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Court : Delhi

Decided On : Mar-16-2012

Judge : Badar Durrez Ahmed & V.K. Jain

Appeal No. : W.P.(C) 1466 of 2012

Appellant : NavIn Kumar Garg

Respondent : Union of India

Judgement :

BADAR DURREZ AHMED, J. (ORAL)

CM 3210/2012

Allowed subject to all just exceptions.

W.P.(C) 1466/2012 and CM 3211-3212/2012

1. The petitioner is aggrieved by the order dated 01.02.2012 passed in OA 292/2012 by Central Administrative Tribunal, Principal Bench, New Delhi.

2. Initially, the petitioner had filed an Original Application being OA 1233/2011 assailing the confidential reports for the periods - 25.04.2005 to 06.09.2005, 07.08.2005 to 31.03.2006 and for the year 2006- 2007. At that point of time, the petitioner before the Tribunal had urged that the ACRs of the petitioner contained gradings which were below the prescribed benchmark of 'very good' for promotion

to the higher grade and that the gradings had not been communicated to him.

3. On this solitary ground, the Tribunal, in the said OA 1233/2011, by an order dated 01.04.2011, directed as under:-

“3 In our opinion, at this stage, it would suffice to direct the applicant to make representation to the respondents against these gradings and the respondents to consider the representation of the applicant and take a view in the matter. Should the gradings of the applicant be upgraded commensurate to the benchmark, the applicant would be considered in a Review DPC for upgrading as per the OM dated 24.4.2009 issued by the DOPandT for parity with IAS. The present OA also would be treated as a supplementary representation and a copy of the OA would be given by the applicant to the competent authority for consideration. The above consideration would be completed within two months from the date of receipt of the representation of the applicant by the respondents.

4 Needless to say the applicant would be at liberty to challenge the order to be passed in response to his representation against the below benchmark gradings in his ACRs, should his grievance still survives.

5. OA is disposed of in the above terms. No costs.”

4. Thereafter, in compliance of the directions given by the Tribunal, in its order dated 01.04.2011, the representation of the petitioner against the below benchmark confidential reports for the aforesaid periods, was examined by the competent authority. A speaking order was thereafter passed on 30.09.2011. As indicated in the speaking order itself, some of the issues, which had been raised by the petitioner in the representation, were that the ACRs had been written in an arbitrary manner; the reporting officer had dual charge and was stationed away from the place of duty of the petitioner and was, therefore, not conversant with his performance; no specific targets were assigned; no warning or counseling was given; ominous expressions has been used whereas the ACR should have been recorded in a narrative form; the petitioner had been posted in a hard area which had a hostile working environment; and the reviewing officer was also holding a dual charge and had no interaction at all with the petitioner.

5. We note from the speaking order that the competent authority was of the view that the issues raised by the petitioner did not merit consideration inasmuch as the he was a senior officer in the Junior Administrative Grade (in the scale of a Director) and he himself was in a leadership position and was required to lead a group of officers and should not have been dependent on seniors for setting targets. As regards the ground that he was neither warned nor counselled, it was also felt that this cannot be used as a justification for upgradation of the ACRs. It was also noted that the CPWD had been executing works in border areas for several years and the representation, on the ground that the petitioner was working in a hostile environment, according to the competent authority, was made obviously to garner sympathy and had no merit in it. The competent authority, thereafter, made a period-wise assessment and observations in that regard are as under:-

“(i) **Period 25.04.2005 to 06.09.2005**: That, he was graded very Good in the preceding year does not justify upgradation of ACR. The officer has not brought out any specific issue which would merit upgradation of the ACRs. The reporting officer has generally graded the officer as Good. The reviewing officer, who had moderate knowledge about the officer has finally agreed with the assessment of reporting officer. The ACR has been countersigned also. The officer having been graded Good by reporting, reviewing officers and same having been countersigned, there is no reason to interfere with the ACR.

(ii) **Period 07.09.2005 to 31.03.2006**: The reporting office has recorded that dedication/motivation/initiative needs improvement. At para 3.6 (initiative), Para 3.7 (ability to inspire and motivate), he has been graded Average. The officer has been graded Average by the reporting officer. The reviewing officer has recorded that the officer is known to shirk work and avoid responsibility. The reporting officer who is still in service has commented that allegations made in the representation are false and baseless. After considering the representation he has reiterated the assessment of grading. In view of above, it has been decided not to interfere with the ACR.

(iii) Period 01.04.2006 to 31.03.2007: The reporting officer while agreeing to the constraints has recorded that more could have been done. He has been graded Good in almost all attributes and has been finally graded as Good. The officer has tabulated the comments of the reporting officer and grounds for upgradation. He has not quantified achievement which would justify upgradation. Representation was sent to reporting officer who has reiterated his grading. Hence, it has been decided not to interfere with the ACR.”

6. Finally, the speaking order also noted that the officer had been assessed below the benchmark for the aforesaid period by different officers. Consequently, the competent authority decided not to interfere with the gradings in the ACRs for the said three periods.

7. Being aggrieved by the speaking order, the petitioner preferred the second original application being OA 292/2012, in which the impugned order dated 01.02.2012 has been passed, whereby the Tribunal, while rejecting the said original application observed as under:-

“3. We have heard Shri Ashish Nischal, learned counsel representing the applicant and with his assistance examined the records of the case. At the very outset, we may mention that the finding recorded in the impugned order that the “officer has been assessed below benchmark for all the above periods by different officers”, has not been questioned. In matters such as recording of ACRs of an employee, representation made there against and the orders passed thereon, there is very little scope for interference. The subjective satisfaction of reporting, reviewing and accepting officers cannot be lightly interfered with, as they are the officers who have seen an employee working directly under them, and are in a position to assess the attributes. The Tribunal would have no such occasion and, therefore, it would be difficult to set aside the views expressed by the said officers. There is no argument raised during the course of hearing that may touch upon infringement of any law, rules, regulations or office memoranda. Once, the representation of the applicant has been considered and disposed of by a speaking order, we do not find any scope for interference, particularly in the fact situation of this case, where for different periods, different officers have given below benchmark gradings to the

applicant.”

8. From the above narration of facts, it is obvious that the only point urged by the petitioner before the Tribunal in the first round was that he had been downgraded for the said periods but that the downgrading had not been communicated to him. On this sole ground, the Tribunal thought it fit to interfere and direct that the petitioner should represent to the competent authority which would, after considering the representation, pass a speaking order. That procedure has been followed. The competent authority has considered the representation filed by the petitioner, which has been followed by a speaking order dated 30.09.2011.

9. Being aggrieved by that speaking order, the petitioner had, as stated above, filed the second Original Application, which has also been considered by the Tribunal. The Tribunal is entirely correct in its observation in noting that in a matter, such as recording of ACRs of an employee where a representation has been made thereagainst and the orders have been passed thereon, there is very little scope for interference by the Tribunal. The same applies to us. We cannot substitute our views for those of the reporting or of the reviewing authorities. In fact, there is no occasion whatsoever, for arriving at any view with regard to an officer inasmuch as we have no knowledge about his working. The persons, who have knowledge of his work, are the reporting and the reviewing officers and they have to grade the officer concerned. In the present case, the gradings were given in the first round without communicating the downgrading to the officer. But that lacuna had been set at rest by the Tribunal by virtue of its order dated 01.04.2011 by directing that the representation of the petitioner in this regard be considered by the competent authority. That has been done. The representation has been considered and a speaking order has been passed. The competent authority has decided to maintain the original gradings given to the petitioner. There is no material before us and there can be no material before us which would enable us to take a different view insofar as the gradings are concerned. As regards the procedure to be adopted after the passing of the order of the Tribunal dated 01.04.2011, we are clear that the competent authority, having considered the representation in detail and having passed a speaking order, has complied with the same.

10. Consequently, no fault can be found with the impugned order dated 01.02.2012 passed by the Tribunal. The writ petition is dismissed. There shall be no order as to costs.

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