

**Central Administrative Tribunal
Chandigarh Bench**

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OA No.060/01382/2017
MA No. 060/00543/2018

Pronounced on: 03.12.2018
Reserved on: 17.11.2018

Coram : Hon'ble Mr. Sanjeev Kaushik, Member (J)
Hon'ble Ms. P. Gopinath, Member (A)

P.K. Sarin S/o Shri S.N. Sarin, aged 63 years, r/o # 234, Sector 4, Mansa Devi Complex, Panchkula, Haryana - 134114

... Applicant

Versus

1. Union of India through the Secretary to Government of India, Ministry of Urban Development, Nirman Bhawan, New Delhi.
2. Director General (Works), Govt. of India, Directorate General, Central Public Works Department, Nirman Bhawan, New Delhi – 110 011.
3. The Superintending Engineer, Shimla Central Circle, CPWD, Keneddy Cottage, Shimla, H.P.

Present: Applicant in person.
Sh. Sanjay Goyal for the respondents.

ORDER

Mrs. P.Gopinath, Member (A) :

1. Applicant joined the respondent department as Junior Engineer on 02.08.1976 and was promoted as Assistant Engineer in 1984 and thereafter as Executive Engineer on 23.04.2008. Applicant retired from service on 31.08.2014.
2. On 28.04.2016, the respondents asked the applicant to represent against the below bench mark grading of APAR for period 2007-08, 2010-11 and 2012-13 while

complying with the Tribunal's order in OA No. 835/2016 to consider/grant of 3rd MACP to applicant. The applicant submitted a representation on 29.05.2016. The respondents rejected this representation.

3. The applicant argues that the reviewing officer had noted in the APAR that work was not given to the applicant due to unexplained reasons. The applicant also argues that for the year 2011-12, his APAR grading was "very good" whereas for 2012-13, the APAR grading was reduced to "good". The applicant cites the Apex Court judgement in **State of Haryana Vs. P.C. Wadhwa, AIR 1997 SCC 1201** wherein the Court had observed that making of adverse remarks would be lost if they are communicated to the officer concerned after an inordinate delay.

4. The prayer of the applicant is to quash the below bench mark grading for the period 01.04.2012 to 30.11.2012 and for upgrading of APAR for the same period to "Very Good".

5. The respondents in the reply statement submit that the work of Executive Engineer (Planning) was withdrawn from the applicant on account of his willful insubordination and disobedience which resulted in upsetting the work of the circle office and division office under the control of the circle. The engineering, clerical, work charged staff, and drivers of CPWD at Shimla had also made a complaint against the applicant vide

letter dated 14.12.2012. As regards the non-upgradation of APAR on the basis of the representation made by the applicant, it has been submitted that no satisfactory ground or substantial submission was put on record by the applicant arguing his claim to upgrade the APAR.

6. Heard counsel for applicant and respondents and perused written submissions made. The APARs for the period 1984-85 to 1989-90 were as follows:-

PERIOD	GRADING
21.10.1984 to 31.03.1985	FAIR
01.04.1985 to 31.10.1985	FAIR
01.04.1986 to 31.07.1986	AVERAGE (NARRATIVE REPORT)
14.08.1986 to 18.12.1986	GOOD
01.04.1987 to 31.03.1988	CERTIFICATE
01.04.1988 to 06.09.1988	CERTIFICATE
07.09.1988 to 31.01.1989	AVERAGE
01.04.1989 to 31.03.1990	AVERAGE

Thus, the applicant had only two fair, three average and one good record in the past and thus the good record in a subsequent year which is assailed is not without a history or a background.

7. The respondents submit that they had introduced a system by which every year the APAR of the officers was uploaded on the Personal Information and Management System (PIMS) of each employee of the CPWD website. Hence, such uploaded ACR was the disclosure of the APAR to

the applicant and a separate communication was not necessary.

8. The applicant adopted dilatory tactics in his work, indulged in undue correspondence and unwarranted notings. This resulted in paralyzing the work of the office. It also set an atmosphere of fear of being adversely reported on constantly by the applicant. Thus, working of other officials in the office and the work of the office was adversely affected.

9. In view of the above situation, the Assistant Engineers of Shimla Central Circle were directed to put up their files/matters to the Superintending Engineer for disposal. The Superintending Engineer had while sending a report on a letter sent by the applicant, noted that the language used by the applicant during discussion in the presence of Sh. Natha Singh, AE, HQ was unbecoming of a Government servant.

10. It is apparent from the arguments that the applicant would not pass a popularity vote. He had refused to pass the TA bills of the staff, invited complaints from the driver that he indulged in confrontation, misbehavior and used abusive language with them. The relation of the applicant with his colleagues and subordinates was not good as seen from the complaints made against him. While working as AE on 19.04.1991, the applicant was accused of having demanded and received bribe and the outcome of the criminal trial is not

made available to the Bench. Applicant however remained under suspension till 27.01.2003, for 11 years, 8 months and 29 days. He was also disrupting the smooth functioning of the Government office with his behavior and complaints as can be seen from Annexures R-9 and R-10 produced by the respondents which give a detailed account of the applicant's activities which were adverse to office discipline. Such constant adversarial behavior would affect the working and atmosphere of the office.

11. The grading of the applicant prior to his suspension in 1991 is also not very encouraging - two "fair", three "average" and one "good". The reporting officer who has graded his overall performance as "very good", has given a very good grading in only five out of 28 attributes. For the remaining 23 attributes, the grading is either good or fair. Thus, the individual attribute grading do not total up to the final grading awarded. Annexure A-2 is a speaking order passed in OA No. 835/2016 filed by the applicant wherein it is recorded that the applicant did not represent against APAR for the year 2011-12 for upgradation. The applicant only requested for upgradation of APAR for the period 01.04.2012 to 30.11.2012. The applicant did not bring out any new facts and merely reiterated the details already made in the aforesaid APARs and hence, the APAR for the period 01.04.2012 to 30.12.2012 did not qualify for any

upgradation, argue the respondents and a 2-1/2 page detailed speaking order was issued in respect of the representation made by the applicant.

12. As noted above, the gradings from 1984-1990 was either fair/average/good. This is not a case where the applicant had earned consistently “very good” records and any appraisal with the lesser grading was an anathema to him.

13. The Bench had also called for the file in which the applicant’s representation for upgrading ACR was considered. We find from the notings in the above file that when it was discovered that the ACR for the period 2008-09 and 2009-10 were not available, the applicant was asked to intimate the name of the reporting and reviewing officer. The applicant appears to remember the name of the reviewing officer, but disclaimed knowledge of the name of the reporting officer. Regarding ACR for 2010-11, no representation was submitted by the applicant. For the ACR of 2012-13, a representation was submitted, considered, but not upgraded by passing a reasoned order.

14. We find that there is evidence on record in the form of file notings of forwarding relevant APAR to the applicant for information and record and also the consideration of the upgrading of the APAR by the DG CPWD who had noted that the applicant had not brought out any new facts and merely

reiterated the details already available in the aforesaid APAR. The appellate authority arrived at the conclusion that the APAR did not qualify for upgradation.

15. On a perusal of the records of the applicant, we find that the applicant on the whole has been awarded either good, fair or average gradings for the period 1989 to 1991. Applicant has been given a “good” grading for the period April, 2012 to November, 2012. Therefore, the case of the applicant is not one of “outstanding” or “very good” performance which has suddenly seen a drop in the gradings to “good”. It is also not a case that the applicant had not been given an opportunity to represent against the below bench mark gradings awarded and have the same considered and speaking order passed on the same. The performance of the applicant had been discussed in great detail in the minutes of the review meeting of the Screening Committee for grant of 3rd financial upgradation in the year 2017. The meeting recorded that the applicant had a “very good” grading for short periods 04/2005 to 01/2006, and 10/2011 to 03/2012 and “outstanding” grading for another short period 04/2007 to 07/2007. The meeting also recorded that ACRs for the reporting year 2007-08 was in two parts, i.e. APAR for period 01.04.2007 to 29.07.2007 is “outstanding” and for period 30.07.2007 to 31.03.2008 is “good”. Thus, the outstanding APAR was for a very short period of four months.

The applicant's history of service record of APAR reports does not encourage the Bench to consider any upgradation of grading awarded. The applicant has also been under suspension for a very long period of 11 years and APARs for the said period are also not available.

16. Going through the overall record of the applicant in service, we also do not feel the need to upgrade the APARs. The applicant has got "very good" grading for three short periods i.e. 04/2005 to 01/2006, 04/2006 to 03/2007 and 10/2011 to 03/2012. He has got an outstanding ACR from 04/2007 to 07/2007 only. Hence, for service rendered from 1989 to 2014, the above very good/outstanding ACR is only for a very short period and does not make out a case for any upgradation of the below bench mark APARs for the other periods.

17. For the foregoing discussion, we do not see any ground for judicial interference in upgrading the APARs of the applicant for the relevant period. OA, being devoid of any merit, is dismissed. MA No. 543/2018 also stands disposed of accordingly. There shall be no order as to costs.

(P. Gopinath)
Member (A)

(Sanjeev Kaushik)
Member(J)

Dated:
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