(2013) 08 DEL CK 0342

In the Delhi High Court

Case No : Writ Petition (C) 2332 of 2012

Delhi Development Authority APPELLANT

Vs

Ram Avtar Sharma and Others RESPONDENT

Date of Decision : 06-08-2013

Acts Referred:

Citation : (2013) 08 DEL CK 0342

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Arun Birbal with Mr. Vineet Malhotra, for the Appellant; Jyoti Singh instructed by Mr. Padma Kumar S., for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—The respondent Ram Avtar Sharma was aggrieved by the fact that persons junior to him were promoted from the post of Executive Engineer to that of Superintending Engineer on the recommendations of a Departmental Promotion Committee which met on May, 2007 and he was superseded being found unfit for promotion and the reason whereof was Ram Avtar Sharma''s ACR gradings recorded in the appraisal reports, which reports were prepared as per a proforma prescribed. It was obviously a case of below benchmark ACR gradings which was creating the problem and since the said below benchmark ACR gradings were not forwarded to Ram Avtar Sharma to enable him to make a representation there against the first round of litigation which he fought resulted in a direction being issued to the employer i.e. Delhi Development Authority to forward to him the below benchmark ACR gradings to enable Ram Avtar Sharma to submit a response there against and after considering the response to pass appropriate orders and should the ACR gradings be upgraded, a review DPC to be held.

2. The DPC which met in May, 2007 had appraised the eligible Executive Engineers who fell within the zone of consideration with reference to their service record for the preceding five years: 2001-02, 2002-03, 2003-04, 2004-05 and

2005-06 and thus we would be focusing on the said years.

3. The ACR proformas prepared by Delhi Development Authority would reveal that they consist of four parts. Part I pertains to a self-appraisal by the officer concerned. Part II pertains to the appraisal by the Reporting Officer. Part III pertains to the Reporting by the Reviewing Officer and Part IV pertains to the Report by the Counter Signing Officer.

4. Pertaining to Part II of the proforma, apart from column ''A'' wherein the Reporting Officer comments upon the self-appraisal pen profiled by the appraisee in Part I, under column ''B'' having the caption ''Assessment by Reporting Officer'', the reporting officer has to tick any one of the five options listed as per numbers 1, 2, 3, 4 and 5 indicating: 5 - Outstanding; 4 - Very Good; 3 - Good; 2 - Average; 1 - Poor against 22 attributes which are as under:-

5. Part III of the proforma pertains to the Reporting by the Reviewing Officer. The Reviewing Officer has to comment, in the light of the assessment of the Reporting Officer, indicating whether he agrees with the same and to bring out differences, if any arise. Thereafter the Reviewing Officer has to appraise the appraisee on four attributes with the same numeral parameters as per the previous as under:-

6. Part IV of the proforma pertains to the Report of the Counter Signing Officer wherein he determines the overall assessment of the officer under the following heads:-

7. A reference to paragraph 5 and paragraph 6 above would reveal that whereas the Reporting Officer makes his report with reference to 22 listed parameters, the Reviewing Officer does so with reference to 4 listed parameters, which we find integrate the 22 listed parameters on which the Reporting Officer makes his report.

8. Pertaining to the ACR grading of the respondent for the five block years in question the position could be summarized in a tabular form as under:-

9. Highlighting that for the last 3 preceding years the ACRs are in part, the tabular formation aforenoted would reveal that for the assessment year 01.04.2001-2002 the Reporting Officer has ticked 14 out of 22 attributes as ''Good'' and 6 ''Very Good'' and for the next year 5 attributes have been rated ''Good'' and 16 ''Very Good''. For the assessment year 01.04.2003 till 31.03.2004, for the part year up to 15.08.2003, 9 attributes have been ticked as ''Good'' and 13 ''Very Good'' and the remainder 10 attributes have not been ticked at all and 12 have been ticked as ''Very Good''. For the next assessment year 01.04.2004 till 31.03.2005 for the part year ending 31.07.2004, for reasons unknown only 10 attributes have been ticked, out of which 2 are ''Good'' and 8 ''Very Good'' and for the remainder out of 11 attributes which have been ticked, 6 are ''Good'' and 5 ''Very Good''. For the 5th appraisal year, up to 31.08.2005 only 14 attributes have been ticked, 12 of which are ''Good'' and 2 ''Very Good''

and for the remainder period only 13 attributes have been ticked; all ''Very Good''.

10. The corresponding position pertaining to the grading by the Reviewing Officer would be that for the assessment year 01.04.2001 - 31.03.2002, 3 out of 4 attributes have been ticked as ''Good'' and 1 ''Very Good''. For the next year 01.04.2002 - 31.03.2003 only 3 attributes have been ticked, one as ''Average'' and 2 ''Good''. For the third assessment year, pertaining to the period up to 15.08.2003, 3 attributes have been ticked as ''Good'' and 1 ''Very Good'' and for the remainder year all 4 attributes have been ticked ''Very Good''. For the next year, up to 31.07.2004 all attributes have been ticked as ''Very Good'' and for the remainder, 3 have been ticked as ''Good'' and 1 ''Very Good''. For the last year, up to the period 31.08.2005, 2 attributes have been ticked as ''Average'' and 2 ''Good'' and for the remainder 2 attributes have been ticked as ''Good'' and 2 ''Very Good''.

11. As regards the Counter Signing Officer we find that for the five block years pertaining to the score and grading, for the first year 01.04.2001 - 31.03.2002 the respondent has been graded ''Good'' for both and similar is the position for the part of the next appraisal year i.e. 01.04.2002 - 31.12.2002. We find that there is no appraisal pertaining to this year for the remainder period either by the Reporting Officer or the Reviewing Officer or the Counter Signing Officer. For the third year, as noted above, the Reporting and the Reviewing Officer have recorded part appraisals for the year. The first period being 01.04.2003 - 15.08.2003 and the second period being 16.08.2003 - 31.03.2004 and we find that for both periods the Counter Signing Officer has not filled the ACR proformas. For the next year, as noted hereinabove the appraisal period is in two parts: 01.04.2004 - 31.07.2004 and 01.08.2004 - 31.03.2005 and for which two periods we find that the Counter Signing Officer has appraised the respondent on both counts as ''Very Good'' and ''Good'' respectively. For the fifth assessment year, as noted above the appraisals by the Reporting Officer and Reviewing Officer are in two parts, the first being the period 01.04.2005 - 31.08.2005 and the second 01.09.2005 - 31.03.2006 and we find that for both periods the Counter Signing Officer has not recorded any appraisal.

12. It would be apparent to the reader of our opinion that the legal debate can only pertain to the assessment years 01.04.2003 - 31.03.2004 and 01.04.2005 - 31.03.2006 on account of the fact that for both assessments years the Counter Signing Officer has not appraised the respondent and thus it can be said that the assessment is incomplete.

13. At this stage we need to note that the benchmark was 3 ''Very Good'' and the respondent would not meet the benchmark as per the ACR gradings above for the reason for the years 2001-02 and 2002-03 the final ACR grading, which has been treated as the one penned by the Counter Signing Officer are ''Good'' and of the next 3 years, there is no final grading by the Counter Signing Officer for 2 years and for 1 year, part year ACR grading is ''Very Good'' and for the other part

''Good''.

14. As noted in paragraph 2 above, the first round of litigation fought by the petitioner resulted in OA No. 1826/2007 being decided by the Tribunal on May 15, 2008 with a direction that review DPC be held after deeming it that Ram Avtar Sharma satisfied the benchmark and suffice would it be to state that such a direction could not be upheld for the reason if a judicial fora directs convening of a review DPC with further direction that the candidate concerned would be deemed to have cleared the benchmark, nothing would remain to be considered at the review DPC; and this is the reason why the decision taken by the Tribunal was set aside by this Court in W.P.(C) No. 8473/2008 with a direction that below benchmark ACR gradings would be conveyed to Ram Avtar Sharma for his response and thereafter decision taken on the subject of the ACRs.

15. Therefore, the department conveyed the ACR gradings for the year 2001-02 and 2002-03 to Ram Avtar Sharma and we find that he submitted a voluminous representation running into 300 pages, overlooking the fact that a thing once said is fresh, if repeated it becomes stale and if re-repeated it becomes rotten. The representation was considered by the Vice Chairman DDA who vide order dated February 16, 2010 rejected the same, resulting in a second round of litigation.

16. Ram Avtar Sharma filed OA No. 1832/2010 pleading before the Tribunal that recording of the final ACR grading had to be a mechanist''s exercise. He pleaded that with respect to the 22 attributes graded by the Reporting Officer and the 4 attributes graded by the Reviewing Office, on the point scale: 1 - ''Poor'' and 5 - ''Outstanding'', a simple count should be resorted to and if the number of ''Very Goods'' outnumbered ''Good'' and/or ''Average'', the appraisee was entitled to be graded ''Very Good''.

17. This argument has rightly been rejected by the Tribunal for the reason appraisal of a person with respect to his work performance cannot be a mechanical exercise. For example, and we refer to the 22 attributes on which the Reporting Officer has to indicate his appraisal, the first four pertain to knowledge regarding specifications, estimations, rules, codes and procedures and accounts and conditions of contract. An Executive Engineer may be outstanding in said four attributes, which are four facets of the same attribute i.e. knowledge. But with respect to the attribute pertaining to capacity and output of work, attention to necessary details, control on works and disposal of establishment matters the officer is a laggard and for each attribute singularly and collectively obtains the grading ''Average''. So also for ability to work in a team and attitude to work. In the remaining 12 attributes, in each one of them, he is rated ''Very Good''. Can such an officer say that he deserves the overall grading ''Very Good''? The answer being in the positive would be doubtful for the reason weightage to each attribute cannot be the same. For an Executive Engineer the capacity and output of work, attention to necessary details, control on works and disposal of establishment matters would carry a very heavy weightage as also for ability to

work in a team and attitude to work. Opined to be ''Average'' on these attributes, the overall appraisal of such an officer can never be more than ''Good''. The reason is: What use would be any knowledge which cannot translate itself into action.

18. But, on the second point urged by Ram Avtar Sharma the Tribunal has held in his favour, and the reasoning we find in paragraph 10 of the impugned decision is as under:-

10. However, there is considerable force in the argument on behalf of the Applicant that the ACRs, in which counter signing officer has not recorded any opinion, should be ignored by the DPC, while considering an officer for promotion. The rationale for the same is that it is the counter signing officer who is to make the Overall Assessment, based on the reports of the reporting and the reviewing officers. If there is no Overall Assessment, the ACR, in our view, would be incomplete. Had the assessments been made by the reporting and the reviewing officers on the same parameters, as is done in recording the ACRs of the officers of the Central Civil Services/All India Services, the reviewing officer''s grading would have overriding effect over the grading given by the reporting officer, subject, of course, to the condition that the former had given reasons for differing with the latter. In the case of the form of the ACR followed in the DDA the assessment is made on 22 parameters by the reporting officer and on four different parameters by the reviewing officer. It is for this reason that the counter signing officer has to apply his/her mind and grade the officer on the basis of the previous two grading by the reporting and reviewing officers. In view of this the ACR without the Overall Assessment by the counter signing officer would be incomplete. The reason for ignoring this ACR is not the same as followed in the case of V.K. Singhal Vs. Commissioner of Income Tax, OA No. 3524/2009, in which the directions were given by this Tribunal to ignore the ACR, in which below benchmark grading had been given, because both the reporting and reviewing officers had retired and their comments could not be obtained and there was no other officer available, who had directly seen the work and conduct of the officer reported upon. In similar circumstances in Ranjana Kale Vs. Chief Economic Adviser & Anr., OA No. 1142/2009, this Tribunal directed the respondents therein to communicate the below benchmark ACR to the applicant therein. The applicant approached the Hon''ble Delhi High Court in W.P.(C) No. 13488/2009 seeking the same direction to ignore the ACR as was given in the case of V.K. Singhal (supra), because the reporting and reviewing officers both had retired in her case also. The High Court directed that the ACR should be ignored. However, in this case, unlike in the case of V.K. Singhal (supra) and Ranjana Kale (supra), the counter signing officer, has not recorded his grading and has retired. It may be reiterated, at the cost of repetition, that an ACR, in which Overall Assessment has not been made is incomplete. It is, therefore, for a different reason we are holding that the ACR, in which the counter signing officer has not recorded his Overall Assessment, should be ignored. There is this subtle difference between the reasoning in the cited cases and in the instant case for

ignoring the ACR. For the same reason, the impugned order passed by the Vice Chairman of the Respondent-DDA has to be considered erroneous inasmuch as this aspect has not been considered before considering the grading in the ACRs of 2003-04 and 2005-06. Additionally, there is ambiguity in the reason given for not upgrading the ACR of 2005-06, as argued on behalf of the Applicant, that the competent authority, while rejecting the contention of the Applicant that his ACR has been downgraded to ''Good'' has held that the reporting officer has assessed him ''Very Good'' on 13 parameters and the reviewing officer has assessed him ''Very Good'' on five parameters and yet has refused to upgrade it to ''Very Good''. It is on these grounds, therefore, that the Applicant would succeed.

19. The reasoning is that the Reporting Officer appraises the appraisee on 22 parameters the Reviewing Officer makes the appraisal on 4 parameters which are other than those on which the Reporting Officer makes the appraisal and thus such an appraisal would be incomplete if the Counter Signing Authority does not make the final appraisal.

20. The question therefore would be: Whether the aforenoted line of reasoning is required to be followed in the facts of the instant case?

21. We transpose ourselves back to paragraph 5 and paragraph 6 of the present decision. The 22 attributes on which the Reporting Officer has to indicate the appraisal have been noted in paragraph 5 above and the 4 attributes on which the Reviewing Officer has to indicate the appraisal have been noted in paragraph 6 above.

22. The 4 attributes on which the Reviewing Officer appraises the appraisee are:- (i) Integrity; (ii) Quality; (iii) Speed; and (iv) Office Management.

23. A perusal of the 22 attributes on which the Reporting Officer gives the appraisal are nothing but the differential of the 4 integrated attributes on which the Reviewing Officer appraises. The differentiated differential of the 4 integrated is as under:-

(i) Integrity: Attribute - 9, 16 and 18 i.e. Defence of Arbitration Cases, Dependability and Financial Control.

(ii) Quality: Attribute - 1, 2, 3, 6, 9, 13, 14, 15, 17 and 20 i.e. Knowledge regarding estimation, Knowledge of Specification, Knowledge of departmental rules, codes and procedures, Attention to necessary details, Defence of Arbitration Cases, Inter personal relationship, Ability to work in a team, Attitude to work, Willingness to take responsibility and Settlement of quality control paras.

(iii) Speed: Attribute - 5 i.e. Capacity and output of work.

(iv) Office Management: Attribute - 3, 4, 7, 8, 10, 11, 12, 18, 19, 20, 21 and 22 i.e. Knowledge of Departmental Rules, Codes and Procedures, Knowledge of Accounts and Condition of contracts, Control on works, Test check of measurements, Disposal of establishment matters, Submission of monthly account, Submission of budget proposals, financial control, Management of division, Settlement of quality control paras., Settlement of Audit paras. and Settlement of CTE paras.

24. Thus, the reasoning which has been adopted by the Tribunal is based on an erroneous fact i.e. the 22 parameters on which the Reporting Officer appraises are different than the 4 parameters on which the Reviewing Officer appraises.

25. Since we are concerned with the 2 years: 2001-02 and 2002-03 it would be necessary to note that the data tabulated in paragraph 9 above would reveal that the appraisal for the year 2001-02 on 14 parameters is ''Good'' and on 6 parameters is ''Very Good'' by the Reporting Officer and as regards the Reviewing Officer the grading is ''Good'' on 3 parameters and 1 ''Very Good''. The 14 parameters on which the Reporting Officer has graded respondent ''Good'' are 1, 2, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19 and 21 and the 6 parameters on which the respondent has been graded ''Very Good'' are 3, 4, 8, 9, 10 and 20.

26. Reflecting back on paragraph 18, it would be apparent that a person who is opined to be ''Very Good'' with respect to knowledge of departmental rules, codes and procedures as also accounts and conditions of contract, does test check of measurement and is ''Good'' at Defence of Arbitration cases and Disposal of Establishment matters and is only ''Good'' on Knowledge of estimating and specification, Capacity and output of work, Attention to details, Control on works, Submission of budget proposals, Inter personal relationship, Ability to work in a team and Attitude to work would not be entitled to be graded ''Very Good''.

27. This we find is the unwritten line of reasoning in the order passed by the Vice Chairman, DDA to reject the representation against the below benchmark ACR grading.

28. We need not make our decision lengthy for the reason a similar analysis of the ACR grading by the Reporting Officer and the Reviewing Officer for the year 2002-03 for which we find the appraisal would reveal a similar picture with a slightly misleading, first blush appearance, for the reason pertaining to this year the 5 ''Good'' appraisals are followed by 16 ''Very Good'' appraisals. The 5 ''Good'' appraisals for the period in question pertain to: (i) Serial No. 5 - Capacity and output of work; (ii) Serial No. 6 - Attention to necessary details; (iii) Serial No. 7 - Control on work; (iv) Serial No. 16 - Dependability; and (v) Serial No. 5 - Willingness to take responsibility. As we have reasoned in paragraph 18 above it is the qualitative weightage which has to be kept in mind and not the weight of numbers.

29. It is trite that the object of writing the confidential report is two-fold: (i) to give an opportunity to the officer to remove deficiencies and (ii) to improve quality and excellence and discipline in public service. The appraisal reports must show objectivity, impartiality and fair assessment. A two tiered ACR proforma with the immediately superior officer under whom the appraisee works initiating

the grading and the next above officer re-reflecting upon the same lends assurance to impartiality, objectivity and fairness in the assessment. The purpose of having a counter signing authority above is to remove apparent imbalance in the assessment by the two i.e. the Reporting and the Reviewing Officer, should one arise. For example, on all 22 parameters the Reporting Officer appraises the appraisee ''Very Good'' and the Reviewing Officer appraises the appraisee ''Very Good'' on two parameters pertaining to integrity and quality and on the two parameters of speed and office management appraises the appraisee ''Good'' and yet gives the overall assessment ''Good''. Such an appraisal by the Reviewing Officer would lack in objectivity because it overlooks the weightage to be given to each quality and surely an officer whose integrity and quality is ''Very Good'' and speed and office management is ''Good'' would be entitled to the overall assessment ''Very Good'' keeping in view the fact that his immediate superior officer has graded him ''Very Good'' on all 22 attributes.

30. Besides, the result of the previous litigation fought by the respondent on the same subject was a direction that the below benchmark ACR gradings would be intimated to the respondent for his response and the Vice Chairman, DDA would decide the representation. Thus, even on said score the line of reasoning adopted by the Tribunal is incorrect.

31. It may be true that in the instant case the Counter Signing Authority for the two years had superannuated, but that would hardly be of any relevance for the reason in paragraph 37 of the opinion in Dev Dutt Vs. Union of India (UOI) and Others, the Supreme Court had observed as under:

37. We further told that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the authority concerned, and the authority concerned must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.

32. The writ petition is accordingly allowed. Impugned order dated February 21, 2012 is set aside and OA No. 1832/2010 filed by Ram Avtar Sharma is dismissed. No costs.