

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/021/00761/2012

Date of CAV : 07-09-2018

Date of Order : 02-11-2018

Between :

Bhanudas Tukaram More S/o Tukaram Laxman More,
Aged about 47 years, Scientific Officer-C,
O/o Heavy Water Plant, Manguru,
Khammam District.

....Applicant

AND

1. Chief General Manager,
Heavy Water Plant, Manuguru,
Gautaminagar P.O., Aswapuram,
Khammam District.

2. The Chief Executive,
Heavy Water Board, V.S.Bhavan,
Anushaktinagar, Trombay,
Mumbai – 400 094.

3. The Union of India,
Represented by its Secretary,
Department of Atomic Energy,
Anushakti Bhavan, C.S.M.Marg,
Mumbai – 400 001.

...Respondents

Counsel for the Applicant: Mr.Bhanudas Tukaram More
(party-in-person)

Counsel for the Respondents : Mr.V.VinodKumar, Sr.CGSC

CORAM :

THE HON'BLE MR.B.V.SUDHAKAR, ADMINISTRATIVE MEMBER
THE HON'BLE MR.SWARUP KUMAR MISHRA, JUDICIAL MEMBER

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

This application is filed under section 19 of the Administrative Tribunal's Act, 1985 to declare the action of the 1st Respondent in communicating the overall grading A3 on 07.08.2010 in respect of the applicant's Annual Performance Assessment Report (APAR) for the period from 01.07.2009 to 30.06.2010 and consequential order in appeal bearing No. HWB'AD(O)/106/2010/80, dated 24.11.2010 and consequential order in appeal bearing No.HWB/R/4(1)/2011/548, dated 21.06.2011 is illegal, arbitrary, unconstitutional and violative of Rules and consequently direct the respondents to give suitable grading to the applicant for the period 01.07.2009 to 30.06.2010 in respect of his Annual Performance Assessment Report and pass such other and further order or orders as are deemed fit and proper by this Hon'ble Tribunal in the circumstances of the case.

2. The brief facts of the case are that, the applicant was appointed as Junior Trainee in Department of Atomic Energy (DAE) at Tarapur Atomic Power Station in Maharashtra State on 07.10.1985. Thereafter he was transferred from Madras Atomic Power Station, kalpakkam to Heavy Water Plant Manuguru in the month of February, 2003 and since then he has been working as Scientific Officer-C, which is one of the unit of Department of Atomic Energy, Government of India. While working with HWPM, he had been communicated the overall grading A3 without any Specific remarks on 07.08.2010 in respect of his annual performance assessment report for the period from 01.07.2009 to 30.06.2010. The applicant contends that the impugned order is without any basis and not as per the procedure laid

down for preparation and maintenance of Annual Performance Assessment Report for Central Civil Services. As per the applicant's request, he has been provided with the final assessment sheet for making a representation as per the rules. The applicant submitted representation dated 20.08.2010 to the accepting authority, HWPM with a request to review his case. The respondent without giving any reasons disposed of the applicant's representation dated 24.11.2010 against which appeal is filed to the 3rd Respondent for awarding appropriate grading. The 2nd Respondent issued proceedings dated 21.06.2011.

3. The applicant contends that as per procedure for preparation and Maintenance of Annual Performance Assessment Report for Central Services, if the performance of the employee is low, the authority to give notice to the concerned employee, to improve his performance, but in the present case, the respondents have not issued any notice to the applicant for improvement of his performance, thus the preparation of the overall grading A3 of the applicant, which is violation of the procedure and also violative of principles of natural justice. Hence this application.

4. Respondents have filed reply affidavit stating that, the applicant initially had undergone training at Nuclear Power Corporation of India Limited (NPCIL), Kalpakkam a public sector undertaking of Department of Atomic Energy, Government of India as Junior Trainee with effect from 07.10.1985 and subsequently inducted as SA/B with effect FROM 09.04.1987, was promoted as SA/C with effect from 14.05.1990 and as

SO/SB with effect from 01.08.1994. He joined HWP(M), DAE on 21.03.2003 as SO/SB on exercising option for non-absorption in NPCIL. He was promoted to the grade of SC/C with effect from 01.08.2001 vide order dated 16.05.2005 of Heavy Water Board, Mumbai.

5. It is further stated in the reply that the applicant was awarded Grading of 'A3' in his Annual Performance Assessment Report (APAR) for the period from 01.07.2009 to 30.06.2010 which was communicated to him on 11.08.2010. The contention of the Applicant is his OA that his performance has not been taken into consideration and procedure as laid down for preparation and maintenance of APAR has not been followed is not correct. The Respondents further state that, the grading 'A3' (Very Good) is neither adverse nor low performance. The "A3" (Very good) grading given to him does not make him ineligible for promotion to the next grade as the Applicant fulfilled the norms prescribed by TC/TSC, BARC for promotion. Since the APAR gradings are communicated in the present system as done in this case, it serves the purpose of further improvement of his performance, if the employee so desires. It is submitted that the 'A3' grade is equivalent to 'Very Good' as per Order No.TC/1696/2010/20176, dated 28.7.2010 and APAR system is being followed in DAE from the year 2009-10 onwards for Scientific Officers. It is also submitted that the applicant was called for interview on 21.12.2010 vide confidential Note No. HWPM/R/P-75/2010/1642, dated 02.12.2010 for promotion after fulfilment of the norms as per the promotion norms followed by DAE. It is submitted that the applicant did not attend the interview on the said date as

communicated by HWB, Mumbai vide letter No.HWB/R/4(15)/2010/C-320, dated 20.08.2011.

6. The Respondents further state that the performance of Scientific and Technical personnel in DAE is assessed based on the resume of the work done during the year with very specific mention of individual contributions and not just based on description of routine jobs. The APAR will have a plan of action for the next year's work along with attributes such as (i) Intellect (ii) Professional ability (iii) Work output (iv) Administrative ability and (v) Personal qualities for the assessment of an individual officer.

7. The Respondents further state that, as per the guidelines mentioned in Para-5, Accepting Authority is the Competent Authority for dealing with APAR representations. The said Authority has reviewed the representation of Applicant in consultation with Assessment Officer and Reviewing Officer and forwarded the same to HWB Central Office, Mumbai for communication of the same to the Applicant. Associate Director (Operation) who is the next higher officer to the Accepting Authority / Competent Authority has communicated to the Applicant that the APAR for the said period has been reviewed and found in order.

8. The Respondents further submit that, the Competent Authority, after due consideration confirmed the final grading awarded to the applicant vide letter dated 24.11.2010. In view of these submissions, Respondents pray for dismissal of the OA.

9. The applicant appearing in person also filed rejoinder and additional rejoinder stating that, the decision of the Competent Authority in respect of his APAR for the period from 01.07.2009 to 30.06.2010 without any specific remarks, without spelling out specific factual deficiencies and substantial failings is arbitrary, colourable exercise of power, illegal and in contravention of the rules of natural justice besides incapacitation, defamation and deliberate attempt of destruction of his career.

10. The applicant further states that the performance assessment should be used as a tool for career planning and training rather than a mere judgmental exercise. It is not meant to be a fault finding process but a developmental tool as APAR has two principal objectives :

(a) to improve the performance of the subordinate

(b) to assess the potentialities of the subordinate and prepare him through appropriate feedback and guidance for future possibilities in service.

11. Respondents have also filed reply to the rejoinders filed by the applicant reiterating the contentions already raised in the first reply statement.

12. The Tribunal had heard Mr. Bhanudas Tukaram More, the applicant appearing in person and Mr. V. Vinod Kumar, learned Sr Central Govt., Standing Counsel for Respondents.

13. The applicant appearing in person placed reliance on the decision of

the Hon'ble Apex Court in

(i) Dev Dutt Vs. Union of India & Ors (CA No.7631/2002);

(ii) Shri Ram Bharosa Vs. Secretary, Govt., of India, Dept., of Posts and others 5/2015, Swamysnews 79, (Ahmedabad), date of judgment 31-3-2014 in OA No.327 of 2013;

(iii) Prabhu Dayal Khandelwal Vs. Chairman, UPSC & Ors (CA No(s) 8006-8007/2003, dated 23.07.2015;

(iv) Sukhdev Singh Vs. Union of India & Others (2013 (9) SCC 566).

In Sukhdev Singh Vs. UoI & Others, it has been held as follows :

“8. In our opinion, the view taken in Dev Dutt that every entry in ACR of a public servant must be communicated to him / her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the AT, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR – poor, fair, average, good or very good – must be communicated to him/her within a reasonable period.”

We are of the view, that since almost eight years have passed by since the aforesaid Annual Confidential Reports were recorded, it would be too late in the day to require the Authorities to adjudicate upon the representations made by the appellant as against the uncommunicated Annual Confidential Reports.

9. In the above view of the matter, we are satisfied, that the respondents ought to be directed to reconsider the claim of promotion of the appellant, to the post of Chief Commissioner of Income Tax, for the vacancies which arose during the years 2000-2001 and 2001-2002 on the basis of the communicated reports for the years 1997-1998 and 1999-2000, within a period of three months from today.

In the present case there is no material produced from the side of the Respondents to show that any specific remarks regarding any particular incident was communicated to the applicant before making the entry in question in the APAR from 01.07.2009 to 30.06.2010. No specific factual deficiencies have also been brought to his notice before making the entry in question. No memo or show cause notice are issued in this regard to the applicant. Therefore the authorities have failed to discharge their responsibility and the applicant was denied due opportunity to improve his performance or to explain the position before the authority, prior to the entry made in his APAR for the period in question. The submission made by the learned counsel for the Respondents that since the entry can be considered as “very good” it was not necessary to communicate the said entry made in his APAR. But in view of the decision of the Hon’ble Apex Court in the case of Dev Dutt Vs. UOI & Ors

14. The applicant while challenging the entry in the ACR for the year in question as A-3 had inter-alia submitted that originally the Respondents had conveyed that the said grading is equivalent to ‘good’ and subsequently they changed their stand and stated that the said grading is equivalent to ‘very good’. In this context the applicant had drawn the attention of this Tribunal to several representations submitted by the applicant including the representation dt. 20.08.2010 wherein he has given his categorical opinion to the assessment and marks given to him in respect of different aspects including on the point of intellectual ability, Originality, technical judgment, productivity et.,. After going through the same, with reference to the final

marks allotted to him and in the absence of any cogent material produced by the Respondents, this Tribunal is of the considered view, in the facts and circumstances of this case that the Respondents should have given the grading A1 to the applicant in the ACR in question. Normally this Tribunal would have given an opportunity to the applicant to submit representation to the applicant so that he can give reasons for giving a fresh grading. But the Respondents having a report from the service and since more than eight years have passed, it would be too late in the day to direct the applicant to make representation and seek reconsideration of the ACR/APAR in question.

15. In the result, the Respondents are directed to consider the grading of the APAR (ACR) for the year 2009-10 in respect of the applicant as A1 for the purpose of considering his case for promotion and for all other official purposes.

16. The Original Application is accordingly allowed. No order as to costs.

(SWARUP KUMAR MISHRA) (B.V.SUDHAKAR)

JUDICIAL MEMBER

ADMINISTRATIVE MEMBER

Dated : 2nd November, 2018.

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