

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.183/2019

Date of Decision: 10th July, 2019

CORAM: R. VIJAYKUMAR, MEMBER (A)
RAVINDER KAUR, MEMBER (J)

Abhay Narayan Tripathi,
 S/o. Raghuraj Ram Tiwari,
 Aged about 59 years, presently serving as:
 Additional Principal Chief Conservator of
 Forest, Pune, having his office at:
 Van Bhavan, 3rd Floor, B Wing, Near Mendhi
 Farm, Gokhale Nagar, Pune – 411 016.
 And presently residing at: A Bungalow,
 Club of Western India, Opposite Laskhar
 Police Station, Camp, Pune – 411 001.
(By Advocate Shri S.R. Atre)

... *Applicant*

Versus

1. The Union of India
 Through its Secretary,
 Department of Personnel and Training,
 Government of India,
 North Block, New Delhi – 110 011.
2. Secretary, Ministry of Environment
 Forests and Climate Change,
 Govt. of India, 6th Floor,
 Prithvi Wing, Indira Paryawaran
 Bhaban, Jorbag Road, Aliganj
 New Delhi – 110 003.
3. The Chief Secretary and Chairperson
 of Referral Board, Government of
 Maharashtra, Mantralaya,
 Mumbai – 400 032.
4. The Principal Secretary (Forests),
 Child Development Department,
 Government of Maharashtra,
 Mantralaya, Mumbai – 400 032. ... *Respondents*

(By Advocate Shri V.S. Masurkar)

ORDER (ORAL)

Per : Shri R. Vijaykumar, Member (A)

This application has been filed on 05.08.2019 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"8 (A) This Hon'ble Court be pleased to call for the records and proceedings of the present case and after examining the legality and propriety thereof,

- a. Quash and set aside the adverse comments and below benchmark grading in the APAR of the applicant for the period from 1st of April, 2017 to 8th of February, 2018;
- b. Declare the comments made by the Reporting Officer in the APAR of the applicant as void ab-initio.
- c. As a consequence upgrade the APAR of the applicant on the basis of the target achievements during the reporting period and also by taking into consideration the past records of the Petitioner, and
- d. Restraining the respondents from taking into consideration the APAR for the year 2017-18 written by an incompetent officer for the purposes of applicant's promotion and/or deputation during the remaining service period of the applicant.

B. This Hon'ble Tribunal be pleased to hold and declare that the APAR of the applicant for the period from 1st of April, 2017 to 8th February, 2018 is void ab-initio and accordingly quash and set aside the same and direct the respondents to duly upgrade the same and/or in any case not to take the

same into consideration for the purposes of applicant's promotion and/or deputation.

C. Pass any such order and/or orders as this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the present case."

2. The applicant had served as Secretary to the Protection of Child Rights Commission in the relevant period of the year 2017-2018 upto 08.02.2018 when he was reverted to his parent cadre of the Indian Forest Service. The APAR which was challenged in these proceedings was written for the period for 01.04.2017 to 08.02.2018 and during this time, the Chairman of the Commission was available from 25.05.2017 to 31.03.2018. As mentioned in the APAR by the Administrative Authority of the Forest department, the APAR was to be written by the Secretary, Women and Child Development department as Reporting Authority and then reviewed by the Chief Secretary and finally accepted by the Hon'ble Minister. At this point in time, the applicant was in the S-15 pay scale of HAG whereas the Secretary was in S-14 scale, below his scale. Therefore, in terms of the hierarchy in Government, the applicant

argues that the APAR could not have been written by an Officer junior to him in the pay hierarchy although from a different service. No comments were recorded by the Chief Secretary as Reviewing Authority nor by the Minister as Accepting Authority and the APAR came to be finalised on this basis.

3. The applicant was communicated the APAR by the concerned Administrative Authority on 11.01.2019 and filed his first representation on 19.01.2019. It is brought to our notice that the representation had been forwarded on 16.04.2019 to the Competent Authority and Minister, Women and Child Development. Meanwhile it appears that the respondents had also sent the representation to the Secretary for comments but nothing was furnished by the then Reporting Authority. Hence, it is presumed therefore that she had no comments to offer. The matter now rests with the Competent Authority for the last three months and orders have not yet been passed in the matter. Meanwhile, the applicant submits that he is due for the next grade of HAG+, S-16 on completion of 32 years of service

and the DPC is likely to be held very shortly. He, therefore presses for interim relief and for directions to dispose of the representation.

4. Learned counsel for the respondents fairly submits that the matter now rests with the Competent Authority and vehemently objects to grant of any interim relief on the basis that once orders are passed, the required relief would automatically accrue to the applicant.

5. The matter has been carefully considered. This Tribunal cannot substitute itself for the Administrative Authority and it is for them to first take a decision on the matter which could be adjudicated before this Tribunal. In the present circumstances, the matter is pending for nearly three months before the Competent Authority without issue of any orders on the representation already filed by the applicant with the respondents. At the same time, the applicant faces a grave disability in that he had filed his representation as earlier as January, 2019 but his representation has continued to remain

pending even as the consideration for grant of higher grade has became ripe six months later. In these circumstances, grant of interim relief pending passage of orders by the respondents would be in the interests of justice.

6. Therefore, the respondents are directed to obtain orders of the Competent Authority within a period of eight weeks and during this time, the APAR in question shall not be considered for any purposes of promotion or grant of higher scale of pay in any DPC that may be held in this regard. The orders so passed by the Competent Authority shall be communicated to the applicant within two weeks thereafter.

7. In the aforesaid terms, the Original Application is disposed of without any order as to costs.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar)
Member (A)

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