

(2014) 04 RAJ CK 0007
In the Rajasthan High Court
Case No : Civil Writ Petition No. 585/1996

Arun Singh

APPELLANT

Vs

The Bureau of Indian Standards and Others

RESPONDENT

Date of Decision : 10-04-2014

Acts Referred:

Citation : (2014) 04 RAJ CK 0007

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : N.C. Goyal, Advocates for the Appellant; Ravi Bhojak for M.K. Sharma, Advocates for the Respondent

Judgement

Mohammad Rafiq, J.—This writ petition has been filed by petitioner-Arun Singh challenging the grading given to him in his Annual Confidential Reports of the years 1989, 1990, 1991 and 1994 and seeking directions to the respondents to consider his case for promotion on the post of Joint Director w.e.f. 5/5/1991 and accordingly grant promotion with all consequential benefits.

2. It is contended that when the writ petition was filed in the year 1996, petitioner was serving as Deputy Director in the Bureau of Indian Standards under the Ministry of Civil Supplies, Government of India and was posted at Jaipur. Earlier he was posted at Patna, which falls under the Eastern Regional Office Calcutta, headed by Shri P.S. Das the then Deputy Director General (East) and now Additional Director General at New Delhi. Shri Das for the reasons best known to him has been hell bent on spoiling the career of the petitioner by using the confidential report (CR) as a tool to victimize and harass him rather than using it as a tool for human resource development. Shri P.S. Das initiated the process of spoiling the ACR's of the petitioner by communicating memo dated 10/9/1990, wherein the petitioner's CR for the year 1989 the quality of work output was assessed as average and overall worth was graded as B. Petitioner submitted a representation on 19/11/1990 contending that as compared to earlier years in 1987 and 1988, the petitioner was given challenging assignments

ignoring the cases of big senior colleagues and the petitioner carried out these assignments to the complete satisfaction of his superiors. Therefore, overall grading should have been better compared to what has been given in the earlier CRs for the years 1987 and 1988. The representation of the petitioner was rejected vide order dated 26/7/1991 stating that the memo dated 10/9/1990 was advisory in nature in order to enable the petitioner to improve his performance. Petitioner was again served with the memo dated 26/12/1991 for 31/12/1990, wherein he was informed that against the heading 3(b)(iii), "communication skill; he had been assessed as having tendency to "Y" showing therein incoherent in speech, unclear and diffused in writing and under the heading 3(c)(iii), "conscientiousness" he had been assessed as having tendency to "Y" stating therein that the same means apathetic, slipshod or lazy. He was further informed that the overall worth has been shown as B+ and assessment against other headings under column 3 has been shown as normal. Petitioner received the abovesaid memo on 1/1/1992 and submitted a representation on 5/2/1992. In the representation, apart from giving many details, he contended that based on his performance, the Reporting Officer must have given an excellent report otherwise Reporting Officer would have taken action as envisaged in clause 6 under the heading "instruction" of the confidential Report, which he recorded. It is contended that when earlier representation dated 5/2/1992 was under consideration, petitioner was served with another memo dated 25/8/1992, wherein he was informed of the same entry. Petitioner again submitted representation on 30/9/1992 and 8/12/1992, wherein apart from the factual details, he mentioned that the Reporting Officer must have given an excellent report of his performance as his performance was always appreciated by the Reporting Officer and that the Reviewing Officer Shri P.S. Das, Deputy Director under whom the petitioner had never worked directly for even a single day in the year 1991, cannot change the report of the Reporting Officer until such change is sustained on the basis of evidence, his representation was again upheld by the competent authority of the Bureau, who vide memo dated 5/3/1993 expunged the adverse remarks from the CR for the year 1991 but maintained the overall grading of B+. It is contended that this order was contradictory in terms that when the adverse remarks were expunged, overall grading must have been undergone an upward change. Petitioner then submitted another representation on 30/4/1993 for upgradation of his ACR of the year 1990-91. Petitioner did not receive any communication of the year 1992-93 however for the year 1994, petitioner was again served with the memo dated 12/9/1995 informing that certain adverse remarks have been made in his annual confidential report of the year 1994 to the effect that he had very casual approach and was found lacking in working in the interest of the organization. He was given overall grading B+ i.e. good average. Petitioner submitted another representation on 10/10/1995 highlighting therein the salient features of the work carried out by him during the year 1994. He again mentioned that in view of his excellent performance, the Reporting Officer must have given an excellent report and had his working/performance been below, action as envisaged in

clause 4.1 of the "Guidelines for Reporting Officers/Reviewing Officers" should have been taken. Moreover, Shri P.S. Das, Additional Director General was the Accepting Authority and therefore once again he managed to communicate the baseless adverse remarks by influencing the Reviewing Officer even though the Reporting Officer gave an excellent report about his performance in his C.R. The Reviewing Officer instead of exercising an independent judgment over the report of the Reporting Officer downgraded the report of the Reporting Officer by exercising negative and biased judgment unsubstantiated by any evidence. Shri N.C. Goyal, learned counsel for the petitioner in support of his argument has relied on the guidelines issued by the respondent-Bureau of Indian Standards for review of the ACRs of the officers placed under Annexure-1.

3. Learned counsel for the petitioner submits that the Reviewing Officer was required to give him higher grade once the adverse remarks were expunged. The promotion in the Bureau of Indian Standards depends on evaluation of CRs of last five years. The relative weightage of CRs is 65% and for interview it is 35%. Promotion of the petitioner to the post of Joint Director is due since 5/5/1991. He was victimized through delayed communication of the adverse remarks in his CRs for the years 1989, 1990, 1991 and 1994. Besides, promotion to the post of Deputy Director and Joint Director is made on recommendation of the selection committee. Since Shri P.S. Das Additional Director General was biased against the petitioner, the due promotion was denied to him in the years 1989, 1990, 1991 and 1994. Shri Das out of malice has unnecessarily harmed his promotional prospects by managing to record baseless and unfounded adverse remarks in the confidential report for the years 1989, 1990, 1991 and 1994 in an arbitrary and illegal manner. Pursuant to the representations of the petitioner against the adverse remarks dated 5/2/1992, 30/9/1992, 8/12/1992 and 10/10/1995, the adverse entries for the years 1990, 1991 and 1994 were expunged vide orders dated 4/11/1992, 5/3/1993 and 8/12/1995 however, maintaining the overall grading as B+ without assigning any reason.

4. Shri N.C. Goyal, learned counsel for the petitioner in support of his arguments has relied on the judgments of the Supreme Court in Union of India and others Vs. E.G. Nambudiri, and State of U.P. Vs. Yamuna Shanker Misra and another, .

5. Shri Ravi Bhojak, learned counsel appearing for the respondents has opposed the writ petition and submitted that the ACRs in the Bureau were written as per the "Guidelines for Reporting Officers/Reviewing Officers", which have been placed on record with the reply at Ann.R/1. He submits that the ACRs are written by Reporting Officer, Reviewing Officer and Accepting Officer, who are three different persons. The petitioner's contention that he was given challenging assignments is really not understood as in service all assignments are challenging and particularly for higher posts. In regard to communication under the heading "3(b)(iii) i.e. "Communication Skill", the Reporting Officer has given "normal" remark. Shri P.S. Das as a Reviewing Officer has changed it to tendency to "Y" that is "incoherent in speech, unclear and diffused in writing", which

remarks were expunged by the Accepting Authority namely Lt. General A.S. Bhullar, the then Director General of Bureau of Indian Standards. In regard to heading of CR under "conscientiousness", the Reporting Officer has remarked tendency towards "X", which has been changed to tendency to "Y", which was expunged by the Accepting Authority, Shri P.S. Das, who has stated in his comments dated 24/2/1992 on the petitioner's representation dated 5/2/1992 that his remarks were of advisory in nature and the competent authority decided to expunge the remarks. Since only two parameters were changed and the other numerous parameters remained the same and as such, his overall rating was not changed from "B" (good average) for the year 1990. It is contended that the representations of the petitioners submitted against the said adverse remarks on 26/8/1992 and 8/12/1992 were accepted. The remarks were expunged but his overall grading of "B" (good average) remained unchanged. The allegations of the petitioner that the adverse remarks were made arbitrarily or by malice are denied. Over all gradation is given on the basis of overall performance under various parameters. Petitioner contention that he did not work directly under Shri P.S. Das in 1991 is of no consequence. Petitioner was working at Patna office of BIS in 1991 as Deputy Director and was under the control and supervision of Shri P.S. Das, who was in charge of Eastern Region and Patna office was working directly under Shri P.S. Das. The petitioner's overall rating by Reporting, Reviewing and Accepting authorities was B+. Learned counsel to bring home this point has relied on the chart enclosed with the document Ann.R/2. Learned counsel for the respondents contended that promotion of the petitioner is not at all influenced by the so-called adverse entry in the ACRs as alleged by him. The marks awarded to the candidates by the Assessment Committee on the basis of interview are not based on the grading in the ACRs. Petitioner did not get the qualifying marks, which was 50% in the year 1992. In the subsequent years i.e. 1993, 1995 and 1995, he could not get enough marks, which when added to the ACR marks would qualify him for promotion on the basis of cut off marks decided by the selection committee. Generally, the ACR marks and the Assessment (Interview) marks obtained by the petitioner are of similar order.

6. Perusal of that chart (Ann.R/2 indicates that even when the adverse remarks, which were expunged in respect of the year 1990-91, petitioner was graded B+ grading by both the Reporting Officer as also by the Reviewing Officer. It cannot therefore be said that his non-promotion was result of grading so given to him and the adverse remarks recorded by the reviewing officer, that being the position when the adverse remarks were expunged, that would not make much of difference because same grading was retained. Similarly, as pointed out by the respondents, overall rating by different authorities was graded B+ (good average) for the year 1992-93 and therefore also this argument of general grading by reviewing officer is not proved. In regard to ACR of 1994, reporting officer Shri S.K. Khaitan and reviewing officer Shri D.S. Ahluwalia, who had given general remarks has stated overall reading as B+. In fact, Shri P.S. Das, who was accepting officer of the petitioner upgraded his rating to B+ in that year i.e. to

good average. Allegation of baseness or malafide against Shri Das cannot be taken to have thus proved. As regards promotion, respondents have introduced Bureau of Indian Standards (Recruitment to Scientific Cadre) Regulations, 1988, Regulation 9 of which deals with promotion. The Assessment Committee takes interview of officers with the maximum limit of 35 marks with effect from the year 1993. During 1992, maximum marks for interview were 40. The Assessment Committee is not concerned with the ACRs and does not know the ACR based on the grading given to the officer. The marks to each officer ACR based on the grading given to the officer in the preceding 5 years are awarded by the Selection Committee in accordance with clause 4.2 of the criteria for promotion of the aforesaid Regulations. The Selection Committee considers the evaluation of ACRs for the previous 5 years and the evaluation of the officers in the Assessment (Interview) as conducted by the Assessment Committee and recommends the suitability of the officer for promotion to the next higher grade on the basis of the criteria.

7. I am inclined to uphold the plea of the learned counsel for the respondents that promotion of the petitioner was not at all influenced by the so-called adverse entry in the ACRs as alleged by him. The marks awarded to the candidates by the Assessment Committee on the basis of interview are not based on the grading in the ACRs. Petitioner did not get the qualifying marks, which was 50% in the year 1992. In the subsequent years i.e. 1993, 1995 and 1995, he could not get enough marks, which when added to the ACR marks would qualify him for promotion on the basis of cut off marks decided by the selection committee. Generally, the ACR marks and the Assessment (Interview) marks obtained by the petitioner are of similar order.

8. In view of aforesaid, it cannot be said that petitioner was being victimized due to any bias or there was otherwise any malafide. There are two upgradations in respect of two years i.e. 1990-91 and 1992-93 out of four years. The remarks as proposed by the reporting officer were retained by the reviewing officer as also by the accepting officer in all respect, lastly upto 1994. Remarks awarded in respect of year 1994, graded B+ (only average) by the reporting officer, which was upgraded to B+ (good average). The judgments of the Supreme Court cited by the learned counsel for the petitioner in support of his argument are therefore distinguishable and are of no help to the petitioner in any manner.

9. There is thus no case for interference. The writ petition is therefore dismissed.