

**Central Administrative Tribunal
Principal Bench
New Delhi**

**OA No.3337/2017
MA No.2893/2019**

Reserved on : 25.09.2019
Pronounced on : 18.11.2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Krishan Kumar Agarwal S/o S. P. Gupta,
R/o 95 D, Ankur Apartment,
Paschim Vihar, New Delhi. ... Applicant

(By Mr. Ajesh Luthra with Mr. Yogesh Mahur, Advocates)

Versus

1. Director (HR),
Bharat Sanchar Nigam Limited,
Corporate Office, Janpath,
New Delhi-110001.
2. Principal General Manager (Pers.),
Bharat Sanchar Nigam Limited,
Corporate Office, Janpath,
New Delhi-110001.
3. Mr. B. Chandra Sekhar
(Private Respondent),
P. General Manager (CFA & EB),
BSNL, Bangalore Telecom District,
5th Floor Telephone Bhawan,
CTO Building, Rajbhawan Road,
Bangalore-560001. ... Respondents

(By Mr. Pankul Nagpal, Advocate)

ORDER

Justice L. Narasimha Reddy, Chairman :

The applicant joined the Department of Telecommunications as Assistant Divisional Engineer Telephones, in the year 1999. Thereafter, he became the employee of the Bharat Sanchar Nigam Limited, the first respondent. He was promoted to the post of Divisional Engineer Telephones, in the year 2003; as Director in the year 2008; and as Deputy General Manager, in the year 2011. He was posted as DGM, Tezpur on 28.06.2011. With reference to his work between 01.04.2012 and 02.02.2013, his performance was found to be below benchmark, and the APAR was communicated to him. The APAR for the period 03.02.2013 to 31.03.2013 was also communicated, and it was slightly better.

2. The applicant made several representations to the competent authority, through the General Manager (Pers.), the 2nd respondent herein, for upgradation of his APAR. The 2nd respondent called for the remarks of the officers who functioned as his reporting and reviewing authorities at the relevant points of time, and on consideration of the same, passed office order dated 26.02.2017, stating that he does not

find any reason to upgrade the APAR, and that the two APARs referred to above shall be maintained. A further representation dated 19.06.2017 was made to the competent authority, which was rejected on 14.07.2017. This OA is filed challenging the orders dated 26.02.2017 and 14.07.2017.

3. The applicant contends that his APAR for the relevant period was purposely graded as below benchmark, and there was absolutely no basis for the reporting and the reviewing authorities to grade him in such a manner. He pleads that the second respondent was supposed to assess his performance objectively, but has simply taken the remarks of the reporting and reviewing authorities in a mechanical manner, and passed the impugned order.

4. The respondents have filed a detailed counter affidavit. It is stated that the reporting and the reviewing authorities, who graded the performance of the applicant, have assigned cogent reasons for their assessment, and the applicant is not able to demonstrate as to how the same is without basis. It is further submitted that the 2nd respondent has called for the remarks of the reporting and reviewing authorities, as required under the relevant provisions of law, and passed the impugned

order. The respondents state that the applicant was indisciplined and did not perform the work assigned to him, and that the objective assessment made about him does not warrant interference.

5. We heard Shri Ajesh Luthra, learned counsel for the applicant, and Shri Pankul Nagpal, learned counsel for the respondents.

6. The whole issue is about the APAR of the applicant for two periods of 2012-13. For the period between 01.04.2012 and 02.02.2013, the reporting authority gave 1 out of 10 numerical grading. In his *pen picture* about the applicant, he expressed serious dissatisfaction about his performance. The reviewing authority has agreed with the assessment made by the reporting authority. The APAR for the remaining period of 2012-13, i.e., 03.02.2013 to 31.03.2013, was slightly better, and he was awarded 5.5 numerical grading.

7. The adverse remarks and the below benchmark assessment was communicated to the applicant, and he made representation to the 2nd respondent. On his part, the 2nd respondent, called for the remarks of the then reporting officer, by name, Shri B. Chandra Sekhar, then then GM Tezpur; and

the reviewing officer, Shri A. K. Mehera, the then CGM Assam Telecom Circle. In their remarks, they reiterated the views expressed by them at the time of evaluating the performance of the applicant. The 2nd respondent passed an order dated 26.02.2017, expressing his inability to upgrade the APAR of the applicant.

8. The method of preparation of APARs is almost foolproof, and the likes or dislikes of any superior officer are not permitted to be reflected in the APAR. The employee himself is permitted to make his self-assessment, and thereafter his immediate superior, the reporting officer, makes his assessment about the employee. It carries some weight because he is the one who has the immediate opportunity of observing the performance of the employee. He is required to furnish reasons, may be, in brief, in support of his conclusions. To avoid any subjective assessment, the one made by the reporting officer is required to be considered by the reviewing authority. Thereafter, the accepting authority finalises the APAR. When so many safeguards are provided, it is difficult to assume that the assessment is not done properly.

9. When a representation is made by an employee to the competent authority, he undertakes his own exercise, by calling for the remarks of the reporting and the reviewing officers for the concerned period. It is only when he finds any serious error, or when the employee concerned demonstrates that the assessment was not proper, that he can interfere. The competent authority cannot act on his wishes. Instances are not lacking when the DPC, which meets subsequently, would simply ignore the upgradations made by the competent authority, if it is not based upon any valid reasons.

10. The *pen picture* of the APAR of the applicant for the relevant period, is indeed a sad reflection. After endorsing that the integrity of the applicant is 'doubtful', the reporting officer wrote as under:

"The officer is highly undisciplined, does not have much knowledge in technical or administration or management. The officer indulges in activities unbecoming of an officer."

This was agreed to, by the reviewing officer.

11. The applicant did not even plead that there was any personal animosity on the part of those officers against him. The very purpose of maintaining the APAR is to have a clear

idea about the performance of an employee or officer. It is a mechanism to caution the employee/officer to be disciplined, careful and cautious. When the true picture comes out, the employee cannot take an exception to it.

12. In the entire process, the order passed by the competent authority brings about finality. Law does not provide for any further exercise. Obviously, for this reason, the representation made by the applicant vis-a-vis the order passed by the 2nd respondent, was rejected.

13. Reliance is placed upon the judgment of the Hon'ble Supreme Court in *Union Public Service Commission v Hiranyalal Dev & others* [(1988) 2 SCC 242]. That was a case in which an officer was superseded in the context of promotion to IPS, on the basis of the adverse entries in his ACR. The Tribunal has set aside the minutes of the selection committee, on the ground that the adverse remarks were not communicated to the officer. In the appeal preferred before the Hon'ble Supreme Court, the relief granted by the Tribunal was modified, and instead a direction was issued to the effect that the adverse remarks which were relied upon, shall be ignored,

and the selection committee shall examine the matter afresh. The facts of the present case are totally different.

14. Reliance is also placed upon an order passed by this order Tribunal in OA No.3897/2011 - *Inspector (Exe.) Anil Kumar v Union of India & others*, decided on 22.05.2012. There also, the applicant was superseded in promotion on the basis of the adverse remarks in his three ACRs. Following the ratio of the judgment in OA No.1268/2011, it was held that if the reporting and reviewing officers are not available for offering their remarks against the below benchmark ACRs, such ACRs need to be ignored. In the instant case, the concerned officers were very much in office, and the ratio of that order does not operate to the facts of this case.

15. Similarly, the facts of the order passed by the Chandigarh Bench of this Tribunal in OA No.418/2017 - *Amarjig Singh Raina v Union of India & others*, decided on 20.09.2018, are substantially different from the facts of the present case.

16. Learned counsel for the applicant has cited quite a good number of judgments, and on a careful consideration of

the facts pertaining to those precedents, we find them to be not immediately relevant to the facts of this case.

17. We find no merit in this OA. The same is accordingly dismissed. There shall be no orders as to costs.

Pending MAs also stand disposed of.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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