

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI
O.A. No.4084/2013**

New Delhi this the 5th day of November, 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A.K. Bishnoi, Member (A)

Suresh Kumar
Constable in Delhi Police
PIS No.28030395
Aged about 34 years
S/o Shri Ramji Lal
R/o C-89, Madipur Colony,
New Delhi-110063.

-Applicant

(By Advocate: Shri Anil Singal)

Versus

Govt. of NCT of Delhi through

1. Commissioner of Police,
PHQ, IP Estate, New Delhi
2. Joint CP (South-Western Range)
PHQ, IP Estate, New Delhi
3. Addl. CP (West Distt.),
PHQ, IP Estate, New Delhi
4. K S N Subudhi
Reserve Inspector, West Distt., Delhi
Through Commissioner of Police,
PHQ, IP Estate,
New Delhi.

-Respondents

(By Advocate: Shri Amit Anand)

O R D E R (Oral)

Hon'ble Mr. A.K. Bishnoi, Member (A):

The brief facts of the case are that the applicant is working in Delhi Police as Constable. In the year 2011, he was transferred to Distt.

Lines/West where he reported to Respondent No. 4 on 01.12.2011. As per the applicant, he was suffering from a medical problem for which he applied and was sanctioned leave w.e.f. 28.12.2011 to 13.01.2012 and then from 20.01.2012 till 07.04.2012.

2. The submission of the applicant is that for the period from 31.08.2011 to 31.03.2012, Respondent No.4 has given the following assessment in his ACR:-

“He is on habitual absentee for 81 days absent and he was on medical rest for 55 days. During the period his performance is very good. Hence his performance is marked as “satisfactory”.

It is contended by the applicant that if periods of leave are excluded from the period he has worked under Respondent No.4, then the remaining period is less than three months which is the minimum period required for an ACR to be recorded by the Reporting Authority. He has consequently sought for quashing of his ACR and has also sought grant MACP Scheme benefit w.e.f. 20.01.2013.

3. We have heard Shri Anil Singal, learned counsel for the applicant and Shri Amit Anand, learned counsel for the respondents.

4. It is seen from a perusal of the records as also from the arguments advanced by the learned counsels for two sides, that the applicant made a representation (Annexure A-6) against the said ACR, which was disposed of by Respondent No.3 vide order dated 12.12.2012 (Annexure A-2) as under:-

“Subject:- Regarding representation submitted by Ct. Suresh Kumar, 1991/W, against the adverse ACR

The representation submitted by Ct. Suresh Kumar, 1991/W against the adverse ACR for the period from 31.08.11 to 31.03.12 was considered by Addl. DCP-1/W, but could not be acceded to.

The contents of the U.O. may also be got noted by Ct. Suresh Kumar, 1991/W and a copy, duly received by the Const., may be sent to this office for record.”

5. The applicant filed an appeal before the Joint Commissioner of Police (Respondent No.2) which was disposed of vide order dated 10.09.2013 (Annexure A-4).

6. It is a settled principle of law that if a representation is made against an ACR then the Competent Authority has to follow due procedure while disposing it of and that includes obtaining remarks from the reporting and reviewing authorities, if they are in service. In the present case the representation of the applicant has been disposed of through the order dated 12.12.2012, which makes no mention whatsoever about the procedure which has been followed. There is nothing to suggest the remarks of the concerned officers have been obtained and considered. It is a short, laconic order bereft of any reference to facts, points raised in the representation and the reasoning on the basis of which the representation has been rejected. It can be seen that it has not even been signed by the Competent Authority but by some other officer on his behalf. By no stretch of imagination, can it be called a reasoned and a speaking order and is a clear case of non-application of mind. Thus, the order dated 12.12.2012 is totally untenable in law. So being the case, we need not go into any other issues of the present OA.

7. The OA is allowed, setting aside the order dated 12.12.2012 and leaving it open to the competent authority to pass fresh orders. It is

made clear that the order to be passed by the competent authority shall reflect the factum of calling of the remarks of the reporting and reviewing authorities and if they are not available, the manner in which the issue was dealt with. We make it clear that if the order so passed by the respondents is not to the satisfaction of the applicant, it shall be open to him to institute proceedings in accordance with law. No order as to costs.

(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

CC.