

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.20/994/2017

Reserved on: 11.09.2018

Order pronounced on: 17. 09.2018

Between:

A.Rajavarman, aged about 55 years,
S/o. S. Anbalagan, Senior Architect, Central PWD,
CGO Complex, Auto Nagar, Vijayawada – 520 007.

... Applicant

And

1. Union of India, represented by its
Secretary to Government of India,
Ministry of Urban Development,
Nirman Bhawan, New Delhi – 110001.
2. The Director General of Works,
Ministry of Urban Development,
Nirman Bhawan, New Delhi – 110001.
3. The Additional Director General (SR-1),
Central PWD, Rajaji Bhawan,
Basant Nagar, Chennai – 600090.
4. The Chief Architect (SR),
Central PWD, Rajaji Bhawan,
Basant Nagar, Chennai – 600090.

... Respondents

Counsel for the Applicant	...	Mr. T. Koteswara Rao
Counsel for the Respondents	...	Mr. B. Laxman, Advocate for Mrs. K. Rajitha, Sr. CGSC

CORAM:

<i>Hon'ble Mr. B.V. Sudhakar</i>	...	<i>Member (Admn.)</i>
<i>Hon'ble Mr. Swarup Kumar Mishra</i>	...	<i>Member (Judl.)</i>

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

The OA has been filed against the below bench mark grading given in the APAR of the applicant for the periods 1.4.2015 to 11.8.2015 and 12.8.2015 to 31.3.2016.

2. Brief facts of the case are that the 4th respondent has written the APARs for two periods and graded the applicant below the bench mark by awarding less number of marks in part III of the APAR. The reviewing and the accepting officers have accepted the grading given. The applicant represented on 10.8.2016 and 29.8.2016 to the competent authority and a memorial to the Honorable President but they were all rejected. Hence the O.A.

3. The applicant contends that the superior officers have never given any memo or advice citing lapses, if any, about his discharge of duties assigned to him. The respondents while rejecting his representations for upgradation, have neither given any reasons nor did they reckon the fact that the applicant was ever given a memo or an advice in regard to his functioning ability, which goes against the Principles of Natural justice. There are self contradictions in the process of marking the applicant under different attributes in the APAR. The applicant claims that the reporting officer has not given attention to Min. of Home affairs memo No. 51/4/64- Estt (A) dt 21.6.1965 in regard to fixing targets and review of the same periodically for taking corrective steps wherever and whenever needed. The DOPT Memo No.21011/1/2010-Estt –A dt. 30.4.2010 dictated that while reviewing APARs with below bench mark the reviewing authority should act in a quasi judicial manner. Further the applicant contends that his APARs for the last 5 years from 2010-11 have been graded as very good. Lastly the 4th respondent has suggested to 2nd respondent vide lr dt 8.9.2016 to upgrade the APAR to ‘Very Good’ based on his interactions with the applicant which revealed that the latter has realized the importance of performance.

4. Respondents inform that since the reporting and reviewing officers have retired, applicants representation was therefore submitted to the Secretary, Min.

of Urban Development, the next superior to the accepting authority i.e. the D.G., CPWD in this case, who considered and rejected the representation. This rejection was ordered after obtaining the comments of the reporting officer who once again suggested to upgrade the APARs as Very Good in view of the realization of the applicant to perform well. Applicant made another representation on 7.2.17 but there being no provision as per DOPT I.D. note dt 26.9.2017 it was not considered. Respondents while claiming that the APARs were initiated by the applicant himself and not by the 4th respondent have stated that performance for a particular period has no bearing on the performance for the subsequent period. The competent authorities have reviewed the performance of the applicant for the said period as per rules on various attributes and numerically graded him accordingly. The respondents contend that each attribute is specific and independent to others and hence they cannot be correlated to the marking given to other attributes. The assessment of the Govt Servant is done at three levels to bring in objectivity and fairness. The reviewing officer is free to offer his own remarks if the reporting officer remarks are brief, vague and cryptic. Further the reviewing and accepting authorities being sufficiently familiar with the work of the applicant there was no need to verify the correctness of the remarks of the reporting officer. The respondents rebut the contention that the reporting officer has not set targets and reviewed his work. On the contrary they say his work was periodically reviewed. Respondents admit that the arithmetical error in indicating the marking as 5.68 instead of 5.90 but they assert that it does not change the grading. They also point out that there is no rule to treat a complete APAR as *non est*.

5. Heard the learned counsel for both sides.

6. The counsel for the applicant has submitted a citation of the Central Administrative Tribunal, Principal Bench in O.A No 1720/2008 dt 22.4.2009 where in it was stated that

“when an opinion has been formed adverse to the government servant, reporting officer while writing confidentials should share the information, which is not the part of record and is to be confronted by the officer and make it a part of the record. An opportunity like memo advisory note, explanation etc is a corrective process”.

The learned counsel also drew the attention of this tribunal in regard to the quasi judicial functions by submitting the observation made by the Honorable Supreme Court in Indian National Congress vs Institute of Social Welfare and others vide Civil appeals Nos 3320-21 of 2001, reported in 2002 (5) SCC 685. Another citation of Honorable Apex Court in Maya Devi (dead) through LRs vs Smt Raj Kumari Batra (dead) through LRs and ors vide CA no 10249 of 2003 where in it was stated that

“orders can be made only after due and proper application of mind. Application of mind brings reasonableness not only to the exercise of power but to the ultimate conclusion also. Application of mind in turn is best demonstrated by disclosure of the mind. And disclosure is best demonstrated by recording reasons in support of the order or conclusion.”

The learned counsel for the applicant therefore contends that the action of the respondents lacks application of mind in grading the APAR and hence to be treated as non- est. The learned counsel for the respondent defended stating that the APARs were written as per rules on the subject and that the applicant was given reasonable opportunity to defend himself.

7. It is seen from the APARs for the periods in question that there is no evidence affirming that the applicant was advised in writing to improve his performance in any area where the reporting officer found the applicant

wanting. This fundamental principle is to be followed before making any adverse remark in the APAR. If after a written advise was tendered, the officer has not improved his performance, than an apt observation can be made in the APAR quoting the written advise tendered. APAR is meant to help the officer to know as to how he is performing year over year. It is a positive instrument to help officers to be motivated and keep improving their performance. The superior officers are expected to guide them to do so by tendering formal advise where required. Being the main base for career advancement, they have to be written with great care and attention. Any observation made therein should be backed by evidence on ground. Particularly, if an adverse entry is made, then it should be based by documentary evidence padded by facts, wherein the response of the Govt. servant for such adverse performance has been suitably reckoned. It cannot be made straight away without giving an opportunity to the concerned officer for presenting his version.

8. Being on the subject the observation of the Honorable Apex Court in (i) *State of Haryana v. P.C. Wadhwa, (1987) 2 SCC 602*, the Apex Court has summarized the importance of APAR and in particular the impact of any adverse observation without enabling the officer to defend.

14. The whole object of the making and communication of adverse remarks is to give to the officer concerned an opportunity to improve his performances, conduct or character, as the case may be. The adverse remarks should not be understood in terms of punishment, but really it should be taken as an advice to the officer concerned, so that he can act in accordance with the advice and improve his service career.

ii) Again, in *Swatantar Singh v. State of Haryana, (1997) 4 SCC 14*, it has been held –

“It is true that in view of the settled legal position, the object of writing the confidential reports or character roll of a government servant and communication of the adverse remarks is to afford an

opportunity to the officer concerned to make amends to his remissness; to reform himself; to mend his conduct and to be disciplined, to do hard work, to bring home the lapse in his integrity and character so that he corrects himself and improves the efficiency in public service. The entries, therefore, require an objective assessment of the work and conduct of a government servant reflecting as accurately as possible his sagging inefficiency and incompetency. The defects and deficiencies brought home to the officer, are means to the end of correcting himself and to show improvement towards excellence.”

Thus, from the above decisions of the apex Court, it is evident that the precise purpose of communication of adverse remarks is that **it acts as a curve corrector**, so that the employee could reform himself and improve in order to ensure that the career prospects are not hampered. It is not meant to penalize the individual.

9. Now, what is the consequence of non-communication of those remarks which ought to have been communicated? Answer to this question is available in the decision of the Apex Court in ***Union Public Service Commission v. Hiranyalal Dev, (1988) 2 SCC 242***, wherein the Apex Court has held, “*It cannot be gainsaid that the Selection Committee could not have taken into consideration the adverse remarks entered in the records which had not been communicated to Respondent 1*”. The Apex Court has in the case of ***Prabodh Sagar v. Punjab SEB, (2000) 5 SCC 630***, opined, “*The challenge, however, is based on two principle counts — on the first it is the issue of mala fides and on the second it is the un-communicated adverse reports: undoubtedly both these counts are rather serious in nature and success in regard to any one of the counts would entitle the appellant herein to appropriate relief.*”

10. In the present case there was no such opportunity given to the applicant nor any semblance of course corrector steps were taken. Besides his performance over the last 5 years was found to be very good and suddenly dipping to being good should have some strong acceptable reasons. The reporting officer has recorded his view of the performance of the applicant in the pen picture but he did not comment as to whether the applicant was advised to improve and if so the details thereof. The citation of Principal bench quoted supra covers the case fully. This is a clear case of violation of principles of Natural Justice. Further while disposing the representation of the applicant the Secretary, Min. of Urban Development has simply signed the office note without application of mind, as is expected of a Quasi Judicial authority in disposing such representations as per DOPT lr. dt 30.4.2010 and the observations of the Honourable Supreme Court in the citations stated above. The grading given was 5.90 and it was just 0.10 from being very good. There being such a minor difference having a telling effect on the career of the applicant, it was all the more necessary to make a detailed review aspect by aspect as is expected of a quasi judicial authority keeping the rules in view and the representation dt 29.8.2016 of the applicant where elaborate details of the work done were given plus the National Institute of Ocean Technology appreciating the good work done by the applicant vide its letter dt 9.3.16. The learned counsel has also mentioned that the applicant all through his career was never graded below very good. The representation of the applicant dt 31.3.2017 bears testimony to this fact. Nevertheless, even in the background of the above details, it is seen that the Secretary has not recorded a speaking and reasoned note which gives the impression that the representation was disposed in a routine manner. More so, in the context of the fact that the reporting officer when asked to give his comments has repeated his

recommendation to grade the officer as Very Good, who is in fact more conversant with the working of the applicant than the Secretary. Therefore, it is abundantly evident that the DOPT rules quoted, the Principles of Natural Justice plus the legal principles laid in citations stated above have been violated.

11. Hence in order to meet the ends of Justice, as there being no rule to declare the APARs in question as *non est*, the respondents are directed to consider the upgrading of the APARs to 'Very Good' for the periods referred to, as recommended by the reporting officer, based on grounds elaborated above within a period of 3 months from the date of receipt of this order.

12. The OA is allowed accordingly. No order to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 17th day of September, 2018

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