

Union of India and ors. Vs. Ravinder Singh and anr.

Union of India and ors. Vs. Ravinder Singh and anr.

SooperKanoon Citation : sooperkanoon.com/922047

Court : Delhi

Decided On : Aug-25-2011

Judge : Sanjiv Khanna, J.

Appeal No. : Writ Petition (Civil) No. 6176/2011

Appellant : Union of India and ors.

Respondent : Ravinder Singh and anr.

Advocate for Def. : Mr. Naresh Kaushik; Ms. Joymati Miz, Advs.

Advocate for Pet/Ap. : Mr. R. V. Sinha; Mr. R.N. Singh, Advs.

Judgement :

1. Respondent No. 1, Ravinder Singh was appointed in the Junior Time Scale in the Central Water Engineering (Grade 'A') service on 25th November, 1972. Director/Superintending Engineer in March, 1992 and to the grade of Chief Engineer [Sr. Administrative grade level post (Grade A) Service] on 6th February, 1998 and continued in the said capacity till 31st March, 2010, when he retired on superannuation. While holding the post of Chief Engineer, his case was considered for promotion to the higher administrative grade level post by the Departmental Promotion Committee (DPC, for short) on 31st July, 2007, 1st April, 2008 and 9th February, 2009, but he was not granted promotion as on each occasion. He was assessed unfit for promotion. The reason it appears was his grading in the Annual Confidential Reports (ACRs, for short) for the period 2003-

04, 2004-05 and 2005-06, which were below the bench mark.

2. The respondent No. 1, approached the Central Administrative Tribunal, Principal Bench, Delhi (Tribunal, for short) vide OA No. 2321/2007 seeking expunction of adverse remarks in his ACRs for the period 13th July, 2005 to 17th October, 2005, which was disposed of by the Tribunal vide order dated 13th August, 2008, holding that no interference was called for. Respondent No. 1, thereafter filed OA No. 2606/2008, praying for upgradation of remarks/grading of his ACRs. This O.A. was disposed of vide order dated 4th December, 2008 with liberty to file a fresh application with positive and specific averments pertaining to ACRs which were below the bench mark and also state whether or not he was conveyed and if conveyed, whether the respondent No. 1 had filed any representation which had not been decided. Respondent No. 1, thereafter, filed OA No. 588/2009 giving specific details. This OA was disposed of by the Tribunal vide order dated 13th October, 2009, directing as under:-

"2. In view of the facts as mentioned above, we direct respondents to communicate to the applicant all such ACRs which may be below bench mark and considered by the DPCs held in July 2007 and April 2008 within a period of six weeks from today. The applicant would then have a right to make representation against such reports and the same shall be dealt with and disposed of by the respondents within next four weeks from the date of receipt of such representation. If such reports are upgraded, commensurate to the bench mark, review DPC shall be convened within next four weeks therefrom, wherein the applicant would be considered for promotion to the post of Member, Central Water Commission. This application is disposed of in terms mentioned above."

3. Thereafter, the respondent No. 1 filed contempt petition No. 50/2010, alleging non-compliance of the order dated 13th October, 2009. The petitioner filed a reply to the said contempt petition stating, inter alia, that they had handed over copy of the ACRs which were below the bench mark and considered by the DPC in July, 2007 and April, 2008. The Tribunal directed that it was open to the respondent No. 1 to make a representation against the said ACRs which would be decided by the petitioner as already ordered in the order dated 13th October, 2009. The

respondent No. 1, thereafter, made a detailed representation on 23rd March, 2010, which was considered by the competent authority which decided to retain the original gradings save for the period 7th November, 2005 to 31st March, 2006, wherein the grades were upgraded from 'good' to 'very good'. With regard to other gradings, vide order dated 19th May, 2010, the original gradings were retained by the competent authority.

4. Paragraph 7 of the said order is relevant and reproduced below:-

"7. WHEREAS, after considering the representation dated 23.3.2010 of Shri Ravinder Singh, applicant in OA No. 588/2009, available material on the issue, the relevant entries made by the reporting and reviewing officers in the ACRs, it has been decided by the competent authority i.e. Secretary (WR) in respect of ACRs for the periods (i) 1.4.2003 to 10.7.2003 (ii) 11.7.2003 to 6.11.2003 (iii) 7.11.2003 to 31.3.2004 (iv) 1.4.2004 to 31.3.2004 & the Hon'ble Minister (WR) in respect of the ACRs for 31.7.2005 to 17.10.2005 to not to upgrade the ACRs as requested by Shri Ravinder Singh and to retain the gradings originally given by the respecting reporting and reviewing officers. In respect of the ACR for the period 7.11.2005 to 31.3.2006 the competent authority i.e. Hon'ble Minister of Water Resources has decided to retain the views of the reporting officer as the review officer had decided to retain the views of the reporting officer as the reviewing officer had only given comments about the Ganga Flood control Commission in general and not referred to the officer reported upon in his remarks against Col. NO. 2 to 4 of Part IV. Thus, the gradings given by the reporting officer will prevail over the remarks of the reviewing officer and a copy of this order is annexed to the ACR for the period 6.11.2005 to 31.3.2006 to reflect the decision taken by the competent authority on the representation dated 23.3.2010 of Shri Ravinder Singh."

5. The respondent No. 1 again approached the Tribunal in OA No. 2545/2010, which has been partly allowed and disposed of by the impugned order dated 18th May, 2011. By the impugned order, it has been directed that the petitioner shall hold a review DPC for the year 2007 and 2008 and consider the respondent No.1 for promotion by ignoring the ACRs for the period 2003-04 and 2005-06 and

instead consider two ACRs immediately preceding the last ACR. The said exercise was to be completed within two months from the date of receipt of order. It was clarified that respondent No. 1 shall be eligible for notional promotion, if found fit by review DPC and he would not be eligible for back-wages. The notional promotion would count towards calculation of increments which would result in re-calculation of his pension.

6. Learned counsel for the petitioner is right in his contention that normally ACRs cannot be ignored and he has drawn our attention to the judgment of the Division Bench of this Court in WPC No. 6013/2010, Union of India vs. Krishna Mohan Dixit, dated 8th October, 2010. In view of the said decision, normally we would have issued notice in the present writ petition but we refrain from doing so for the reasons and aspects which have been highlighted by the Tribunal in the impugned decision. The Tribunal has examined the ACRs for each year including the gradings which were given by the reporting officer as well as the reviewing officer. For the sake of convenience, we are reproducing the findings recorded by the Tribunal in this regard in paragraphs 3 to 8 of the impugned decision:-

"3. Before considering the arguments in the matter, it will be useful to examine the contents of the ACRs, against which the Applicant has given representation. The ACR for the year 2003-04 has been written in three parts, that is, from 01.04.2003 to 10.07.2003, from 11.07.2003 to 06.11.2003 and from 07.11.2003 to 31.03.2004. The reporting officer for the first part was Shri R Jayaseelan, then Member, CWC and also officiating Chairman of CWC. Under the column 'State of Health' he recorded 'Average'. Against the columns 'Quality of Work' and 'knowledge of sphere of work', remarks 'good' have been recorded. Similar lukewarm remarks have been recorded against the column 'Leadership Qualities', stating that he tried to maintain the objectives of targets. Only under the column 'Management Qualities', the remarks recorded was that he was willing to assume responsibility and was able to give guidance to juniors. Under the column 'General Assessment', the following remarks have been recorded:

"Comprehension and originality are just adequate to meet the job requirements. Speed of disposal of work and quality are good. Maintains good relationship with

superiors and subordinates."

On the basis of the above, grading 'Good' had been recorded. This ACR has not been reviewed by the reviewing authority because the reporting authority was also holding the charge of the reviewing authority.

4. For the period from 11.07.2003 to 06.11.2003, the reporting authority was Shri S K Das, Member, CWC and the reviewing authority was Shri R Jayaseelan, Chairman, CWC. The remarks are all verging on just 'good'. The reporting officer has recorded that there were no particular achievements to be mentioned; reasonably good in his sphere of work; incapable of setting targets and achieving objectives; innovative capacity, if any, had not been seen during the period of the report; he was able to guide and train subordinates with assistance from his superiors; and took decisions on the matters dealt by him after consulting his superiors. The grading awarded to the Applicant was 'Good'. The reviewing authority agreed with the reporting authority and recorded that the health of the officer reported upon was not good due to an accident. He further recorded that the Applicant carried out only routine duties.

5. For the last part of the year 2003-04, that is from 07.11.2003 to 31.03.2004, the reporting authority was Shri C B Vashishta, Member, CWC and the reviewing authority was again Shri R Jayaseelan, Chairman, CWC. The reporting authority recorded in his overall assessment of the work of the Applicant that the latter had produced overall good quality of work and that his capabilities for planning of work and achieving targets was also good. However, he recorded a grading of 'Very Good'. The reviewing authority did not agree with the grading given by the reporting authority and recorded that the grading should only be 'Good'. It was again recorded that the officer reported upon, that is the Applicant, only performed routine duties.

6. The reporting authority and the reviewing authority for the ACR of the year 2004-05 were the same as for the last period of the previous ACR. The reporting authority, while recording generally 'Very Good' remarks against various columns in the ACR form, recorded in his overall assessment that the Applicant was hard-working and intelligent officer and was fairly prompt in disposal. It was also

mentioned that he gave adequate attention to details. The reviewing authority did not agree with the grading 'Very Good' given by the reporting authority and recorded that it was 'Good' only. He also recorded that the officer had certain limitations for holding higher responsibilities and his health condition was just adequate to carry out routine responsibilities.

7. The ACR for the period 2005-06 was also written in two parts, from 13.07.2005 to 17.10.2005 and from 07.11.2005 to 31.03.2006. The reporting authority for the first part of the ACR was Shri B S Ahuja, Member, CWC and the reviewing authority was Shri R Jayaseelan, Chairman. The reporting authority recorded that the Applicant was physically energetic and mentally alert. The remarks against all the columns amounted to 'Very Good'. Under the general assessment it was recorded that the Applicant was a sincere, devoted and hard-working officer, who could be relied upon to achieve the objectives. The overall grading was 'Very Good'. The reviewing authority again reiterated that the health of the officer reported upon was not good due to an accident which he had suffered earlier. He also recorded that the Applicant would have difficulty in holding higher responsibility and that his overall performance was 'Good'. During the second period of report, the Applicant had shifted to Ganga Flood Control Commission (GFCC), where his reporting authority was Shri V R Sastry, Chairman of GFCC and the reviewing authority was Shri J Harinarain, Secretary, Ministry of Water Resources. The reporting authority recorded in various columns that his work was generally good. In the overall assessment it was recorded that the officer reported upon went into all the details, while submitting proposals and that he had a logical mind. He was graded as 'Very Good'. The Secretary, however, recorded against the column whether he agreed with the reporting authority that:

"The GFCC has unfortunately come up to be seen as an institution which is very lackadaisical and casual in its work. Unfortunately there has been no effort made by the management of the GFCC to address these concerns."

He graded the Applicant as 'Average'.

8. In the background of the above remarks, it would be useful to look at the representation of the Applicant, which was given to the Secretary, Ministry of

Water Resources on 23.07.2010. As regards the ACR for the two periods from 01.04.2003 to 10.07.2003 and 11.07.2003 to 06.11.2003, the Applicant has mentioned that the grading 'Good' has been given to him without giving any reason for the same. He has also taken exception to 'average' being used to describe his health, which according to him would not have any meaning. He would further state that comments on health as being 'average' had no basis as he had not taken much leave and had been punctual in his work. As regards the ACR for the period 07.11.2003 to 31.03.2004, the Applicant has again reiterated in his representation that the reviewing authority downgraded the grading 'Very Good' given by the reporting authority to 'Good', without assigning any reason for the same. He contended, in his representation, that it was not clear as to what was meant by the comment of the reviewing authority that he carried out only routine duties, because routine work was performed only in the general section of the CWC and the specialised unit, in which he was working, did not perform any routine task. As regards the ACR for the period 2004-05, it has been mentioned that the reviewing authority downgraded the 'Very Good' grading, without giving any reason for that and basing it only on his impression that the health of the officer reported upon was not good and that he could not be given higher responsibilities. It has been stated that no reason has been given for recording that his health was not good. He has further stated in his representation that the ACR for the period 13.07.2005 to 17.10.2005 had been downgraded by the reviewing authority on the same grounds of the Applicant having suffered head injury in the year 2001 and that he performed only routine tasks. It had been contended that in the ACR for the period 07.11.2005 to 31.03.2006, he had been graded as 'Very Good' by the reporting authority. The reviewing authority downgraded his grading to 'Average' on the ground that the performance of the GFCC was lackadaisical and that the Management had not done anything to improve the performance. He would contend that he had joined the GFCC only on 07.11.2005 and in a short period of about five months, it was not possible to bring about perceptible change in its performance by the Applicant as Member of GFCC. It was further mentioned in the representation that he was very actively involved in organising the International conference of ICID in 2009. It was stated in the representation that the grading in his ACRs were downgraded due to malicious

intentions and that grounds for downgrading had not been stated in the ACRs. It was also stated that most of the downgrading had been done by Shri R Jayaseelan, who was biased and had malicious and hostile attitude towards the Applicant."

7. Learned counsel for the petitioner could not controvert or deny the aforesaid findings. The order dated 19th May, 2010, passed by the petitioner, the relevant portion quoted above does not also answer the said findings.

8. Keeping in view the aforesaid facts and the limited relief which has been granted by the Tribunal as noticed above, we do not find any merit in the writ petition and the same is dismissed in limine.