

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

O.A. No.1035/ 2013

Date of CAV:04.02.2019.

Date of Order :30.04.2019.

Between :

Pawan Kumar, s/o Randhish Lal,
Aged about 54 yrs, Occ:Principal Scientific
Officer, (Non-Functional Selection Grade),
Deputy Controller, Technical Services Division,
Controllerate of Quality Assurance (Infantry
Combat Vehicles), M/o Defence (DGQA),
Yeddu-mailaram, Medak District,
A.P.-502 205.

...Applicant

And

1. Union of India, rep., by the
Secretary, Dept. Of Defence Production,
M/o Defence, South Block, New Delhi.
2. The Director General of Quality Assurance,
Dept. Of Defence Production,M/o Defence,
Room No.234, South Block, New Delhi.
3. The Additional Director General,
Directorate of Quality Assurance (Combat Vehicles),
Near Engine Factory, M/o Defence, Avadi,
Chennai-600 054.
4. The Controller, Controllerate of Quality Assurance
(Infantry Combat Vehicles), M/o Defence (DGQA),
Yeddu-mailaram, Medak District, A.P.PIN-502 205. Respondents

Counsel for the Applicant ... Dr.A.Raghu Kumar

Counsel for the Respondents ... Mrs.K.Rajitha Sr.CGSC

CORAM:

**THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)
THE HON'BLE MRS.NAINI JAYASEELAN, MEMBER (ADMN.)**

ORDER

(As per Hon'ble Mrs.Naini Jayaseelan, Member (Admn.))

The applicant is challenging the orders of the 1st respondent, vide memo dated 21.09.2012 rejecting his claim for upgrading his APAR to bench mark grade (06 or above level) and for expunging the adverse remark at Para 9 of Section III of APAR for the period 2010-2011 in which the 1st respondent has held that both the Reporting and Reviewing authorities have agreed on the assessment and the pen picture is consistent with the score awarded for various attributes like work output, functional competence and personal attributes and there is no reason to interfere with the APAR entries.

2. **Brief facts of the case:**

The applicant joined M/s HMT Limited, Pinjore, Haryana, a Government of India Undertaking as Engineer Trainee in December 1979. After two years of training as Engineer (Trainee), he was placed in the Executive Cadre of HMT Limited on 01.01.1982. Later, he was promoted to the rank of Deputy Manager on 01.04.1987.

3. The applicant submitted that on the recommendations of the Union Public Service Commission (UPSC), he was offered the post of Senior

Scientific Officer Grade-I in Senior Time Scale Grade in the Defence Quality Assurance Services (Organized Group 'A' Services) of Ministry of Defence, Department of Defence Production (DGQA) in the year 1992. He joined the above post at Controllerate Quality Assurance (Vehicles), Ahmednagar, Maharashtra, on 26.03.1993. Later, he was transferred to Controllerate of Quality Assurance (Engineering Equipment), Pune, in September 1998 on rotational transfer.

4. The applicant submitted that he underwent a course viz., "Management and Quality Assurance Certificate Course" in Defence Institute of Quality Assurance, Bangalore from October to December 1998, where he was awarded "Distinction", the highest grade in the Institute. He was transferred to Senior Quality Assurance Establishment (Vehicles), Chennai, in July 2004 on rotational transfer and later transferred and posted to Controllerate of Quality Assurance (Infantry Combat Vehicles), Yeddu-mailaram, Medak District (A.P.) in August 2009. He was promoted to the post of Principal Scientific Officer (Junior Administrative Grade) on 13.01.2010. The applicant submitted that he was promoted to the post of Principal Scientific Officer (Non-Functional Selection Grade) i.e., JAG (NFSG) in the Pay Band-IV of Rs.37,400-67,000/- with Grade Pay of Rs.8700/- w.e.f 14.01.2010. The applicant served as Deputy Controller of Quality Services Division(Head of the Division) of Controllerate of Quality Assurance (Infantry Combat Vehicles), Yeddu-mailaram, from 05.08.2009

to July 2010. At present, the Quality Services Division is divided into two parts, one part is headed by a Principal Scientific Officer (NFSG) and other headed by a Lt.Col., a tenure officer posted from Indian Army. In July, 2010, the applicant was transferred as Head of Planning and Coordination Division of CQA (ICV). He was again transferred as Head of Administrative Division of CQA (ICV) in November 2010 and again as Head of Technical Services Division of CQA (ICV) in April 2011.

5. The applicant's APAR grading for the period from 01.04.2009 to July 2010, was 6 out of 10, which amounts to 'Very Good'. However, in the entire period under report i.e., from 01.04.2010 to 31.03.2011, not even a single action of the applicant was found to be adverse any way or below the specified standard of requirement. For the period from August 2009 to March 2010, the applicant was given adverse entries against which the applicant filed O.A.No.590/2012 before this Tribunal, which was disposed of, vide order dated 23.06.2014, as under:

"9. For the foregoing reasons and discussions made above and in view of the facts and circumstances of the case and after following the decision of the Supreme Court in the case of S.T.Ramesh vs. State of Karnataka, I have no hesitation to quash and set aside the impugned orders vide Memo No.97118/GEN/APAR/DGQA/Adm-6B dated 30.09.2010 of the 2nd respondent and Memo No.97118/GEN/APAR/DGQA/Adm-6B dated 21.3..2011 and Memo No. 97118/GEN/APAR/DGQA/Adm-6B dated 12.10.2011 of the 1st respondent. Accordingly, the same are quashed and set aside. However, I remit back the matter to the competent authority i.e., 2nd respondent for reconsideration of the representation of the applicant afresh and pass a reasoned and speaking order within a period of 45 days from the date of receipt of a copy of this order."

6. The applicant further submitted that the Reviewing Officer for the period from August 2009 to 31.03.2010 is the Reporting Officer for the period 01.04.2010 to 31.03.2011. Since the applicant has challenged his action before this Tribunal, the Reporting Officer was biased and this bias has continued. Further, the Reporting Officer for 2010-2011 and the applicant could be promoted to the same higher post of Additional Director General of Quality Assurance (with Grade Pay of Rs.10,000/- in Pay Band-IV) and as such there is an element of natural bias. The respondents, however, communicated the APARs for the period from 01.04.2010 to 31.03.2011, vide letter dated 18.11.2011, indicating that -

- (a) "The officer has not mentioned anything about his contribution in the accomplishment of the task" (Para 1 of Section III);
- (b) Officer with limited intelligence. Officer requires constant monitoring in accomplishment of given task within time frame. Officer cannot work independently".

Against the above adverse remarks and grading, the applicant submitted a representation to the 1st respondent dated 02.12.2011 explaining the facts of the case and contending that the grading of the applicant with 5 points (equivalent to "Good") in terms of evaluation be upgraded to 06 or above (Very Good) and adverse remarks to be expunged. The applicant's representation dated 02.12.2011 was followed by a request for personal interview. The 1st respondent by the impugned order dated 21.09.2012 rejected the representation of the applicant on the ground that as per rules relating to APARs, there is no provision for further appeals against the orders of rejection of representation.

7. The applicant's counsel contended that the Reporting Officer/Reviewing Authority/Accepting Authority admitted in Para 3, Section III that there was no failure in respect of the applicant's work. In fact, the applicant was second among his peers with respect to various parameters of work output/personal attributes/functional competence. Therefore, giving a grading of 5 in respect of various parameters, amounts to underrating of his work output / personal attributes / functional competence. These ratings therefore, indicate bias/malafide intention on the part of the Reporting Authority. Also, these were not corroborated with any facts and no corrective action was taken by the Reviewing Authority. Moreover, the Accepting Authority has accepted that "he does not have personal knowledge of the officer. His assessment is based only on the comments of IO and RO". Further, that as per the DOPT instructions, grading should be objective and in accordance with the service record and should not be subjective and whimsical.

8. The applicant's counsel further contended that the remarks of the Reporting Officer at Para 1 of Section III that "the officer has not mentioned anything about his contribution in the accomplishment of the task" is factually incorrect as the applicant has clearly mentioned in Para 1 of Section II the brief description of his duties. There was no occasion where the applicant failed either in terms of the tasks or taking initiative or refused to shoulder responsibility as a Group-A Officer. The APARs are meant to

be an objective assessment of the performance of an officer and are intended to give a reasonable opportunity to the officer concerned before making an adverse entry. In the instant case, it is the applicant's plea that during the period from 01.04.2010 to 31.03.2011, there was no occasion where a specific task which was entrusted to him and the task was not accomplished. It is alleged that the adverse entries made against the applicant are whimsical, fanciful and arising out of the figment of imagination of the Reporting Officer and Reviewing Officer and not based on any record. Therefore, the APAR entries for the period from 01.04.2010 to 31.03.2011 are malafide, which affect his promotion chances.

9. The Counsel for the Applicant has cited the following judgments of the Hon'ble Supreme Court in support of his contentions:

- (i) *State of U.P. v. Yamuna Shanker Misra* (CDJ 1997 SC 358) in Civil Appeal No.1878/1997, dated 21.02.1997.
- (ii) *S.T.Ramesh v. State of Karnataka & Another* (CDJ 2007 SC 188) in Civil Appeal No.868/2007 in W.P.No.33105/2000 (S-CAT)
- (iii) *Dev Dutt v. Union of India* (CDJ 2008 SC 975) in Civil Appeal No.7631/2002, dated 12.05.2008.

10. In *State of U.P. v. Yamuna Shanker Misra* (CDJ 1997 SC 358) in Civil Appeal No.1878/1997, dated 21.02.1997, the Hon'ble Supreme Court quoting the judgment in *S.Ramachandra Raju v. State of Orissa* (JT 1994

(5) SC 459), has held as follows:

"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 prove excellence, individually and collectively, as a member of the group..... The officer entrusted with the duty to write confidential reports, has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately while giving, as accurately as possible, the statement of facts on an overall assessment of the performance of the subordinate officer..... Before forming an opinion to be adverse, the reporting/officers writing confidential should share the information which is not a part of the record with the officer concerned, have the information confronted by the officer and then make it part of the record".

11. In *S.T.Ramesh v. State of Karnataka & Another* (CDJ 2007 SC 188) in Civil Appeal No.868/2007 in W.P.No.33105/2000 (S-CAT) , the Hon'ble Supreme Court held as follows:

"The confidential report is an important document as it provides the basic and vital inputs for assessing the performance of an officer and further achievements in his career, and that the performance appraisal through CRs should be used as a tool for human resource development and not to be used as a fault finding process but a development one".

12. In *Dev Dutt v. Union of India* (CDJ 2008 SC 975) it was held by the Hon'ble Supreme Court held that *"the grant of a 'good' is of no satisfaction to the incumbent if it in fact makes him ineligible for promotion or has an adverse effect on his chances. Hence, the 'good' entry should have been communicated to the appellant so as to enable him to make a representation". It was further held "the non-communication of the 'good'*

entry was arbitrary and illegal. Therefore, every entry in the ACR of a public servant must be communicated to him within a reasonable period."

13. The respondents in their reply statement have firstly stated that the APAR period is up to 31.03.2011 and not up to 31.04.2011, as stated by the applicant in his OA. The O.A.No.590/2012 filed by the applicant against the remarks in the APAR for the period from 05.08.2009 to 31.03.2010 was in June 2012 and the same cannot/could not have influenced the APAR writing for the period from 01.04.2010 to 31.03.2011, which was done in April 2011 by the Reporting and Reviewing Officers.

14. The respondents further submitted that a complaint dated 04.10.2010 had been filed by the staff of P&C Division during the period of assessment on the attitude of the applicant, which was resulting in lesser efficiency and effectiveness of the Division during the period from 01.04.2010 to 31.03.2011. In addition to APAR remarks for the period from 05.08.2009 to 31.03.2009, a notice by the Reporting officer, vide letter dated 27.09.2010, was sent to the applicant to improve his performance in dealing the correspondence received from various agencies in future.

15. The respondents contend that the Reporting Officer is a Service Officer, whereas and the applicant is a Civilian Officer and the promotions to ADCQA are based on different seniority positions. Further, there is

separate earmarked posts of ADGQA for Service/Civilian personnel, and therefore, the plea that since both were contenders to be promoted to the same higher post of Additional Director General of Quality Assurance, which led to a bias does not hold good.

16. The respondents submitted that as per Para 4.3 of Chapter IV of the Brochure for Preparation and Maintenance of APAR for Central Civil Services, an officer is required to develop a work plan for the year which should be agreed upon by the reporting officer incorporating the relative annual work rhythm and budgetary cycle. This exercise is to be carried out at the beginning of the year. In case of change of the reporting officer during the year, the work plan agreed upon at the beginning of the year has to be reviewed again during the month of September/October as a mid year exercise and finalized by 31st October. Based on this review, the work plan may undergo some changes from that originally prepared. The applicant's area of activity duties and responsibilities during the period of assessment in QSD, P&C and ADM divisions have been well defined in CQA (ICV) Unit Standing Orders. None of these aspects have been brought out by the applicant in Section II. Inspite of the applicant having worked in three divisions during the period, the duties pertaining to ADM Division only have been brought out in Section II. This has been duly brought out by

the Reporting Officer in Para 1 and Para 9 of Section III. The attitude of the applicant assessed on day-to-day functioning and handling of the works periodically assigned during the period of the report is on an objective basis. The applicant was also given an opportunity by the Reporting Officer vide letter dated 27.09.2010 to improve his performance. The APAR for the period from 01.04.2010 to 31.03.2011 has been written considering the actions of the applicant in all the three divisions that he has worked during the said period and is not in any way whimsical/ fanciful/malafide or arising out of any figment of imagination of the Reporting and Reviewing Officer.

17. The respondents have reiterated that in addition to taking into account the applicant's working in all the Divisions taken into account for the said period, the representation made against the gradings/remarks have also been dealt with in a proper manner.

18. In view of the above, we see no reason to interfere with the grading of the APAR. Accordingly, the OA is dismissed. No order as to costs.

Sd/-

Sd/-

**(NAINI JAYASEELAN)
MEMBER (ADMN.)**

**(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)**

Dated: this 30th day of April, 2019

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