

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
CHANDIGARH**

OA. No. 060/00548/2016

Date of Decision : 20.11.2017

**CORAM: HON'BLE MR.JUSTICE M.S. SULLAR, MEMBER(J)
HON'BLE MRS.P. GOPINATH, MEMBER(A)**

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Rohit Choudhary, son of Sh. Harendra Singh, age 54 years, resident of # 2-A, Baradari Garden, Near Circuit House, Patiala.

.....Applicant

BY ADVOCATE: **Mr. Nakul Sharma**

VERSUS

1. Union of India, through the Secretary, Ministry of Home Affairs, North Block, New Delhi.
2. State of Punjab, through its Secretary, Department of Home Affairs and Justice, Civil Secretariat, Punjab, Chandigarh.
3. Director General of Police, Punjab Police Headquarter, Sector 9, Chandigarh.

.....Respondents

BY ADVOCATE: **Mr. K.K. Thakur for Respd.No.1.
MS. Rajni Paul proxy counsel Mr. Rakesh
Verma respdts. No. 2 &3.**

ORDER

MRS. P. GOPINATH, MEMBER(A):-

1. The applicant joined the Indian Police Service in 1988. He got 9 out of 10 in APAR Grading from the reporting officer for the period 01.04.2010 to 01.09.2010. For the period 09.09.2010 to 31.03.2011 also the applicant got 9 out of 10 in the APAR Grading from the Reporting Officer and the accepting authority granted 9.5 out of 10 as the APAR Grade. The applicant remained posted under the

command and control of one DGP for period 25.04.2011 to 30.09.2011 and a second DGP from 01.10.2011 to 15.03.2012. He argues that the latter DGP reported on the officer for the entire period 25.04.2011 to 15.03.2012, including the period spent under the earlier DGP which according to him is violative of the Performance Appraisal Report Rules, 2007. The overall grading by the latter DGP was 6 out of 10.

2. The applicant submitted a detailed representation for upgrading the assessment made in the APAR wherein the applicant gave the details of how he developed certain differences on some issues with the reporting officer which resulted in the average assessment. The applicant submitted another representation in continuation of the first one stating that the Central Administrative Tribunal at Delhi in judgement dated 15.04.2009 in the OA No. 249/2009 titled Rohit Choudhary Vs. UOI & Ors. had held that the second reporting officer was biased and discriminatory towards the applicant.

3. The Home Affairs and Justice Department, without giving any finding and without passing any speaking order, stated that there is no need for any action on the representation of the applicant in this OA. The applicant argues that his representation had been rejected with a non-speaking order and without any clear findings on the issues raised thereon. The applicant also draws attention to the fact that he had been given a grading of 9.6 for the year 2012-13, 9.8 for the year 2013-14 and 9.5 for the year 2014-15 by the reporting

authority. Hence, a sudden drop in the grading is inexplicable. The report so made by the reporting authority, covers a period wherein another officer had observed the work of the applicant, and not the reporting authority.

4. The relief sought by the applicant is to quash Annexure A-11, order disposing of his representation for upgrading the assessment made in the APAR for the period 25.04.2011 to 15.03.2012 and upgrade the assessment made as per earlier performance report and latter performance report for the years 2012-13, 2013-14 and 2014-15 wherein the applicant had been given a grading of 9.6, 9.8 and 9.5 respectively.

5. The respondent Home department in a rectification certificate, issued on 17.06.2016, corrected the APAR of the applicant by certifying that Sh. Anil Kaushik, IPS, "was not the reporting authority from 24.04.2011 to 30.09.2011".

6. The respondents in the reply submit that the overall numerical grading of 6 in the APAR of the applicant for the period April, 2011 to March, 2012 has been recorded as per the performance of the officer and that the performance of one period cannot be compared to the performance of the officer in another period. The review authority reviewed the APAR of the applicant for the entire period 25.04.2011 to 15.03.2012 in the light of Rule 5(4) of All India Services (PAR) Rules, 2007. The action of the reviewing authority was correct as he had supervised the performance of the officer for the entire period.

7. The applicant had served under the supervision of two DGPs, the first DGP period was 25.7.2011 to 30.09.2011. The period spent under second DGP was from 30.09.2011 to 15.03.2012. The period of work under the first DGP was less than three months and since the said DGP demitted office on 30.09.2011, he could not record the APAR of the applicant.

8. The APAR forms submitted to the applicant was for the entire period from 25.04.2011 to 15.03.2012 and the appraisal report was recorded by the reporting officer for the period 30.09.2011 to 15.03.2012. The Principal Secretary, Home who had supervised the performance of the applicant in his capacity as Reviewing Authority for the entire period recorded his report for the whole period in the light of Rule 5(4) of All India Services (PAR) Rules, 2007 reproduced hereunder:-

“Where the reporting authority has not seen, but the reviewing authority has seen the performance of a member of the Service for at least three months during the period for which the performance appraisal report is to be written the reviewing authority shall write the performance appraisal report of any such member for any such period.”

9. In the reply statement, the respondent argues that when the APAR report was given to the applicant for completion, Section I which is to be filled by the applicant and Anil Kaushik was mentioned as reporting officer, the applicant could have at that stage made a representation that Sh. Anil Kaushik would be the reporting authority only for the period 30.09.2011 to 15.03.2012. But the applicant made no such representation. The applicant made representation

only when a grading of 6 was communicated to him and this appears to be an afterthought.

10. The respondent denies the allegation that the grading made for the period under challenge in this OA was on account of differences with the reporting and reviewing authorities. The applicant prior to submitting his APAR for recording had not made any such observation/allegation of bias or discrimination on the part of the reporting authority. Further, the applicant while filling section I of the APAR form was aware that the APAR form was for the period 25.04.2011 to 15.03.2012 and that Sh. Anil Kaushik was the reporting authority. Hence, this is not a case where applicant was unaware that the first reporting authority had retired or was not in a position as a consequence of retirement to write his APAR.

11. The Government of India instructions produced at Annexure R-2 states that members of the service graded between 6 and short of 8 will be rated as 'very good' and will be given a score of 7. Hence, respondent argues that the applicant has been graded as "very good" and should not have a cause for grievance. The reviewing authority under the Rule 5(4) of All India Services (PAR) Rules, 2007, is authorized to review the performance of a member of the Indian Police Service when the reporting officer had not seen the performance of the officer reported upon for any period. The Respondent also argues that the applicant also did not submit any memorial to the Hon'ble President of India against the reviewing officers' report for the period in question. Since the first reporting

officer had already retired, hence, any report by him post-retirement, after the admissible period of report, would not be admissible.

12. While sending the APAR forms to the applicant for the period 25.04.2011 to 15.03.2012, the covering letter dated 29.03.2012 in Section I shows Reporting, Reviewing and Accepting Authorities as under:-

Reporting Authority	(i) Sh. Paramdeep Singh, IPS, DGP, Punjab 01.04.2011 to 30.09.2011 (Retired on 30.09.2011) (ii) Sh. Anil Kaushik, IPS, DGP, Punjab 30.09.2011 to 15.03.2012.
Reviewing Authority	Sh. D.S. Bains, IAS, Principal Secretary Home, Govt. of Punjab 25.04.2011 to 15.03.2012.
Accepting Authority	Sh. Sukhbir Singh Badal, Deputy Chief Minister, Punjab (Ministe-in-Charge) 25.04.2011 to 15.03.2012.

The applicant on the receipt of the above, has filled Section II of his APAR form for the entire period i.e. 25.04.2011 to 15.03.2012 and sent it to Sh.Anil Kaushik vide letter dated 08.05.2012. Hence, respondents argue that the applicant was appropriately informed as above of his reporting officer and had himself not made a distinction while recording his APAR/resume, for two periods to be reported upon by two different officers. Subsequently, Annexure A-22, Certificate dated 12.06.2016 was issued which stated that Sh.Anil Kaushik was not the reporting officer from 25.04.2011 to 30.09.2011 as the officer had worked under Sh. P.S. Gill at that time. Hence, a correction

certificate indicating the period of report has already been issued to the applicant.

13. Applicant also brings to our notice that the CAT Principal Bench in its judgement of 15.4.2009 in OA No. 249/2009 titled Rohit Choudhary Vs. UOI, the Bench had observed that Sh. Anil Kaushik, the then ADGP (Security) was biased and discriminatory to the representationist. The same officer being the reporting officer for the period in this OA, it is necessary to provide a relief to the applicant. Hence, the matter is remitted back to the respondents and the appropriate respondent is directed to review the APAR of the applicant and pass a speaking order on the report made thereon with modifications, if any, to be recorded in the APAR for the period 2011-2012. The reviewing authority will complete the review of performance of applicant for period 2011-2012 within 30 days and pass a speaking order on the grading recorded/upgraded. This is so also in view of the observations of bias by the CAT Principal Bench on the reporting officer and the fact that the issue in this OA is also in respect of the applicant's report made by the same authority.

14. Ordered accordingly.

**(P. GOPINATH)
MEMBER(A)**

**(JUSTICE M.S. SULLAR)
MEMBER(J)**

Dated: 20.11.2017

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