

**Central Administrative Tribunal
Chandigarh Bench
(Circuit Court at Jammu)**

OA No.61/418/2017

Decided on : 20.09.2018

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman

Hon'ble Ms. P. Gopinath, Member (A)

Shri Amarjit Singh Raina,

EE (SG), Joint Director,

Group A,

HQ Chief Engineer, Jalandhar Zone, Jalandhar Cantt.

... Applicant

(By Ms. Monika Kohli, Advocate)

Versus

1. Union of India through Secretary (Defence), Ministry of Defence, South Block, New Delhi-110011.
2. The Engineer-in-Chief's IHQ of MOD (Army), Kashmir House, Rajaji Marg, New Delhi-110010.
3. Chief Engineer, HQ Chief Engineer Western Command C/o 56 APO.
4. Sh. Om Kumar, IDSE (Reviewing Officer), CE, JT DG E-in-C's Branch, IHQ of MOD (Army), Kashmir House, Raja Ji Marg, DHQ PO New Delhi-110011.
5. Sh. S.C.Somani, IDSE (Initiating Officer), SE CWE, HQ CWE Jalandhar Cantt.
6. HQ Chief Engineer, Military Engineer, Military Engineer Services, Jalandhar Cantt.

... Respondents

(By : Mr. Harshwardhan Gupta, Advocate)

ORDER (ORAL)

P. Gopinath, Member (A) :

The facts giving rise to filing of the instant Original Application (OA) are that the applicant is working as Joint Director in Headquarter Chief Engineer, Jalandhar Zone, w.e.f. 11.12.2015. He had joined the Headquarter, Commander Works Engineer (CWE), Jalandhar Cantt, as DCE on 20.1.2015, in pursuance of letter dated 19.12.2014. Mr. S.C. Somani (Respondent No.5), took over as CWE, HQ, Jalandhar Cantt. The applicant claims that ever since joining, the respondent No.5 maintained a hostile attitude towards the applicant and allotted him only 10% of the daily routine work.

2. The applicant pleads that, he was to inspect all E/M installation of all GEs under CWE once in a quarter, in addition to his other duties as DCWE. Vide letter dated 28.5.2015, the applicant was declared non-performer of duties, by respondent no.5. He submitted a reply to the allegations leveled by respondent no.5. Despite this, a number of letters were issued to him to tarnish his image. A show cause notice

was also issued on 2.6.2015 for the absence of a few hours on 1.6.2015, though applicant was present in the office.

3. The applicant was sent a letter dated 27.6.2016 (Annexure A) along with his Part Performance Appraisal Report (PPAR) for the period from 1.4.2015 to 10.12.2015, in which he has been given overall grading of 3.01 by Respondent No.5, being the Reporting Officer of the applicant. The grounds taken by R.O. for such remarks are that he has an indifferent attitude, willfully delays disposal of works, indulges in acts of gross indiscipline i.e. insubordination, leveling false / fabricated charges against superior authorities and other staff. He resorted to discourteous writing using derogatory language which went against official decorum not befitting an officer, and also violated the officially approved channel of correspondence. He was advised several times but declined to improve himself. He is in habit of levelling false / fabricated allegations, which is evident from the covering letter to the PAR and it was also reported that no firm judgment could be formed about integrity of the applicant.

4. The Reviewing Authority slightly improved the grading to 3.24, but he also recorded, inter-alia, that applicant acted in an inappropriate manner by using derogatory and sarcastic

language, the tone and tenor of which is not in consonance expected of a mature officer. He adopted dilatory tactics / caused delays in disposal of works assigned to him. His relations with his fellow officers were not cordial was also recorded.

5. The applicant submitted a representation dated 8.8.2016 (Annexure B), against the adverse remarks. He followed this up with another representation dated 6.10.2016 with a request to upgrade his overall grading in the PPAR, by expunging the adverse remarks. The applicant has also enclosed his Annual / Part Confidential Reports of earlier periods in which he has been graded as “outstanding” or “very good”, the detail of which is as under :-

Period	Overall Grading
01.04.2010 to 31.03.2011	7.00/10 (Very Good)
01.04.2011 to 31.03.2012	8.49/10 (Outstanding)
01.04.2012 to 29.12.2012	8.04/10 (Outstanding)
01.04.2013 to 31.03.2014	8.31/10 (Outstanding)
01.04.2014 to 12.01.2015	8.35/10 (Outstanding)
01.04.2015 to 10.12.2015	3.24/10 (Spoiled by IO / RO)
11.12.2015 to 31.03.2016	6.56/10 (Very Good)
01.04.2016 to 31.03.2017	7.63 (Very Good)
01.04.2017 to 08.09.2017	8.2/10 (Outstanding)
09.09.2017 to 31.03.2018	8.87/10 (Outstanding)

The applicant has three “Very Good” and six “Outstanding” APR’s for the period 2010 to 2010 and one 3.24 grading for a period of 9 months from 01.04.2015 to 31.12.2015.

6. The representation filed by the applicant was ultimately rejected vide orders dated 4.2.2017 conveyed vide letter dated 6.2.2017 (Annexure H), supporting the observations made by Reporting Officer as well as Reviewing Officer. The applicant seeks quashing of the letter dated 6.2.2017 and for issuance of direction to the respondents to ignore the adverse remarks for promotion to the higher post. That is the stage at which we are seized of the matter.

7. The respondents have opposed the O.A. by filing reply. They submit that Respondent no.5 had no enmity or ill will towards the applicant. The dak was duly sent to the applicant from time to time but he used to sit over the same and he would proceed on leave without clearing the dak. In order to run the office, the respondent no. 5 had to dispose of the dak of E-2 and E-4 a himself on several occasions. He was advised to improve his work and conduct from time to time but to no avail. As such the remarks written in his confidential report are based on evidence and are required to be upheld by this Court.

8. Heard Ms. Monika Kohli, learned counsel for the applicant as well as Mr. Harshwardhan Gupta, learned counsel for the respondents at length and examined the material on record.

9. The short question, that stares the Court in face, is as to whether in the peculiar facts and circumstances of this case, the Reporting Officer and Reviewing Authority are justified in recording adverse remarks in confidential roll of the applicant, for the period from 01.04.2015 to 10.12.2015, when the reports of the applicant for the pre-impugned APR period 2010 to 31.3.2015 and post impugned APR period 10.12.2015 to 31.3.2018, are either “outstanding” or “very good”. Or in short, can there be a steep fall in the ACR grading of an officer, all of a sudden for a period of nine months, when his grading has been continuously “outstanding” or “very good”.

10. It is now well settled that while recording remarks in confidential reports, objectivity has to be adhered to by the authorities and the work and conduct of an officer is to be watched and evaluated by the Reporting Officer. If there is some slackness, then advisory memos, warnings, explanatory notes by way of efforts to apprise the concerned to improve

efficiency are to be communicated. And in the event the performance still does not improve, the adverse remarks are recorded. These remarks should be based on facts and work output, conduct and other factors related to the performance and efficiency of the reported officer. The adverse report is communicated not only to accord an opportunity to the officer to improve his performance but also to let him know the details on which he has been reported adversely. This gives an opportunity to the officer to rebut the remarks and to persuade the authorities by production of material for expunging adverse remarks.

11. Hon'ble Apex Court in the case of **STATE OF U.P. V. YAMUNA SHANKER MISRA AND ANR.**, 1997 SCC (L&S) 903 has considered the object of writing of confidential reports succinctly in the following words :-

"7. It would, thus be clear that the object of writing the confidential reports and making entries in the character rolls is to give an opportunity to a public servant to improve excellence. Article 51-A(j) enjoins upon every citizen the primary duty to constantly endeavour to prove excellence, individually, and collectively, as a member of the group. Given an opportunity, the individual employee strives to improve excellence and thereby efficiency of administration would be augmented. The officer entrusted with the duty to write confidential reports

has a public responsibility and trust to write the confidential reports objectively, fairly accurately as possible, the statement of facts on overall assessment of the performance of the subordinate officer. It should be founded upon facts or circumstances. Though sometimes it may not be part of the record, but the conduct, reputation and character acquire public knowledge or notoriety and may be within his knowledge. Before forming an opinion to be adverse, the Reporting Officers writing confidentials should share the information which is not a part of the record with the officer concerned, have the information confronted by the record. This amounts to an opportunity given to the erring/corrupt officer to correct the errors of the judgment, conduct, behaviour, integrity or conduct/corrupt proclivity. If, despite being given such an opportunity, the officer fails to perform the duty, correct his conduct or improve himself, the confidential reports and a copy thereof supplied to the affected officer know the remarks made against him. If he feels aggrieved, it would be open to him to have it corrected by appropriate representation to the higher authorities or any appropriate judicial forum for redressal. Thereby, honesty integrity, good conduct and efficiency get improved in the performance of public duties and standard of excellence in services constantly rises to higher levels and it becomes successful toll to manage the services with officers of integrity, honesty, efficiency and devotion."

12. A perusal of the record produced before us and remarks given in confidential roll of the applicant for the relevant period would show that the authorities have made only general remarks and there are no specific work related observations. The Reporting Officer and Reviewing Officer appear to have been offended by the tone and tenure of language used by the

applicant. There are only general assertions that the assigned work was not done by the applicant. There is no specific assertion that only 10% of the work was done by the applicant and rest 90% was done by the reporting officer himself. An effort has been made by respondents to contend that the work and conduct of the applicant was not upto mark. If that be so, they could have taken disciplinary action against the applicant but that course of action was not adopted by them. In the last APAR grading placed before us for the period 30th July, 2017 to 31.3.2018, the applicant has been graded as 8.87/10. He is reported to be "sincere and hard working offr. He is thorough gentleman. He is recommended for higher command" by the R.O. Further, R.O has gone to the extent of recording remarks that applicant "is an intelligent, hard working and sincere officer. His performance during the period has been outstanding". Thus, it would be safe to conclude that the overall remarks given by the authorities in the impugned APAR is not based on any concrete proof of work output, and rather it is an outcome of inter-personal animosity and extraneous considerations that deserves to be set aside.

13. Still further, a perusal of the impugned order Annexure H shows that the representation of the applicant has been rejected by passing a totally non speaking order. The applicant has taken a number of grounds in support of his plea that the adverse remarks were not warranted. However, the Chief Engineer, Headquarters, Western Command, has only mentioned that the applicant has failed to bring out any specific achievement meriting a higher grading in his representation. Both IO and RO have adequately justified the reasons for grading awarded by them and representation is bereft of any merit. Ultimately, he says that grading is “technically valid and does not merit any intervention”. To say the least, this cannot be said to be a speaking order.

14. On the issue of necessity of passing of speaking orders, the Hon’ble Apex Court in the case of Chairman, Disciplinary Authority, RANI LAKSHMI BAI KSHETRIYA GRAMIN BANK VS. JAGDISH SHARAN VARSHNEY and Others (2009) 4 SCC 240 has in para 8 held as under:-

“8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of **S.N.Mukherjee vs. Union of India** reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial

authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation”.

15. This is applicable to APAR recording also. The ACR remarks of the applicant are “outstanding” or “very good” for years together from 2010 to 31.3.2015 and subsequently, from 10.12.2015 to 31.3.2018. But for a brief period of nine months from 01.04.2015 to 10.12.2015. When the Respondent No.5 was Reporting Officer, there has been a steep fall in over all grading of the applicant. This sudden fall in APAR of the applicant for the indicated brief period of eight months, as per comparative chart given above, does not appeal to reason and we direct that this report has to be ignored by the authorities for all purposes including further promotion of the applicant to higher post.

16. We find support for aforesaid view from a decision of Jabalpur Bench of this Tribunal in AJEET SINGH CHOUDHARY VS. UNION OF INDIA (UOI) AND ORS, (2005)(2)SLJ80CAT, in which the Tribunal, while considering

the similar facts, had allowed the claim of an Officer. The relevant portion of the decision is reproduced as under:-

“I find that the CRs of the applicant for the years 1993-94 to 2000-2001 are outstanding/very good. In this case, the CR for the preceding year of the communication of the adverse remarks i.e., 2000-2001 is outstanding and for 2001-2002 it is average.

There is a sudden fall in the grading of the applicant from 'outstanding' to 'average.' There cannot be such a steep fall in the performance of the applicant within one year from 'outstanding' to 'average.' It appears that the Reporting Officer and the Reviewing Officers have not made their assessment objectively and correctly. In this connection we may refer to the CR of the applicant for the year ending 31.3.1999 when he was graded as 'Ghatia (Below average)' by the Reporting Officer but the Reviewing Officer has recorded the following remarks: "This officer had exposed the nefarious and corrupt activities of Shri Purshottam Sharma, the then SSP (Radio). In fact he has given evidence in Engineers/Lokayukta Enquiries against Shri Sharma. Hence the A.C.R. reflect Shri Sharma's anger and frustration, rather than a correct evaluation of the officer. I do not agree with the above A.C.R. and this A.C.R. should be treated as expunged. The fact that this officer has worked very hard in the period under review. He is a honest, courageous, capable officer. His work and conduct has been very good. He is fit for promotion.

This itself shows that earlier also the ACR of the applicant has not been recorded by the Reporting Officer objectively. Therefore, it supports the contention of the applicant that the adverse remarks recorded in this ACR of the year ending 31st March, 2002 were not recorded objectively and the officers have become prejudiced against him, because of his filing so many cases. I also find that

the applicant has been given an appreciation letter dated 1.5.2000 by the Principal Secretary Home for rendering commendable service in rescuing 732 families from the floods in Narbada river in Hoshangabad district in September, 1999. I also find that before recording the adverse remarks in the ACR of the applicant for the year 2001-2002 applicant has not been given any opportunity in the form of advice or otherwise nor he has been counselled about his shortcomings. The Hon'ble Supreme Court in the case of U.P. Jal Nigam (supra) has held as under: "If the graded entry is of going a step down, like falling from 'very good' to 'good' that may not ordinarily be an adverse entry since both are in positive grading. All that is required by the authority recording confidentials in the situation is to record reasons for such downgrading on the personal file of the officer concerned, and inform him of the change in the form of an advice. If the variation warranted be not permissible, then the very purpose of writing annual confidential reports would be frustrated. Having achieved an optimum level the employee on his part may slacken in his work, relaxing secure by his one-time achievement. This would be an undesirable situation. All the same, the sting of adverseness must in all events, not be reflected in such variations, as otherwise they shall be communicated as such. It may be emphasised that even a positive confidential entry in a given case can perilously be adverse to say that an adverse entry should also be qualitatively damaging may not be true. In the instant case we have seen the service record of the first respondent. No reason for the change is mentioned. The downgrading is reflecting by comparison. This cannot sustain... In the instant case also I find that no reasons for such down grading the ACR of the applicant from 'outstanding' to 'average' have been recorded in the personal file of the applicant."

17. Therefore, examined from any angle, the impugned order, Annexure H, cannot legally be sustained and the ratio of law laid down in the indicated judgments would, mutatis mutandis, apply to the present case.

18. In view of the aforesaid discussion, this O.A. is allowed. Impugned order, Annexure H is quashed and set aside. The respondents are directed to ignore the adverse remarks for the period in question for all purposes, including promotion to higher post, and other service benefits. The parties are, however, left to bear their own costs.

**(P. Gopinath)
Member (A)**

**(Justice L. Narasimha Reddy)
Chairman**

HC*