(2009) 02 RAJ CK 0061

In the Rajasthan High Court

Bhagwati Prasad APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 25-02-2009

Acts Referred:

Citation : (2009) 02 RAJ CK 0061

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Govind Mathur, J.—The petitioner, a member of Rajasthan Police Service, was posted on deputation with Hindustan Machine Tools Ltd., Ajmer in the month of August 1992 and remained their till 17.08.1993. An adverse entry was recorded in his Annual Performance Appraisal Report for the period commencing from 01.04.1993 to 17.08.1993. The same was communicated to the petitioner vide a communication dt. 13.11.1994 and an explanation relating to the adverse entries so made was submitted by the petitioner on 15.02.1994. Pertinent to note here that adverse remark aforesaid was in the terms that, "He hardly reflected any enthusiasm and initiative in the realm of vigilance and security work. During the period under review, he produced no reports of value, and recommended no action. Also no preventive measures were initiated by him."

2. The representation submitted by the petitioner came to be rejected by the competent authority and information in this regard was given to him vide a letter dt. 28.06.1995. To expunge the adverse remarks relating to the period from 01.04.1993 to 17.08.1993 this petition for writ is preferred. A direction is also sought by the petitioner to grant all other benefits which adversely effected him due to the remarks in question. According to the petitioner the reporting officer lodged excellent remarks in Annual Performance Appraisal Report, however, the reviewing authority, who had no occasion to assess and supervise petitioner''s working altered the same without having any rhyme and reason. An allegation is also made by the petitioner that the adverse remarks were made by the

reviewing authority because of certain rival and ill-relations between the officers. As per the petitioner the reviewing authority never pointed out any deficiency in his working on basis of that it could have been said that he is lacking enthusiasm and initiative.

3. In reply to the writ petition the respondents accepted that the reviewing authority altered the excellent remarks made in Annual Performance Appraisal Report of the petitioner. The relevant portion of the reply reads as follows:

14. That in reply to averments contained in para 14 of the writ petition, it is respectfully submitted that the petitioner has given in this para a reference to his work undertaken by him while he was posted in the Hindustan Machines Tools Ltd., It is submitted that averments of this para as such do not require any specific comments. But it is admitted that the functioning of the petitioner did not prejudice Hindustan Machine Tools Limited while he was posted there and discharged duties. It may also be stated here that it is not apparent from the record available with the answering respondent No. 1 as to whether the Reviewing Officer even visited the place of duty of the petitioner while he was posted at Hindustan Machine Tools Limited. From the record it is apparent that the reporting officer of the petitioner found his work to be excellent.

4. From perusal of the averments made in para 14 of the reply it is apparent that as a matter of fact no prejudice was caused to the Hindustan Machine Tools Ltd. due to functioning of the petitioner. It is also a fact admitted that the reviewing officer never visited the place where the petitioner was working and the reporting officer found petitioner''s working excellent. On basis of the facts available on record it also reveals that the petitioner was posted at Ajmer whereas the reviewing authority was at Banglore. The facts stated in reply to the writ petition as a matter of fact are self speaking and clearly establishes that the petitioner was subjected to an arbitrary exercise of powers. It is well settled that a confidential report is an important document and it provides the basic and vital inputs for assessing performance of an officer. Assessment and maintenance of performance of an officer is always required to be made objectively, cautiously and with an approach to enhance and develop working efficiency of the officer concerned. The remarks relating to the performance are neither required to be used as an instrument of coerce in general or for rewarding the employees who are blindly obedient to their superiors. While entering remarks relating to performance of an officer in confidential report the reporting authority, reviewing authority and the accepting authority, as the case may be, are always required to undertake their duty with high sense of responsibility with due care and attention. This Court in the case of Roop Singh Jodha v. State of Rajasthan and Ors. 2007 (1) WLC(Raj.) 70 while adjudicating an issue relating to assessment of performance of a government servant after considering number of judgments of Hon''ble Apex Court held as follows:

15. Remarks in the APARS of a government servant play a significant role in his service career. While good remarks may help him gain timely promotion, adverse

remarks may delay such promotion and in some cases, may even permanently mar the chances of such promotion. It is true that the compliance of principles of natural justice in the sense of giving notice and providing opportunity of hearing cannot be insisted upon in the matter of recording of adverse remarks. At the same time, however, desirability of applying those principles at least in some semblance has always been impressed upon the executive by series of judicial pronouncements. This is based on sound principles of fairness and transparency in administrative action. Such a course is required to be adopted so as to rule out any possibility of arbitrariness and colourable exercise of power. The Government of Rajasthan has issued the APAR Instructions of 1976 with an avowed objective of adherence to these very principles of law. Guidelines contained in these instructions insist on objectivity of assessment rather than subjectivity of the officer making such assessment. They are intended to safeguard interest of the government servants so that no prejudice is caused to them by any possible bias on the part of the officer recording remarks in his APAR.

5. In the present case even as per respondents there was no act on part of the petitioner that cause any prejudice to the Hindustan Machine Tools Ltd. and the reporting officer termed the petitioner as an excellent officer. A reviewing authority is having all powers to alter the remarks made by the reporting authority, however, such alteration should be objective and just based on well founded incidents of service. Such alteration is required to be narrative and must be produced before the Court, if any challenge is given to such alteration or even to the adverse remarks entered at any stage. In the present case the respondents failed to show any reason for lodging adverse remarks in petitioner''s Annual Performance Appraisal Report. I also fail to understand as to how the reviewing authority who was sitting at Banglore reversed the remarks made by the reporting authority without having any material and without recording reasons. No objectivity reflects in decision of the reviewing authority in the present matter.

6. For the reasons stated above, this petition for writ deserves acceptance, therefore, the same is allowed. The adverse remarks entered in the petitioner''s Annual Performance Appraisal Report for the period from 01.04.1993 to 17.08.1993 is hereby expunged. The petitioner shall be entitled for all benefits flowing as a consequent to expunging the adverse remarks referred above.

