

(2023) 07 CAT CK 0005

In the Central Administrative Tribunal

Case No : Original Application No. 4485 Of 2017

Rajeev Gupta

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 03-07-2023

Acts Referred:

Citation : (2023) 07 CAT CK 0005

Hon'ble Judges : Pratima Gupta, Member (J); Dr. Chhabilendra Roul, Member (A)

Bench : Division Bench

Advocate : Rajesh Katyal

Final Decision : Dismissed

Judgement

Dr. Chhabilendra Roul, Member (A)

1. The applicant is aggrieved by the downgrading of his APAR for the period 01.04.2015 to 23.03.2016 annexed at page 25 of the OA. He states that in his APAR, overall grading for the aforesaid period by the initiating officer has been given as 4.13 (Assessed as 'Good'). However, the reviewing officer while agreeing to the said grading expunged only the adverse remarks given by the initiating officer and made the following comments:-

"I fully agree with remarks of initiating officer. Officer reported upon indulges in unnecessary correspondences on matters pertaining to self but delivers little from assigned task in spite of advise"

2. As the overall grading has been maintained as 4.13, the applicant has preferred a representation dated 14.10.2016 which has been decided by the respondents by passing the impugned order dated 30.01.2017. Aggrieved by the same, the applicant has preferred the present OA seeking the following relief(s):-

"(i) Allow the O.A. of the applicant and set aside the order dt. 29.5.2017 and order dated 30.1.2017 passed by the respondents and the adverse. remarks/ comments given in his APAR be expunged and his overall gradings be kindly

upgraded above the Benchmark in the interest of justice.

(ii) May pass any other order or direction as deemed fit and proper in the facts and circumstances of the case in favour of the applicant.”

3. The applicant who appeared in person argued that the Reviewing Authority as well as the Accepting Authority are in fact the same person, namely, Shri N. Raghuramraju. He relies on page 36 (para C) of the OA wherein relevant instruction with respect to APAR is annexed, in which it is found that the Accepting Authority for the applicant would be Director/Additional Commissioner. Therefore, he has been deprived of one channel for consideration of his case against the APAR, by which he is aggrieved. He further states that he has not been served with any notice or warning during the relevant period and accordingly, the said APAR does not reflect the correct assessment of the applicant. He states that his representation has been disposed of vide order dated 30.01.2017, wherein, the respondents themselves have expunged the remarks maintained by the reviewing officer though the grading with respect to ‘Good’ has been mentioned. He states that once the remarks by the initiating officer were expunged by the reviewing officer and the remarks of the reviewing officer has been expunged by the Appellate Authority, the respondents ought to have upgraded his APAR grading and the overall scale as well. He states that Competent Authority has applied its mind partially by expunging the remarks, however, not considered the up-gradation of the APAR. He states that the expunged comment reflects that the Competent Authority has acted malafide against the applicant.

4. Learned counsel for the respondents vehemently opposes the present OA and states that work of the applicant has been duly assessed by the respondents and, therefore, in the present facts, the remarks of reviewing officer and the accepting authority could be same, and hence there is no violation of rules with respect to the same. He draws strength from the OM dated 23.09.1985 annexed with counter reply as Annexure R-1 which reads as under:-

“10. When there is no Reporting Officer having the requisite experience. A question has been raised as to the course of action to be adopted when, in the case of an officer, there is no Reporting Officer having the requisite experience of three months or more during the period of report, as a result of which no Reporting Officer is in a position to initiate the report. It has been decided that where for a period of report there is no Reporting Officer with the requisite experience to initiate the report, the Reviewing Officer himself may initiate the report as a Reporting Officer, provided the Reviewing Officer has been the same for the entire period of report and he is in a position to fill in the columns to be filled in by the Reporting Officer. Where a report is thus initiated by the Reporting Officer, it will have to be reviewed by the officer above the Reviewing Officer.”

5. Learned counsel for the respondents further states that the rules/instructions on the subject of APAR have been followed in respect to the applicant in letter

and spirit and there was no violation whatsoever. Accordingly, there is no case made out by the applicant. He further states that once the comments have already been expunged, the warning issued to the applicant as mentioned by the initiating officer also stands expunged. Therefore, no malafide could be attached to the reporting/reviewing/accepting authorities.

6. He further draws strength from the judgment passed by the Hon'ble High Court of Delhi in W.P.(C) No. 129/2012 decided on 09.01.2012, particularly paras 5, 6, and 7 which read as under:-

"5. The petitioner has contended before us that the comments made and evaluation of the work done by the Reporting Officer were arbitrary and not justified on facts and the Cadre Controlling Authority acted upon the unsubstantiated and unproved remarks made by the Reporting Officer. It was for the Cadre Controlling Authority and it is not for us to consider the representation made by the petitioner in the light of the comments received by him from the Reporting Officer and the Reviewing Authority and take an appropriate view on it. There is no allegation of mala fide against the Reporting Officer or the Competent Authority. The petitioner was entitled only to the below benchmark grading being conveyed to him, he being given an opportunity to represent against those gradings and his representation being considered by the Competent Authority. Once this is done, there is no scope for interference with the decision taken by the Cadre Controlling Authority, either by the Tribunal or by this Court. The work and conduct of the petitioner is to be judged by his superiors and not by the Court. The Court cannot interfere with the assessment made by the superiors of the petitioner, unless it is shown to be arbitrary or suffering from the vice of breach of some Rule or Regulation, which applied to the petitioner. No material has been placed before us, which would indicate that the remarks recorded by the Reporting Officer and the grades given to the petitioner, in the ACRs for the relevant years were arbitrary. As noted earlier, the Reporting Officer has justified the grading given by him by giving details of the files in which delay, carelessness and non-application of mind on the part of the Petitioner was noticed by him. No breach or any Rule or Regulation is even alleged.

6. In *Amrik Singh v. Union of India & others*: (2001) 10 SCC 424, Supreme Court was of the view that the Court cannot go into correctness of the adverse remarks.

7. In *Rajinder Singh Sehrawat v. Union of India and others*: 93(2001) DLT 417, a Division Bench of this Court, inter alia, observed as under:

"At the outset, we must make it clear that this Court cannot moderate the appraisal and grading given to an officer/employee. While exercising power of judicial review, Court should not venture to assess and appraise on the grading of an officer/employee."

We find no merit in the writ petition and the same is hereby dismissed. In the facts and circumstances of the case, there shall be no order as to costs."

7. Heard the Applicant in person and learned counsel for the respondents carefully and examined the pleadings on records thoroughly.

8. The applicant has availed all the opportunities as per rules to represent against the gradation given by the reporting and reviewing-cum-accepting authorities in the APAR for the period from 01.04.2015 to 23.03.2016. The representation made against the APAR grading given by the reviewing cum accepting authority, dated 14.10.2016 has also been considered by the Competent Authority and vide order dated 30.01.2017, the adverse comments given by the reviewing authority have been expunged. Earlier the adverse comments given by the reporting authority were also expunged by the reviewing authority vide order dated 29.05.2017. In view of this, the applicant has availed due process through which he represented against the low grading i.e. 4.13 (Good) given by the reporting and reviewing cum accepting authority. We find that there is no breach of principles of natural justice in the instant case. The applicant has failed to substantiate any malafide or biasness on the part of the respondents so as to attract judicial review of the administrative action of grading the APAR at particular numerical point. We also agree with the contention of the learned counsel for the respondents that the ratio of judgments in *Amrik Singh Vs. Union of India* (2001) 10 SCC 424 and *Rajinder Singh Sehrawat Vs. Union of India & Ors.* 93(2001)DLT 417 are squarely attracted in the present case. The Tribunal cannot act as an Appellate Authority and change the appraisal or grading given by the accepting authority. The Administrative authorities are in a best position to evaluate the performance of the applicant and assess and appraise the grading of an officer/employee. They have seen working of the official for the relevant period and according to their assessment the applicant deserves a particular grading in the APAR. Any interference in this matter is not warranted in judicial review.

9. In view of the above, the OA lacks merit and hence is dismissed. There shall be no order as to costs.