR....”

d) The Accepting Authority, being the Competent Authority, after getting inputs from the concerned Reporting and Reviewing Authorities has passed the impugned Annexure A-1 order, rejecting the representation of the applicant. The applicant has not been granted NFG promotion to the grade of E-8 as his ACR for the period September, 2008-March, 2009 was below the benchmark.

4. The applicant in his rejoinder to the reply filed on behalf of the respondents has stated that no charge-sheet nor any warning was given to the applicant before grading his ACR as ‘Good’ for the period September, 2008-March, 2009.

5. Arguments of the learned counsel for the parties were heard on 26.10.2016.

6. We have considered the arguments of the learned counsel for the parties and have also perused the documents and pleadings annexed thereto. Admittedly, the applicant was in the zone of consideration for the grant of financial upgradation to E-8 grade, which is an NFG. All his ACRs which were considered for the grant of second financial upgradation, were equal or above the benchmark except for the period September, 2008-March, 2009 (07 months). It is also not in dispute that during this period of 07 months, no charge-sheet or warning was issued to him by his superior authorities. No doubt, a warning was issued to him by the Chief Engineer (BW) Project, which was later withdrawn after the receipt of the explanation of the applicant. For an officer, who has been otherwise having a good track record of service and who has been earning ACRs accordingly year after year, it is surprising as to how suddenly he has been accorded below benchmark grading for this period. It is all the more intriguing and surprising as to how such grading could have been given to him without issuing any warning/memo/advisory to him during the said period. From the perusal of the ACR for the said period, we are unable to find any credible reason adduced either by the Reporting Officer or the Reviewing Officer for grading him in the manner as they

have done. Thus, we hold that the principles laid down by this Tribunal in **Fateh Singh** (supra) have been clearly violated.

7. The applicant was due for his financial upgradation to the E-8 grade in the year 2008 whereas the ACR for the relevant period containing the below benchmark grading has been communicated to him on 17.02.2009, which is again in violation of the laid down principles. Such communication should have been done within a reasonable period of time.

8. We have duly considered, the principles laid down by the Hon'ble Apex Court in **Amrik Singh** (supra), which, unfortunately, in our view, do not support the case of the respondents. The Hon'ble Apex Court in **Amrik Singh** (supra) has held that the Courts cannot go into the correctness of the adverse remarks nor into the assessment made by the Selection Board. In the instant case, we observe that the conditions precedent to writing such ACRs have not been adhered to, viz. the applicant has not been warned or advised against his unsatisfactory performance at any point of time during the relevant period.

9. In the conspectus of the discussions in the foregoing paras, after taking into consideration the performance record of the applicant throughout, as also considering that the below benchmark grading, for the period September, 2008-March,

2009, has been given to the applicant without any pre-warning or advisory, we are of the view that the ends of justice would be met by directing the respondents to grant financial upgradation to the applicant to the E-8 Grade, which is a Non Functional Grade, by ignoring the ACR for the period from September, 2008-March, 2009. Accordingly, we direct the respondents to do so. This shall be done by the respondents within a period of three months from the date of receipt of a copy of this order. OA accordingly stands disposed of.

1o. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Raj Vir Sharma)
Member (J)

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