

**Central Administrative Tribunal
Principal Bench**

OA No.3949/2017

New Delhi, this the 13th day of November, 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Manoj Kumar Jha @ M K Jha
Aged 50 years, Group 'A'
Superintending Engineer (Civil)
S/o Late Dr. Mahender Jha
R/o 7, Bowali Mondal Road
2nd Floor, Kolkata-700026. ...Applicant

(By Advocate: Shri Ashish Nischal)

Vs.

Union of India through its Secretary
Ministry of Urban Development
Nirman Bhawan
New Delhi-110011. ..Respondents

(By Advocate: Sh. Rajeev Kumar)

ORDER (ORAL)

Justice Permod Kohli :-

Notice.

2. Shri Rajeev Kumar, learned counsel, appears and accepts notice on behalf of respondents.

3. This OA is directed against the order dated 07.06.2017 passed by the Deputy Director(Admn.II) rejecting the representation of the applicant dated 09.08.2016 for upgradation of grading in the APAR for the period

01.04.2015 to 13.01.2016 from 'Good' to 'Very Good' and expunging adverse remarks, as also the order dated 02.08.2017 whereby the memorial of the applicant dated 10.07.2017, against the aforementioned order, rejecting his representation, has been declined.

4. The applicant is working as Superintending Engineer(Civil) at Kolkata. He was served with the APAR for the period 01.04.2015 to 13.01.2016 wherein he was awarded numerical grading of 5 which is equivalent to 'Good'. Whereas the bench mark for further promotion is 'Very Good'. The applicant accordingly preferred a representation dated 09.08.2016 against the aforesaid grading, which has been rejected vide the impugned non-speaking order dated 07.06.2017. A memorial against the same has also been declined on the ground that no second representation is permissible.

5. We have heard the learned counsel for the parties. Insofar as the order rejecting the representation of the applicant is concerned, the same is liable to be set aside being a non-speaking one. Shri Ashish Nischal, learned counsel for the applicant has also taken us to the notings on the file which he has procured under RTI. From the notings also, we find that no other reason except that the reporting

and reviewing officers have opined that the assessment already made in the APAR is in order, has been given while rejecting the representation of the applicant. The Secretary, who is the competent authority, has mentioned in the notings as follows:-

"NOTE#18

after perusing all relevant facts, there seems to be no justification to accept the representation.

17/05/2017 2:16PM

Rajiv Gauba
(SECY UD)"

6. As a matter of fact, no reasons have been recorded by the competent authority. Keeping in view the averments made in the representation, the impugned order is liable to be set aside on this ground alone. Insofar as the memorial is concerned, the same has been rejected on the ground that no second representation is admissible. Shri Nischal has brought to our notice a document (Annexure A-9) which are instructions of the DOP&T. Para 9 of the aforesaid instructions read as under:-

"9. A memorial or appeal against the rejection of the representation against adverse remarks is to be allowed within six months of such rejection. Pendency of any memorial or appeal would mean that the adverse remarks are not final and cannot be acted upon."

It is accordingly submitted that the memorial or appeal is permissible against the rejection of the representation.

7. For the above reasons, we are of the opinion that both the impugned orders are liable to be set aside. Thus, without going into the merits of the controversy, we set aside the impugned orders and remit the case back to the competent authority with a direction to pass a fresh order on the representation of the applicant dated 09.08.2016 by recording reasons and taking into consideration the averments made in the representation. Suffice it to say that the applicant shall have the liberty to make appropriate memorial/appeal, in accordance with rules, if aggrieved, against the order passed on his representation. Let the competent authority pass the order on the representation within a period of two months from the date of receipt of a copy of this order.

(K.N. Shrivastava)
Member(A)

(Justice Permod Kohli)
Chairman

/vb/