

(2019) 03 CAT CK 0135

In the Central Administrative Tribunal

Case No : Original Application No. 3040 Of 2018

Nitesh Srivastava S/o Shri Krishna Murari

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 26-03-2019

Acts Referred:

Citation : (2019) 03 CAT CK 0135

Hon'ble Judges : L. Narasimh Reddy, J; Mohd. Jamshed, J

Bench : Division Bench

Advocate : Dinesh S. Badiar, Rajeev Kumar

Final Decision : Allowed

Judgement

1. The applicant is an officer of the Indian Revenue Service of the 1998 batch. He states that he held various positions in his career, and at every stage, his performance was graded as 'Outstanding' in the APARs. In the year 2016, he was working as Additional Commissioner, Meerut Central Excise. As required under law, he submitted his self-appraisal for the period between 01.04.2016 and 01.08.2016. It is also stated that the reporting officer during that period was inimically disposed against the applicant, and deliberately graded his performance as 'Good' by assigning 5.3 out of 10 marks, and even the reviewing officer approved the same without verifying the relevant record. Since the APAR was below the benchmark, it was communicated to the applicant, as required under law. The applicant made a representation to the competent authority with a request to upgrade the evaluation in the said APAR to the level of 'Outstanding'. The Referral Board, through its resolution dated 21.05.2018 declined to upgrade the APAR.

The same is challenged in this OA.

2. The applicant raised several contentions in his challenge to the impugned order. He submits that the reporting as well as the reviewing officers were holding the additional charge of their respective offices, and with a deliberate

intention, they have evaluated his APAR below the benchmark, to damage his otherwise bright career. He contends that the successive reporting and reviewing officers under whom he worked over the years, uniformly assessed him as ? Outstanding?, and sometimes by awarding 10 out of 10 marks, duly indicating the justification therefor, and it is only in the APAR for the period 01.04.2016 to 01.08.2016 that he has been shown below benchmark. He submits that the minutes of the Referral Board would speak for themselves, and the very constitution thereof was not proper, inasmuch as an officer who was junior to the reporting officer, was on the Referral Board. He further submits that with a mala fide intention, the reporting officer expressed doubt about his integrity, i.e., the applicant, and the procedure prescribed by the DoP&T in this regard was not followed at all. Other contentions are also urged.

3. The respondents filed a detailed counter affidavit opposing the OA. It is stated that the reporting and reviewing officers have evaluated the performance of the applicant, and have rated him as ?Good?, duly mentioning the relevant indices, and that the Referral Board has examined the representation of the applicant in an objective manner.

4. We heard Shri Dinesh S. Badiar, learned counsel for the applicant, and Shri Rajeev Kumar, learned counsel for the respondents.

5. The applicant feels aggrieved by the evaluation made in the APAR for the period 01.04.2016 to 01.08.2016, and the order dated 28.06.2017, through which his representation was rejected, and the minutes dated 21.05.2018 of the Referral Board.

6. At the outset, we take note of the fact that the scope of interference by the Tribunal with the evaluation made in APARs by the concerned authorities, or the disposal of the representation by the competent authority, is very limited, and it is only when it is clearly established that the evaluation or consideration of the representation was contrary to any specific provision of law or the circulars issued by the Government in this behalf, that the possibility for interference may arise.

7. The very purpose of maintenance of ACRs, which came to be re-named as APARs, is to ensure that the officer under consideration is informed of his strengths and weaknesses, and the objective is more to enable him to rectify the mistakes, if any. Time and again, instructions were issued to the effect that the reporting and reviewing authorities must act objectively, and keep their personal likes and dislikes aside, while undertaking the evaluation. A note of caution was also added in the context of making observations about absence of integrity.

8. Way back in the year 1972, the procedure to be followed in this behalf was indicated by the Government, and that was reiterated recently on 11.02.2016 in an office memorandum. It is beneficial to extract the same, in its entirety:

"Subject: Instructions/Guidelines relating to filling up the Integrity Column of

Annual Performance Assessment Reports-regarding.

The undersigned is directed to refer the existing instructions/guidelines of this Department on filling up the column relating to integrity in ACRs (now APARs). It has been brought to the notice that many a time Reporting Officers do not make clear and categorical mention about the integrity of the officer reported upon. Further, it has also been seen that in case of doubt of integrity of the officer reported upon, the procedures prescribed for filling up the integrity column in APARs are not being followed appropriately.

2. Now, it has been decided to reiterate the followings instructions/guidelines contained in para 5.2 of this Department OM No. 51/5/72-Ests. (A) dated 20th May, 1972 on procedures prescribed for filling up the column relating to integrity in APARs:

(a) Supervisory officers should maintain a confidential diary in which instances which create suspicion about the integrity of a subordinate should be noted from time to time and action to verify the truth of such suspicions should be taken expeditiously by making confidential enquiries departmentally or by referring the matter to the Special Police Establishment. At the time of recording the annual confidential report, this diary should be consulted and the material in it utilised for filling the column about integrity. If the column is not filled on account of the unconfirmed nature of the suspicions, further action should be taken in accordance with the following subparagraphs.

(b) The column pertaining to integrity in the character roll should be left blank and a separate secret note about the doubts and suspicions regarding the officer's integrity should be recorded simultaneously and followed up.

(c) A copy of the secret note should be sent together with the character roll to the next superior officers who should ensure that the follow-up action is taken with due expedition.

(d) If, as a result of the follow-up action, an officer is exonerated, his integrity should be certified and an entry made in the character roll. If suspicions regarding his integrity are confirmed, this fact can also be recorded and duly communicated to the officer concerned.

(e) There are occasions when a reporting officer cannot in fairness to himself and to the officer reported upon, either certify integrity or make an adverse entry, or even be in possession of any information which would enable him to make a secret report to the Head of the Deptt. Such instances can occur when an officer is serving in a remote station and the reporting officer has not had occasion to watch his work closely or when an officer has worked under the reporting officer only for a brief period or has been on long leave, etc. In all such cases, the reporting officer should make an entry in the integrity column to the effect that he has not watched the officer's work for sufficient time to be able to make any definite remark or that he has heard nothing against the officer's integrity as the

case may be. This would be a factual statement to which there can be no objection. But it is necessary that a superior officer should make every effort to form a definite judgment about the integrity of those working under him, as early as possible, so that he may be able to make a positive statement.

(f) There may be cases in which after a secret report/note has been recorded expressing suspicion about an officer's integrity, the inquiries that follow do not disclose sufficient material to remove the suspicion or to confirm it. In such a case the officer's conduct should be watched for a further period, and, in the meantime, he should, as far as practicable, be kept away from positions in which there are opportunities for indulging in corrupt practices.

3. It is further conveyed that the remarks against the integrity column of APARs of the officer reported upon shall be made by the Reporting Officer in one of three options mentioned below:

(a) Beyond doubt.

(b) Since the integrity of the officer is doubtful, a secret note is attached.

(c) Not watched the officer's work for sufficient time to form a definite judgement but nothing adverse has been reported to me about the officer.

4. All Ministries/Departments are requested to bring it to the notice of all concerned for strict compliance."

A perusal of the same reveals the amount of caution, which the Government wanted the reporting and reviewing authorities to take, whenever they intend to make a comment on the integrity of the officer reported upon.

9. Reverting to the facts of the case, the record discloses that the applicant had a clean record and fairly meritorious assessment of performance, year after year. In para 4.11 of the OA, he furnished the gist of the APARs from 2010 to 2017. They are as under:

Sr. No.

Period of APAR

Reporting/ Reviewing Authority (Sh)

APAR Grade

1

01.04.2010 to 14.07.2010

H. K. Sharan/...

Outstanding (10.00)

2

02.08.2011 to 29.02.2012
Mahender Singh/ Rajender Prakash
Outstanding (8.00)

3

2012-2013

Ram Tirath/C Dube
Outstanding (9.32)

4

01.04.2013 to 29.10.2013

J R Panigrahi/C Dube
Outstanding (9.40)

5

01.11.2013 to 31.03.2014

J R Panigrahi/ Mahender Singh
Outstanding (9.00)

6

01.04.2014 to 15.10.2014

J R Panigrahi/ Mahender Singh
Outstanding (9.15)

7

16.10.2014 to 31.03.2015

M K Srivastava/ Mahender Singh
Outstanding (8.52)

8

27.08.2015 to 31.03.2016

R K Barthwal/...
Outstanding (8.67)

9

01.04.2016 to 01.08.2016

Rajender Singh/ Mahender Singh

Good (5.39)

10

07.09.2016 to 31.03.2017

Manmohan Singh/Devender Mishra

Outstanding (10.00)

11

30.05.2017 to 05.10.2017

Syed H Hassan/ Devender Mishra

Outstanding (9.96)

10. Except for a period of four months in the year 2016, the APARs of the applicant were graded as 'Outstanding'. It is also evident that Mahender Singh was the reviewing officer for the applicant from 2013 onwards, and he was party to the evaluation of the applicant as 'Outstanding'. The applicant stated that during the period of four months in question, one Mr. Rajender Singh was holding the charge of the office where the applicant was working, and he deliberately made an evaluation detrimental to his interest.

11. The applicant initiated his APAR as required under law. In column 8, the reporting officer is required to comment on the integrity of the officer reported upon. The reporting officer observed as under:

"The brief period of four months during which the officer worked with me presented occasions/instances to assess the integrity and trustworthiness of the officer. Based on the inputs gathered during those occasions, I am of the considered view that the officer is neither reliable nor trustworthy. His integrity cannot be said to be beyond doubt."

Not a single instance of deviation from norms, insubordination or avoiding responsibility, on the part of the applicant, was cited. However, many objectionable expressions were used. This is in clear deviation from the office memorandum dated 11.02.2016. Though the memorandum mandated that any comment about the integrity of an officer must be contained in a separate sheet, the reporting officer in the instant case deviated from that, and made an equivocal comment about the integrity of the applicant, hardly with any basis.

12. The reporting officer made the following pen picture about the applicant:

"He is an intelligent officer and possesses sufficient knowledge of law and procedures. He, however, generally chooses not to contribute to the work in terms of quality and its timely completion. In his scheme of things, the contribution to work should come either from the officers below or above him. He is in the habit of leaving even the important works involving substantial amounts

of revenue, entirely to his subordinates without being much concerned with the quality of the outcome. He does not provide necessary guidance and clear directions to his subordinates for the quality output. He deploys delaying tactics where ever things may be contrary to what he wished for. He is also in the habit of displaying insubordination and disobedience. His conduct neither inspires confidence in his subordinates nor provides any assurance to the superiors. He is smart but could be quite dicey. He generally avoids assuming responsibility."

The observations are general in nature and not with reference to any specific instances.

13. The very purpose of providing a reviewing officer in the scheme of APARs is to ensure that the inadvertent or wanton expression of likes or dislikes by a reporting officer, do not constitute the basis for gradation of the APAR. In the instant case, the reviewing officer made the following pen picture:

"The positive attitudes of Sh. Srivastava are his intelligence, articulation and analytical skills. It is rather unfortunate that this officer has started using his strength for the purpose which is detrimental to the interests of revenue and (by implication) govt. It is a pity that the conduct and approach of the officer, instead of instilling confidence among his subordinates, has compelled the reporting officer (to which I am in agreement) to put question mark on his integrity."

The reviewing officer failed to note that the reporting officer deviated from the specific requirement of law, when it comes to the question of dealing with the integrity of the officer reported upon. In a way, he too has violated the memorandum dated 11.02.2016.

14. The applicant was communicated the below benchmark APAR for a period of four months in the year 2016, and he made a representation. This is a rare case in which the representation was considered by a Referral Board, and not an individual officer. The applicant contends that the reviewing officer Mr. Mahender Singh was an officer of the rank of Member, when he reviewed the APAR, and the Referral Board comprised of a Chairperson and two Members, and thereby the very composition of the Board becomes questionable. There is no specific answer from the respondents on this legal plea.

15. The resolutions of a Board are generally in one or two paragraphs, indicating the gist, and details are furnished by the executive. This is a rare case in which the resolution itself runs into 18 closely printed pages. In fact, it presents a text book case as to how a competent authority should not function. The comments said to have been obtained from the reporting officer are extracted in the resolution. The reporting officer stated many things, which he did not think it fit to mention in his pen picture albeit in a brief manner. The amount of prejudice he has towards the applicant is glaring. The comments run into 7 or 8 pages. Even in a disciplinary proceeding, we do not come across such an analysis. The Board has blindly accepted that, without even taking into account, the requirements under memorandum dated 11.02.2016. We are of the view that the impugned

order cannot be sustained in law, and deserves to be set aside.

16. One of the options available to us is to remand the matter for fresh consideration. However, having noticed the tone and tenor of the language employed by the reporting officer, and the blind approval thereof by the reviewing officer, as well as the Referral Board, we are of the view that no useful purpose would be served by doing so. Once it emerges that the evaluation made by the reporting officer as well as the reviewing officer are contrary to the office memorandum dated 11.02.2016, the same deserves to be set aside, and we accordingly do so. Since the period in question is only four months in the year 2016, the evaluation that is made for the rest of the eight months of the year, needs to be treated as holding good for this period also.

17. Accordingly, the OA is allowed, and the gradation made in the APAR of the applicant for the period between 01.04.2016 and 01.08.2016 by the reporting and the reviewing officers is set aside. The order passed by the competent authority in resolution dated 21.05.2018 is also set aside. It is directed that the evaluation of the APAR of the applicant for the remaining eight months of 2016 shall be treated as holding good for the entire year. There shall be no order as to costs.