

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.260/344/2013

Date of Reserve:13.03.2019
Date of Order:25.04.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Sri Surendra Prasad, S/o. Iate Bankey Bihari Prasad, aged about 45 years, presently working as Executive engineer (Civil), BSNL Civil Division, Sambalpur, Fourth Floor, BSNL DTO Building, Sambalpur (Orissa)-768 001 and at present residing at Qr.No.Type-IV/3, BSNL, DTO Compound, Kacheri Road, Sambalpur (Odisha)-768 001.

...Applicant

By the Advocate(s)-M/s.A.K.Mohanty
D.K.Mohanty
P.K.Kar

-VERSUS-

1. Chairman cum Managing Director, Bharat Sanchar Nigam Ltd., BSNL House, Harish Chandra Mathur Lane, Janpath, New Delhi-110 001.
2. The Principal General Manager (BW), Bharat Sanchar Nigam Ltd., Corporate Office, B.W.Unit Corporate Office, Telegraph Office Building, Kashmere Gate, New Delhi-110 006.
3. The Director (Enterprise), BSNL Corporate Office, Bharat Sanchar Nigam Limited, Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi-110 001.
4. The Chief Engineer ©, BSNL Civil Bihar Zone, Patna, Telephone Bhavan, 'R' Block, Patna-800 001.

...Respondents

By the Advocate(s)-Mr.P.R.Barik
ORDER

MR.SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is presently working as Executive engineer (Civil), BSNL Civil Division, Sambalpur in the State of Odisha. His grievance is directed against A/6 dated 30.05.2012 and A/7 dated 04.01.2013 whereby and whereunder the Principal General Manager, BSNL (Res.No.2) and the Director (Enterprise), BSNL (Res.No.3) respectively, have rejected the representations of the

applicant for upgradation of his ACR/APAR. For the sake of clarity, the contents of both the Annexure are extracted hereunder:

A/6 dated 30.05.2012

Subject: Representation dated 20.12.2012 against below bench mark grading of ACR/APAR for the period 07.04.2007 to 20.09.2007 – case of Shri Surendra Prasad (Staff No.92093):

1. In accordance with the provisions of DOP&Trg. OM No.21011/1/2005-Estt(A) dated 13.04.2010, Shri Surendra Prasad EE(C) has represented vide his letter dated 20.12.2011 against the remarks of reviewing authority.
2. The decision of Shri A.K.Gupta, PMG (BW), BSNL CO, new Delhi on the representation of Shri Surendra Prasad is:

"After careful consideration of all the available documents with specific reference to the representation of his case by Shri Surendra Prasad vide representation dated 20.12.2011, I have come to conclusion that overall grading of Shri Surendra Prasad for the period 07.04.2007 to 20.09.2007 shall be 'GOOD' instead of 'OUTSTANDING' as recorded by reporting officer".

3. A copy of the order shall be placed in the ACR for the period 07.04.2007 to 30.09.2007 of Shri Surendra Prasad.

This is issued with the approval of competent authority".

A/7 dated 04.01.2013

Subject: Representation dated 21.12.2012 against below bench mark grading of ACR for the period 05.12.2007 to 31.03.2008 – case of Shri Surendra Prasad (Staff No.92093), the then EE(&D), O/o. CE©, Lucknow:

1. In accordance with the provisions of DOP&Trg. OM No.21011/1/2005-Estt(A) (Pt.II) dated 14.05.2009, Shri Surendra Prasad (Staff No.92093) has represented vide his letter dated 21.12.2011 against the grading for the period 05.12.2007 to 31.03.2008.
2. The decision of Shri A.N.Raj, Director (Ent.) BNNL CO, New Delhi on the presentation of Shri Surendra Prasad (Staff No.92093) is:

"After careful consideration of all the relevant records, the representation of applicant and reporting officer's comment on it, I am of the view that this is not a fit case for interference in decision arrived by reporting officer".

3. A copy of the order shall be placed in the ACR for the period 05.12.2007 to 31.03.2008 in respect of Shri Surendra Prasad (Staff No.92093).

This is issued with the approval of competent authority".

2. Aggrieved with the above, the applicant has moved this Tribunal in this O.A. praying for the following reliefs:

- i) To quash the order no.AC/Surendra Prasad/M (BW-III)/201 dtd. 30.05.2012 (Annexure No.A/6) and order No.APAR/Surendra Prasad/M (BW-III)/2007-08(II)/2012 dtd. 04.01.2013 (Annexure No.A/7) for being not sustainable in law.
- ii) To hold and declare that the final grading of "Outstanding" awarded by the Reporting authority in the ACR of the applicant for the period of 07.04.07 to 20.09.2007 was just and proper in view of the performance of the applicant and quash the grading of "Good" given by the reviewing authority as the same was not based on the performance of the applicant.
- iii) to hold and declare that the final grading of the applicant in his ACRs for the period from 5.12.2007 to 31.3.2008 was at least very Good in view of the performance of the applicant mentioned in art-II of the ACR and to quash the grading of "Average" recorded by the reporting authority.
- iv) To pass such other order(s)/direction9s) as may be deemed fit and proper in the bona fide interest of justice.

3. It is the case of the applicant that the assessment made by the authorities is inspired by malice. According to applicant, while the assessment made by the Reporting Officer as "Outstanding" for the period from 07.04.2007 to 20.09.2007, on being reviewed, the Reviewing Authority downgraded to 'GOOD' without any rhyme or reason. The Reporting Officer for the period from 5.12.007 to 31.3.2008 assessed him "Average" which is not based on Memorandum of Services which is required to be maintained as per the provisions of Rule-174(7) of P&T Manual, Vol.III, which reads as follows:

"...with a view to enabling them to make correct assessment of the work, conduct of their subordinates, the reporting officers are required to maintain memorandum of services in respect of each officer employed under them.....As the Memo of services is the sole basis for writing the annual reports, the reporting officer at the time of submitting reports to the countersigning authorities, if any, should make a specific mention that Memorandum of Services has been maintained and consulted. With a view to checking up that these Memorandum of Services are being properly and regularly maintained, the countersigning authority may call for them and check them".

4. Applicant has pointed out that the rejection of his representations vide A/6 and A/7 are bad in law inasmuch as those have not been considered with reference to rules or instructions on the subject and the authorities without recording any reasons, in an unceremonious manner have rejected the same. In this connection, applicant has relied on the decision of the Hon'ble Supreme Court in Civil Appeal No.5815 of 1994 (Ramachandra Raju vs. State of Orissa) in which it has been held that:

"This case would establish as stark reality that writing Confidential reports bears onerous responsibility of reporting officer to eschew his subjectivity and personal prejudices or proclivity or predilections and to make the objective assessment. It is needless to emphasize that career prospects of the subordinate officer/employee largely depend upon the work and character assessment by the reporting officer. The latter should adopt fair, objective, dispassionate and constructive comments/comments in estimating or assessing the character, ability, integrity & responsibility displayed by the officer/employee concerned during the relevant period for the above objective if not strictly adhered to in making an honest assessment, the prospect & career of the Subordinate officer being put to great jeopardy".

5. According to applicant it is trite that reasons have virtually become indispensable, a component of decision making process as observing principles of natural justice by judicial, quasi-judicial and even by

administrative bodies. Insistence on recording of reasons is meant to serve the wider principle that justice must not only be done, it must also appear to have been done. In *Wool Combers of India Limited vs. Workers Union* (1974) 3 SCC 318, it has been held by the Hon'ble Supreme Court that the very requirement of giving reason is to prevent unfairness or arbitrariness in reaching conclusions. The second principle is based on the jurisprudential doctrine that justice should not only be done, it should also appear to be done as well. In *Siemens Engineering & Manufacturing Co. of India Ltd. vs. Union of India*, it has been held by the Hon'ble Supreme Court that it is far too well settled that an authority in making an order in exercise of its quasi-judicial function, must record reasons in support of the order it makes. It has been further held that every quasi-judicial order must be supported by reasons in support of the order it makes. The rule requiring reasons in support of a quasi-judicial order is as basic as following the principles of natural justice. And the rule must be observed in its proper spirit. A mere pretence of compliance would not satisfy the requirement of law.

6. Applicant has pointed out that the D.P. & .R., O.M.No.51/3/94-Estt(A) dated 22.5.1975 clearly enjoins regarding the duties of the Reporting and Reviewing Officers in writing the confidential reports as follows:

"16. Duties of Reviewing/Endorsing Officer:

With a view to enable the Reviewing Authority to discharge his responsibility in ensuring the objectivity of the Confidential Reports it has been decided that where he is not sufficiently familiar with the work of the officer reported upon, so as to be able to arrive at a proper and independent judgment of his own, it should be his responsibility to verify the correctness of the remarks of the reporting officer after making such enquiries, as he may consider necessary, he should also give a hearing to the person reported upon before recording his remarks".

7. Based on this, the applicant has urged that a duty is cast on the Reviewing Officer to make enquiries in order to verify the correctness of the remarks of the Reporting Authority prior to arriving at a judgment. But no such enquiry has been conducted by him. As the due process has not been followed, the action of the Reviewing Authority in downgrading by two notches is nothing but arbitrary, prejudicial, unjustified, non-objective and uncalled for. So far as grading given by the Reporting Officer in the ACR for the period from 05.12.2007 to 31.03.2008 is concerned, the applicant has contended that the same is not Based on Memorandum of Service nor the authority while considering his representation has taken into account the relevant rules and instructions on the subject and on the other hand, in cryptic order, he has rejected his representation.

8. Per contra, respondents have filed a detailed counter. According to respondents, the representations of the applicant have been duly considered after following the principles of natural justice and due procedure laid down by the Department of Personnel & Training Office Memorandum dated 13.04.2010 (R/1). They have submitted that the reviewing authority has neither acted arbitrarily nor whimsically in downgrading the applicant from Outstanding to Good, as alleged. On the contrary, the Reviewing Authority while downgrading the applicant from Outstanding to Good has thoroughly gone the ACR with regard to performance of the applicant for the period from 1.4.2007 to 4.12.2007 and has come to a finding that the applicant is of "average" ability in the matter of sincerity, competence and orientation towards result/output. The reviewing authority has rated the applicant Average after taking into account all the relevant materials.

9. As regards the ACR for the period from 05.12.2007 to 31.03.2008, it has been pointed out that the same could not be reviewed due to fault of the applicant. As per the standing instruction of the DOP&T, the applicant should have submitted his ACR by 25.04.2008, but he completed his ACR after filling part-II(Self-appraisal) on 18.08.2008 by which time the then Senior Deputy Director General (Building works) Sri B.K.Bindal had retired on attaining the age of superannuation on 30.06.200.

10. Applicant has filed a rejoinder which is more or less reiteration of facts as averred in the O.A.

11. We have heard the learned counsels for both the sides and perused the records. Respondents have placed reliance on the Office Memorandum dated 13.4.2010(R/1) of the DOP&T. The relevant part of the said Office Memorandum reads as follows:

Subject: Below Benchmark grading in ACRs prior to the reporting period 2008-09 and objective consideration of representation by the competent authority against remarks in the APAR or for upgradation of the final grading:

The undersigned is directed to say that prior to the reporting period 2008-09, only the adverse remarks in the ACRs had to be communicated to the concerned officer for representation, if any to be considered by the competent authority. The question of treating the grading in the ACR which is below the benchmark for next promotion has been considered in this Department and it has been decided that if an employee is to be considered for promotion in a future DPC and his ACRs prior to the period of 2008-09 which would be reckonable for assessment of his fitness in such future DPCs contain final grading which are the concerned which are below the benchmark for his net promotion, before such ACRs are placed before the DPC, the concerned employee will be given a copy of the relevant ACR for his representation, if any, within 15 days of such communication. It may be noted that only below benchmark ACR for the period relevant to promotion need be sent. There is no need to send below benchmark ACRs of other years.

2. As per existing instructions, representations against the remarks or for upgradation of the final grading given in the APAR

(previously known as ACR) should be examined by the competent authority in consultation, if necessary, with the Reporting and the Reviewing Officer, if any. While considering the representation, the competent authority decides the matter objectively in a quasi-judicial manner on the basis of material placed before it. This would imply that the competent authority shall take into account the contentions of the officer who has represented against the particular remarks/grading in the APAR and the view of the Reporting and Reviewing officer if they are still in service on the points raised in the representation vis-à-vis the remarks/gradings given by them in the APAR. The UPSC has informed this Department that the Commission has observed that while deciding such representations, the competent authorities sometimes do not take into account the views of Reporting/Reviewing Officers if they are still in service. The Commission has further observed that in a majority of such cases, the competent authority does not give specific reasons for upgrading the below benchmark ACR/APAR gradings at par with the benchmark for next promotion.

3. All Ministries/Department are therefore requested to inform the competent authorities while forwarding such cases to them to decide on the representations against the remarks or for upgradation of the grading in the APAR that the decision on the representation may be taken objectively after taking into account the views of the concerned Reporting/Reviewing Officers if they are still in service and in case of upgradation of the final grading given in the APAR, specific reasons therefor may also be given in the order of the competent authority".

12. We have considered the decision taken by the authorities while rejecting the representations of the applicant, the contents of which are quoted above. There is no reason adduced by the Reviewing Authority as to why he has rated the applicant GOOD by downgrading the assessment OUTSTANDING as given by the Reporting Officer. Similarly, against the remark "AVERAGE", the concerned authority did not assign any reason as to why he did not feel inclined to interfere with such grading as given by the Reporting Officer. Both the rejection orders at A/6 and A/7 are apparently do not contain any cogent reason in support of the viewpoints of the authorities acting in a quasi-judicial manner. Further, the DOP&T OM (R/1) dated 13.04.2010 as relied upon by the respondents, makes it very clear that in order to decide on the representations against the remarks or for upgradation

of the grading in the APAR, decision on the representation has to be taken objectively after taking into account the views of the concerned Reporting/Reviewing Officers, if they are still in service. The rejection letters in its entirety does not make it conspicuous that any such decision has been taken by the respondents based on the above instructions of the DOP&T. Similarly, the Duties of Reviewing/Endorsing Officer as laid down in DP&AR OM no.51/3/74-Est.(A) dated 22.5.1975 appears to have not been scrupulously followed. Since the respondent-authorities acting as quasi-judicial authorities have rejected the representations of the applicant, which in our considered opinion, are non-speaking, unreasoned and in violation of rules and instructions on the subject, the same do not stand to judicial scrutiny. Accordingly, the impugned communications dated 30.5.2012 (A/6) and dated 04.01.2013 (A/7) are quashed and set aside. In effect, the matter is remitted back to both Respondent Nos.2 and 3 to reconsider the representations of the applicant in the light of the rules and instructions as referred to above and pass orders within a period of 90 days from the date of receipt of this order.

13. In the result, the O.A. is thus allowed, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

BKS

(GOKUL CHANDRA PATI)
MEMBER(A)

