

CENTRAL ADMINISTRATIVE TRIBUNAL,

CHANDIGARH BENCH

O.A.NO.060/01116/2017

Orders pronounced on: 14.09.2018
(Orders reserved on: 05.09.2018)CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)**

Harsh Kumar, I.F.S.

Chief Conservator of Forests, Hills,

H.No. 1841, Sector 34-D,

Chandigarh,

Age 54 years, Group A.

APPLICANT

BY: **SELF.**

1. Secretary,

Ministry of Environment & Forests,

Paryawaran Bhawan,

CGO Complex,

Lodhi Road,

New Delhi.

By : **MR. RAM LAL GUPTA, ADVOCATE.**

2. Sh. S.S. Dharamsot,

Forest Minister,

Government of Punjab,

Main Civil Secretariat,

Chandigarh.

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Respondents

By : **MR. RAKESH VERMA, ADVOCATE.**(O.A.No. 060/01116/2017
Harsh Kumar Vs. VOI etc.)

O R D E R
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, for quashing the order dated 1.9.2017 (Annexure A-1) passed on behalf of Respondent No.2, ordering stoppage of the letter dated 15.6.2017 vide which the PAR remark of 9/10, given by Reporting Officer, was restored.
2. The facts leading to the filing of the instant Original Application (OA), that the applicant is an Indian Forest Officer (IFS) of 1985 batch. The All India Services are created under All India Services Act, 1951. The work relating to writing of Performance Appraisal Reports and transfers are in the hands of the State Government. The petitioner was given Non-Functional Grade of pay scale of the level of Chief Conservator of Forests (CCF) on 27.6.2011, after screening of his record done on 4.5.2011, from back date (Annexure A-2). He was further promoted as CCF, as noticed in the order dated 16.8.2017 (Annexure A-4), passed in Contempt Petition © Nos. 620-621 of 2017 in C.A.No.,11231-11232 of 2016 – Harsh Kumar Sharma, IFS Vs. Sarvesh Kaushal, IAS by Hon'ble Supreme Court. The promotion to the future grade of CCF is dependent upon the Performance Appraisal Reports (PAR). As per rules and law, same grade IFS officer cannot write the PAR of the equivalent grade of IFS officer. As per PAR Rules, 2007 for different categories of officers, the Reporting, Reviewing and Accepting Authorities were notified on 23.6.2009 (Annexure A-7). As per order dated 21.8.2014 (Annexure A-8), Minister concerned was to act as Accepting Authority for all the IFS and PFS officers.
3. The case of the applicant, in so far as relevant, is that as per instructions and rules, PAR of the applicant, well in time, was sent to Gurbaz Singh, IFS, the then Reporting Authority namely Additional

PCCF (Development). He had recorded all the columns and termed PAR of applicant as "outstanding (9/10)" on account of his achievements during the year 2015-16, particularly research related projects. However, Kuldip Kumar, IFS, Principal Chief Conservator of Forests (PCCF) (Reviewing Authority) scaled down the grading to "6/10" by stating that the "applicant has gone to courts too often and is using his energies for the courts". He is the same person, who had been opposing promotion of applicant as CCF throughout. The remarks were conveyed to the applicant vide letter dated 5.10.2016 (Annexure A-9), providing applicant an opportunity to make a representation against the same.

4. The applicant submitted a representation dated 27.10.2016 (Annexure A-10), in consonance with PAR Rules, 2007, explaining therein the outstanding work done by him and thereby his entitlement to outstanding grade and that his remark was scaled down without any reason which is illegal and not adverse, as per Government of India instructions dated 30.3.1976 (Annexure A-11). He has explained that Reviewing Authority was biased against the applicant as he wanted to save certain other officers, who were summoned as accused by the JMIC, Court for tempering of documents etc. The Special Chief Secretary (Forests) (Accepting Authority), found that applicant had rightly gone to the courts in exercise of his constitutional rights and as such the PAR level 9 out of 10 given by Reporting Officer, was restored vide letter dated 15.6.2017 (Annexure A-15). It is submitted that as per Standing Orders (Annexure A-7), PAR 2015-2016 of the applicant was never shown to the Minister concerned, though it was to be shown to him, and it was finalized at its own level by V.K. Khanna, IAS, the then Secretary Forests. The applicant had already submitted representation dated 28.7.2017 (Annexure A-16) to the PCCF

(Reviewing Authority), about misconduct of earlier Accepting Authority and Reviewing Authority. When new Secretary Forests came, he heard the applicant and finding that remarks were uncalled for, expunged it and restored level 9/10 from 6/10. However, the Minister (Respondent No.2), entertained an application from Kuldip Singh, IFS, who wanted to scuttle the promotion of the applicant, sent a note to Special Chief Secretary (Forests) that the letter regarding restoration of remarks by Special Chief Secretary (Forests) is stayed till further orders. The applicant has also placed on record Noting of the file, Annexure A-21 and Amendment of PAR Rules, 2007 (Annexure A-22). It is pleaded on that basis, that Respondent No.2 was not the competent authority to interfere in the decision of the then Special Secretary (Forests), while deciding the appeal of the applicant for adverse remarks in his PAR and as per PAR Rules, 2007, the Forest Minister could only interfere in the cases of representation against adverse remarks, where he had seen the work of an officer for more than 3 months. In the year 2015-16, Respondent No.2 was not even part of the Government as he was not Forest Minister. However, he has taken a decision on the file only that action of then Special Chief Secretary Forests for dealing the case and passing the final order on the representation of applicant was justified. Representation was entertained without any referral Board which is illegal. Hence, the O.A.

5. The respondent No.2 has filed a detailed reply. It is submitted that Reviewing Authority passed the order without taking comments of the Accepting/Reviewing Authority, which is in violation of rule 9(7) of PAR Rules, 2007. As per Standing order dated 27.8.2014, cases mentioned in Annexure II are to be submitted to Minister for passing an order, which was not done. Thus, when case was considered by

Minister, the order restoring remarks were kept on hold. No representation against decision dated 28.7.2017 has been received by the respondents. The representation was decided and allowed by Special Chief Secretary, Forests, without any authority. Hence, they pray for dismissal of the O.A. The applicant has also filed written arguments.

6. We have heard the learned counsel for the parties at length and examined the material on file.

7. The applicant would vehemently argue that there was no material, whatsoever, with the Reviewing Authority, for scaling down of his PAR remarks and as such it was rightly restored to 9/10 by the competent Accepting Authority and a valid order passed by that authority cannot be stayed by the Minister, without any power and authority and any material in that behalf. On the other hand, learned counsel for respondents would support the impugned order stating that same is as per rules and law and does not require any interference.

8. We have considered the submissions made on both sides carefully.

9. It is not in dispute that as per letter dated 23.6.209 (Annexure A-7), written by PCCF, Punjab, Chandigarh, the Reporting, Reviewing and Accepting Authority in respect of IFS officers are as under :-

Sr. No.	The posting of the officer	Reporting Authority	Reviewing Authority	Accepting Authority
1&2	X	X	X	X
3.	All Conservator	Concerned Chief Conservator of Forest	Principal Chief Conservator of Forest	Financial Commissioner Forest

It is admitted position at all hands that the PAR of the applicant was written by Addl. PCCF giving applicant 9/10 remarks for the year 2015-

16, particularly for research related projects. This was reviewed by the PCCF and remark was toned down to 6/10 only on the premise that applicant goes to courts too often and is using his energies in courts. He has not mentioned anything on the work and conduct of the applicant upon which earlier remarks 9/10 were given by the Reporting Authority. Apparently toning down was done on extraneous considerations and any Officer or official cannot be penalized just because he or she avails judicial remedy for vindication of his grievance which is his/her fundamental right and cannot be taken by the administrative authorities. Realizing this error, the Accepting Authority, in the light of submissions made by applicant in his representation against implied adverse remarks, restored the grading to 9/10. Thus, one has to accept that the downgraded 6/10 remark, was based on extraneous considerations and has rightly been not accepted by competent authority (Accepting Authority) and who was well within its power and authority to restore the original grading of 9/10, as given by the Reporting Officer.

10. Not only that, the Forest and Wildlife Preservation & Labour Minister, Punjab, had issued Standing Order dated 21.8.2014 (Annexure A-8), that the cases, inter-alia, of "Representations and decision against adverse remarks in ACR relating to IFS officers & PFS officers where Financial Commissioner Forests is the accepting authority", shall be submitted to the Minister, Forest & Wildlife Preservation, Punjab, for passing orders. In para 2 thereof, it is mentioned that during absence of the Minister, cases of immediate nature, which are required to be disposed at his level, decision on which cannot wait for his return or which cannot be sent to him during his tour for timely orders, shall be disposed of by the Financial Commissioner & Secretary to Govt. of

Punjab, Department of Forests & Wildlife Preservation, but such cases shall be shown to him on his return to headquarter. It is not in dispute that such orders were passed by the Minister, for his own convenience, and the same were never followed or reiterated by next Minister. So, obviously, those instructions or orders, lost value after new incumbent stepped into his shoes. So, the claim of the respondents that the case was to be referred by the Accepting Authority, to the Minister concerned, is not tenable in the eyes of law, as the Accepting Authority, exercised its power and authority, given to it by Annexure A-7, which would hold field. That being so, the respondents cannot take any benefit on the basis of Annexure A-8. In any case, even if it is accepted for the sake of argument that Minister was to be shown the file, as already held above, the grading was toned down, on the basis of extraneous considerations, which cannot be sustained in the eyes of law and stoppage of the order restoring grading of the applicant, would amount to upholding an illegal order, which cannot be accepted by a court, from any angle.

11. The applicant has placed on record Noting Portion where the case of the applicant was considered regarding PAR remarks, as Annexure A-21, which also makes the position clear. It is clear from the same that on 15.6.2017, the Government of India, Ministry of Personnel and Training, had amended Rules of 2007 as notified in official gazette on 16.6.2017. As per these amended rules, if Accepting Authority is below the Minister, then for adverse remarks passed in ACR, the decision has to be taken by the Forest Minister, and if the Forest Minister had not seen the performance of the concerned officer, then matter, has to go to the Referral Board. The Additional Chief Secretary in his note has recorded as under :

"As per this in para 8 rule 9 sub rule 7, 7(A), 7(B), 7(C) and 9 9 (b) have been amended. As per this, if accepting authority is below the Minister, then for adverse remarks passed in the Annual confidential report the decision has to be taken by the Forest Minister, but if the Forest Minister had not seen the performance of the concerned officer then matter as per rule 9 (7C) has to go to the referral board., In this case the special secretary Forests as per above shown amendment had already taken a decision on 12/06/2017 (correspondence page/36), and thus there is no need to send the case to the referral board. Case is presented to Forest Minister for necessary orders"

12. It is, thus, apparent that the amended rules would apply prospective only having been published on 16.6.2017, whereas case of the applicant relates to the year 2015-16, which is governed under the old rules. Even if it is assumed for the sake of argument only that case was to be sent to a Referral Board, even then it is admitted position that no Referral Board was ever constituted by the respondents and as such they cannot take any benefit of the new rules and without referring the matter to a Referral Board, the Minister has taken a decision to suspend the order restoring 9/10 grading of the applicant.

13. Besides, it is also admitted position that the Minister concerned could interfere in the representation, only if he has seen the work of the concerned IFS officers for a period of more than 3 months, which is not the case in hand. In this case, the new Minister has not even seen the work and conduct of the applicant and as such question of his interference, even otherwise, does not arise. More so, when as stated above, the toning down of remark is based on extraneous considerations which is not permissible in the rules and law.

14. In view of the above discussion, we hold that the impugned order, Annexure A-1 is illegal, arbitrary, without jurisdiction, inoperative

and as such is quashed and set aside. The remarks given by Accepting Authority is restored. The applicant is held entitled to all the consequential benefits arising there from. The parties are, however, left to bear their own costs.

**(SANJEEV KAUSHIK)
MEMBER (J)**

**(AJANTA DAYALAN)
MEMBER (A)**

Place: Chandigarh.
Dated: 14.09.2018

HC*

