

(2019) 05 DEL CK 0038

In the Delhi High Court

Case No : Civil Writ Petition No. 4896 Of 2019

Aabi Binju

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 08-05-2019

Acts Referred:

Citation : (2019) 05 DEL CK 0038

Hon'ble Judges : Vipin Sanghi, J; Rekha Palli, J

Bench : Division Bench

Advocate : K.L.Manhas, Anurag Ahluwalia, Kartikiya Rastogi, Shabhu Nath

Final Decision : Disposed Off

Judgement

Vipin Sanghi, J

C.M. No.21754/2019

Exemption allowed, subject to all just exceptions.

W.P.(C) 4896/2019

1. Issue notice. Mr.Anurag Ahluwalia accepts notice on behalf of the respondent nos.1 & 2. Counsel for the petitioner states that the respondent no.3, despite service, did not even appear before the Tribunal. In any event, considering the order that we propose to pass, we do not deem it necessary to serve notice upon the respondent no.3.

2. The present writ petition has been preferred by the petitioner to assail the common order dated 28.03.2019 passed by the Principal Bench, Central Administrative Tribunal, New Delhi (hereinafter referred to as Tribunal) in Original Application Nos.4533/2014, 4518/2014, 4532/2014 & 4623/2014. The petitioner had preferred the said four O.As assailing his final APAR gradings in relation to four assessment years namely 2003-04, 2005-06, 2006-07 & 2007-08.

3. The particulars of the four O.As preferred by the petitioner; the assessment

years to which they relate; the gradings awarded by the Reporting Officer and Reviewing Officer, as well as; the grievance of the petitioner in respect of each of these gradings, are contained in the following tabulation:-

Year of the ACR

OA No.

Gradings

Cause of Action

By reporting Officer

By reviewing/ accepting officer

2003-04

4518/2014

Good

Good

The reporting officer(R3) has rated the various attributes as 'Very Good'. But overall grading has been given as 'Good' which is not in consonance with the gradings of the attributes.

2005-06

4532/2014

Average

Average

The reporting officer(R3) has rated the various attributes as 'Good'. But overall grading has been given as 'Average' which is not in consonance with the gradings of the attributes.

2006-07

4533/2014

Average

Average

The reporting officer(R3) has rated the various attributes as 'Good'. But overall grading has been given as 'Average' which is not in consonance with the gradings of the attributes.

2007-08

4623/2014

Very Good

Good

Reviewing/accepting officer(R3) has deliberately downgraded the overall grading from 'Very Good', given by the reporting officer to 'Good' with mala fide intentions out of pure malice.

4. The Tribunal has rejected the said O.As by considering only one submission advanced by the petitioner, namely that he was not warned or censured before being assessed as 'Average' in his APARs. In this regard, the Tribunal has held that there is no requirement in law which mandates that the officer under assessment should be warned, admonished, reprimanded or censured before being assessed as 'Average'.

5. Learned counsel for the petitioner points out that since the facts relating to each of the assessments were different, the petitioner had raised separate grounds in his four O.As. He points out that, in fact, the 'Average' grading relates only to the years 2005-06 and 2006-07. So far as 2003-04 and 2007-08 is concerned, the final grading awarded to him was 'Good' and not 'Average'. He, thus, contends that the Tribunal has not examined the grievance of the petitioner in relation to each assessment year separately and has not discussed the petitioner's other submissions. He further submits that the petitioner had alleged mala fides against the respondent no.3, and had even impleaded him as a party respondent in his personal capacity. Despite notice of service, respondent no.3 had not filed his counter affidavit, yet the allegations made against him were not considered by the Tribunal.

6. Learned counsel for the respondent does not dispute the fact that the petitioner's grievance in relation to each of the assessment year have not been individually dealt with by the Tribunal. He, however, submits that in so far as the findings given by the Tribunal are concerned, the same are sound.

7. We have time and again emphasized that the Central Administrative Tribunal, New Delhi exercises original jurisdiction in relation to matters which fall within its jurisdiction and, therefore, when an applicant approaches the Tribunal with the hope that his grievance would be heard and decided on merits with due application of mind - which would be reflected in the order which the Tribunal ultimately passes, that legitimate hope should be fulfilled.

8. When an applicant approaches this Court to assail an order of the Tribunal, his grievance should not relate to his not having been given a proper hearing, or his case not being decided on the aspects urged by him before the Tribunal, but should only relate to the correctness or otherwise of the order passed by the Tribunal.

9. Unfortunately, in several cases, we have had to deal with such grievances, and considering that it is primarily for the Tribunal to deal with the issues raised by the applicant in the first instance, we have had to remand these cases back to

the Tribunal.

10. We have also come across an order passed by the Tribunal, expressing its view regarding our orders remanding back cases to the Tribunal. We have no penchant to pass a remand orders, and our endeavour is to always deal with the case on its own merit. However, when such situations arise - where we find that the Tribunal has not bestowed its consideration to the grievances and submissions of the parties, we are helpless and are compelled to remand back the matter to the Tribunal only to ensure that the first round of adjudication is not rendered illusory for the applicant. We must, therefore, remand such like cases.

11. We request the Tribunal to kindly undertake course correction with regard to the manner in which it has sometimes been dealing with original applications, and to ensure that cases are properly dealt with. The orders should not reflect upon a casual approach of the Tribunal, but should reflect due application of mind by the Tribunal to the controversies raised before it.

12. We accordingly remand the four original applications for reconsideration to the Tribunal on merits. We, however, clarify that in so far as the petitioner's sole submission, which has been considered and rejected by the Tribunal is concerned, the same has attained finality.

13. The parties shall appear before the Tribunal on 28.05.2019.

14. The petition stands disposed of.