

**Central Administrative Tribunal
Principal Bench
New Delhi**

**OA No. 2891/2016
MA No. 4344/2018**

This the 15th day of October, 2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Ashes Kiran Prasad S/o late Dhanushdhar Prasad,
Presently posted as Chief Traffic Planning Manager,
NWR, Jaipur, And residing in Room No. 1,
Railway Officers' Rest House,
Hasanpura Road,
Jaipur - 302006.

... Applicant

(By Ms. Ayushi Kiran, Advocate)

Versus

1. Union of India through the Chairman,
Railway Board, Raisina Road,
Rail Bhawan, New Delhi - 110001.
2. Member Traffic,
Railway Board, Raisina Road,
Rail Bhawan,
New Delhi - 110001.
3. Department of Personnel and Training,
Ministry of Personnel,
through the Secretary,
Public Grievances and Pensions,
North Block, New Delhi - 110001.
4. General Manager,
North - Western Railway,
Jawahar Circle, Jaipur - 302017.

... Respondents

(By Shri Rajender Nischal, Advocate)

ORDER

Justice L. Narasimha Reddy, Chairman :

The applicant is a senior officer in the Indian Railways. In the year 2016, he was holding the post of Chief Traffic Planning Manager, North Western Railway, Jaipur. His case was not considered for promotion to the Higher Administrative Grade (HAG), on account of the gradations given in the APARs from the year 2009-10 onwards. He instituted a series of proceedings before this Tribunal, the Delhi High Court and the Supreme Court in that connection. The effort of the applicant was to get his APARs upgraded to the extent of rendering him eligible and fit to be short-listed for promotion to higher grade.

2. In the pursuit of such proceedings, the applicant came to know that not only the APARs must be at the level of 'Very Good' for the preceding five years, but also at least one of them should be 'Outstanding'. Though his APARs for the corresponding period were upgraded to the level of 'Very Good', he started his efforts to get at least some of them upgraded to the level of 'Outstanding'. He made a representation in respect of APARs for the years 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14. Dealing with the same, the

competent authority passed order dated 10.06.2016 stating that the representation for upgradation of those APARs had already been considered, and there is no provision for appeal under the DoP&T instructions dated 14.05.2009. As regards the APAR for the year 2013-14, it was mentioned that there is a delay in making representation, and accordingly, it is treated as barred under the said instructions.

3. The applicant made a separate representation in respect of the APAR for the year 2014-15. That was rejected through a communication dated 05.08.2016. this OA is filed challenging the communications dated 10.06.2016 and 05.08.2016.

4. The applicant contends that the communication dated 10.06.2016 cannot be sustained, inasmuch as the occasion for him to seek further upgradation arose only when he was informed that at least one APAR should be up to the level of 'Outstanding'. He submits that none of the reasons mentioned in the said order can be sustained in law. Regarding the order dated 05.08.2016, it is stated that though the representation was made in time and in accordance with law, the order was passed without assigning any reasons.

5. The respondents filed a counter affidavit opposing the OA. It is stated that the representations submitted by the applicant were dealt with strictly in accordance with the guidelines stipulated by the DoP&T, and that there are no merits in the OA.

6. We heard Ms. Ayushi Kiran, learned counsel for the applicant, and Shri Rajinder Nischal, learned counsel for the respondents.

7. The applicant has been making several efforts to get his APARs upgraded to such an extent that he does not suffer any disqualification in the context of promotion or posting. In the course of the marathon legal battle, he was successful to a substantial extent, in that, the APARs were upgraded to the level of 'Very Good'. Even his APAR for the year 2014-15 was recorded as 'Very Good'. However, it was only in the recent past, that he came to know that the requirement at that stage is at least one 'Outstanding', in addition to the others being 'Very Good'. With a view to achieve that target, he made two representations, one in respect of the APARs from 2009-10 to 2013-14, and the other for 2014-15. As regards his first

representation, the respondents passed the following order on 10.06.2016:

“Your representation dated 26.04.2016, for upgradation of APARs for the years 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14 has been examined. It is seen that representations for upgradation of grading in the APARs for the years 2009-10, 2010-11, 2011-12, 2012-13 have already been considered and decision conveyed. There is no provision for appeal in DOP&T instructions dated 14.05.2009 (copy enclosed).

2. As regards, APAR for the year 2013-14, you had viewed the APAR on 31.10.2014 and submitted your representation after more than 1 ½ years. Hence it is time barred in terms of para 2(iv) of DOPT's instruction dated 14.05.2009 (copy enclosed).

This is for your information.”

On the second one, the order dated 05.08.2016 reads:

“Your representation dated 10.05.2016, submitted against the entries recorded in your APAR for 2014-15 (Pt. I & II) has been considered by the competent authority and decided that after considering remarks in both Part 'A' & 'B' of APAR 2015, the final grading of 'Very Good' need not be changed to 'Outstanding' & the same stands,

Kindly acknowledge the receipt of this letter.”

8. It is no doubt true that the APARs of the applicant for the years 2009-10 to 2012-13 were dealt with earlier, and the decision was also conveyed. However, his endeavour was only

in the context of getting it further upgraded. The applicant has been pursuing the remedy since when he was not aware that the upgradation should be to the level of at least one 'Outstanding'. Though in a way, it may resemble an appeal, in the context of his being informed about the requirement about the 'Outstanding', it can be treated as one of re-appreciation of what was done earlier. Secondly, the applicant did not feel the necessity of filing any representation as regards the APAR for 2013-14, since it was graded as 'Very Good'. By the time he realised that the gradation of 'Outstanding' is essential, there was some delay. If these circumstances are taken into account, his representation deserves to be considered on merits.

9. Coming to the order dated 05.08.2016 in relation to the APAR for 2014-15, it is evident that though it was filed within time, it was rejected without assigning any reasons. Time and again, the Hon'ble Supreme Court and the High Courts held that the competent authority is under an obligation to assign reasons in support of its conclusions.

10. We, therefore, allow this OA and set aside the orders dated 10.06.2016 and 05.08.2016. The concerned authority shall pass fresh orders duly assigning reasons within

a period of two months from the date of receipt of this order.

There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/as/