

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**CHANDIGARH BENCH**  
**CHANDIGARH**

**OA. No. 060/00701/2016**  
**MA No. 060/66/2017 &**  
**MA No. 060/1387/2017**

This 13<sup>th</sup> day of February, 2018

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

...  
Rakesh Kumar Gupta S/o Late Sh. Siya Ram Gupta, aged 50 years, r/o 1868, Sector 7-C, Chandigarh, O/o Chandigarh Central Electrical Division, CPWD, Kendriya Sadan, Sector 9-A, Chandigarh.

.....Applicant

BY ADVOCATE: Sh. Rohit Seth

VERSUS

1. Union of India through the Secretary to Govt. 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, Central Public Works Department, Kendriya Sadan, 3<sup>rd</sup> Floor, Sector 9-A, Chandigarh.
4. The Executive Engineer (Electrical), Chandigarh Central Electrical Division, Kendriya Sadan, 3<sup>rd</sup> Floor, Sector 9-A, Chandigarh.
5. The Assistant Engineer (Electrical-II), Chandigarh Central Electrical Division, Sector 9-A, Kendriya Sadan, Chandigarh.

.....Respondents

BY ADVOCATE: Sh. Sanjay Goyal

## **ORDER**

### **HON'BLE MRS. P. GOPINATH, MEMBER(A):-**

1. The applicant is a Junior Engineer working in the respondent department in Chandigarh since 03.08.2013. Applicant submits that the APAR form for period 01.04.2014 to 31.03.2015 was given to him on 15.05.2015. The form duly filled up was submitted by him on 04.06.2015. Applicant argues that his APAR for the above period was written by the Reporting Officer on 29.05.2015 without taking into consideration the self-appraisal prepared by him. The APAR was reviewed by the Executive Engineer on 01.06.2015.

2. Applicant submits that in the event, a self-appraisal is not submitted by any person, reminder is to be issued for the same. This provision, according to him, is specifically provided in clause (xviii) in the OM on writing APAR. The applicant submitted a representation bringing this provision to notice on 08.09.2015 to the Superintending Engineer, after the APAR so written had been conveyed to him. Applicant's request for upgrading his APAR was rejected on 15.12.2015. The Reviewing Authority, submits the applicant, has given adverse grading without filling the columns in the APAR wherein grading on different traits was required to be recorded. Applicant cites the following cases in favour of his prayer:-

- (i) P.K. Shastri Vs. State of M.P. and Another's, 1999(7) SCC 329
- (ii) M.A. Rajasekhar Vs. State of Karnataka and Anr., 1996(10) SCC 369
- (iii) State Bank of India & Ors. Vs. Kashinath Kher and Ors., 1996(8) SCC 762

3. Applicant submits that low grading reflects non-application of mind. Applicant in grounds submits that though he was given 'Good' grading for the period 07.10.2009 to 31.03.2010 (5 months & 3 weeks) and 01.04.2010 to 31.03.2011 (12 months), he has been graded 'Very Good' for the period 01.04.2013 to 01.08.2013 (4 months). Thereafter, for the period 02.08.2013 to 31.03.2014 (8 months), he has been again graded 'Good'. The applicant's prayer is for quashing the "good" grading in his APAR in subsequent year 01.04.2014 to 31.03.2015

4. The respondent submits that vide Annexure R-1, 19 persons including the applicant were issued APAR forms in duplicate for the reporting period 2014-15 for filling the self-appraisal and submission of the same by 15.04.2014 to the Reporting Officer. Despite repeated personal and telephonic reminders by the Assistant Engineer (Electrical) as well as the Executive Engineer (Electrical), applicant did not submit his APR form in duplicate within the prescribed period. The form was re-supplied to him in duplicate on 15.05.2015 with instructions to submit the same with self-appraisal within seven days i.e. by 22.05.2015. Applicant did not submit within the time prescribed. Following the DOP&T guidelines, the Reporting Officer made a self-report on the APAR, based on relevant material on record and his appraisal of behavior, conduct, punctuality and devotion to work etc. of the applicant and forwarded the APAR to the Executive Engineer being the reviewing authority, along with reports

of other persons working under him in respect of whom he was expected to make a report.

5. The respondents submit that the applicant after coming to know that his APAR was written and forwarded for review, submitted his self-appraisal dated 03.06.2015 to the Assistant Engineer, and under intimation to the Executive Engineer after the time span given to him for submission of self-appraisal. This APAR, self-appraisal was returned on the ground that it was submitted beyond the time limit intimated to him in writing the APAR had already been written and submitted to the Reviewing Officer.

6. It is also argued that the applicant was issued letters/memo from senior officers for being absent from work, lack of devotion to duty and negligence etc. produced as Annexure R-3 (colly). The respondents bring to notice that the applicant has also been issued a Rule 14 charge sheet under the CCS(CCA) Rules, 1965.

7. The respondents' argument rests on the fact that as per DOP&T guidelines, if an employee does not submit the APAR with self appraisal in time, then the APAR can be written by the Reporting Officer on the basis of experience of the work and conduct of the officer reported upon. Applicant had been given a chance to submit his APAR self-appraisal and he has failed to make use of the opportunity provided within time limit prescribed. On receiving the copy of the APAR appraisal and review, the applicant is now making averments in the OA regarding reporting in the APAR without taking

into account his self-appraisal which was not timely submitted. The respondent has placed on record Annexure R-1 wherein the APARs have been issued to 18 persons including the applicant. There appears to be no doubt about the letter issued as Annexure R-1 by which blank copies of ACR has been issued to 18 persons including applicant. On the request of applicant, the APAR form was re-issued to applicant. Respondents also argue that all the staff to whom Annexure R-1 was issued, had submitted their self-appraisal. Hence, there would be no reason for the applicant also not to do so similarly.

8. Head counsel for applicant and respondents and perused the written submissions placed on record. Applicant in the OA submits that he had joined the respondent department as JE on 25.09.1991. Hence, as on date of filing the OA, he has approximately 25 years of service. Hence, this is not a case where the applicant is not aware of departmental procedures particularly those relating to APAR as in 25 years of service, he would have familiarized himself with the process of ACR/APAR writing of himself and his subordinates and would have submitted self-appraisal. Hence, the applicant's contention that he was not supplied an ACR form appears to be a lame excuse. The applicant could have asked for such a form to be supplied or could have obtained the form himself from the office. Further, the applicant's contention that there are certain dates fixed for the Reporting Officer to give his report and the Reviewing Officer to give his report are the outer limits for the activity and does not preclude an earlier submission. There is nothing in the rules

which states that the confidential reports cannot be written before the last date prescribed, provided the person reported upon has been given the opportunity of submitting the self-appraisal. The applicant had been given two chances of placing on record his self-appraisal which he failed to avail within the time intimated to him by the Reporting Officer. To implicate a negative attribution to timely or early submission of APAR Report or review appears to be an attempt on the part of the applicant to find an excuse to rest his non-submission of self-appraisal and not upto the bench mark report/review.

9. Respondent has placed on record Annexure R-3 (colly) wherein the applicant has been reprimanded about his dereliction of duty, remaining absent from place of duty, electrical complaints not being attended etc. Hence, this is not a case where the applicant has not been warned in writing about his lack of performance. On 21.10.2015, a letter has been addressed to the applicant about absence from duty, negligency in working, misconduct, carelessness in performing his duty, coming late on duty, leaving station without prior permission or sanction of leave, false measurement made in Measurement Book (MB) and not making MAS accounts for three years etc. Vide Annexure A-5, on 28.04.2016 placed on record by applicant also, respondents have addressed the applicant about the negligence, lack of devotion to duty, disobedience of instructions and insensitive attitude in attending complaints of the client department by the applicant. In Annexure R-5, it is also being stated that the

applicant is regularly creating nuisance and hindrance in Government works by unauthorizedly visiting sites which are not under his jurisdiction. It is also further stated that he is misguiding the workers of the contractors by giving them illegal and wrong instructions. The applicant not doing work on site was also addressed by Assistant Director (Admn.) Subsidiary Intelligence Bureau (AnnexureR-8) and Director CFSL Chandigarh, clients of the applicants department. Hence, this is not a case where applicant was not informed or forewarned about his poor inadequate performance.

10. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness bias and malafide. It is also to check whether decision has been made "lawfully". The action taken by respondent is not one which would shock the conscience of the court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made.

11. We note that applicant has been given not one but two opportunities to submit his self-appraisal, which he failed to use. The guidelines for writing APAR has been formulated to obviate inadequacy of appropriate reporting. The applicant has been given a chance to submit his self-appraisal to cover the inadequacy of improper reporting, but he failed to use it. Whereas no person should suffer due to lack of opportunity, no person should be allowed to take the advantage afforded in a manner as to make it an attempt to read like denying the same. The guidelines for APAR writing should not be

construed as unbridled opportunity, finds no reason to intervene in the same. The Tribunal is not placed in a position of reporting on the applicant as not having the opportunity to observe the applicant's work or conduct. This is also not a case where applicant has been suddenly or abruptly graded "Good". On previous occasions, as brought out in para 3 above, applicant has been grade as "Good". This OA filed, appears to be an attempt to cover up his lapses and put the respondents on the defensive. The Reporting and the Reviewing Officers have ample opportunity to observe the work of the applicant and make their observations. Applicant has also been given an opportunity to submit his self-appraisal and he chose not to observe the time limits given to him in the letter forwarding the APAR for his self-appraisal. The objective behind laying down a time line is to set an outer time limit but does not preclude completing the task on an earlier date, provided, an opportunity had been given to applicant to submit the self-appraisal. This opportunity has been provided to applicant on two occasions.

12. With these observations, OA is dismissed. Pending MA, if any, is also disposed of accordingly. No costs.

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

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

**Dated :13.02.2018  
ND\***

