(2018) 07 CAT CK 0092

In the Central Administrative Tribunal

Case No : Original Application No. 763 Of 2017

Sarabjeet Singh APPELLANT

Vs

Union Of India And Ors RESPONDENT

Date of Decision : 16-07-2018

Acts Referred:

Citation : (2018) 07 CAT CK 0092

Hon'ble Judges : L. Narasimha Reddy, J;Nita Chowdhury, Member (A)

Bench : Division Bench

Advocate : Sachin Chauhan, Rajeev Kumar

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J

1. The applicant is working as Additional Commissioner of Income Tax. In relation to the financial year 2011-2012, the Reporting Authority prepared the Annual Performance Appraisal Report (APAR) of the applicant and rated him as "Outstanding" by awarding overall grading of 8.6. However, the Reviewing Authority revised that grading to 5.3 and rated the applicant as "Good". Feeling aggrieved by that, the applicant submitted a representation to the competent authority. Through an order dated 16.04.2014, the competent authority informed the applicant that the overall grading of 5.3, equivalent to "Good" as recorded by the Reviewing Officer in the APAR for the year 2011-2012, is upheld. The same is challenged in this OA.

2. The applicant contends that the Reporting Authority has given cogent reasons for the grading awarded by him and the same was disturbed by the Reviewing Authority without any basis. It is stated that on nearly 20 counts, meritorious ratings were given by the Reporting Authority, whereas, the Reviewing Authority has whimsically downgraded them.

3. Another complaint of the applicant is that he was not given opportunity by the

reviewing authority before grading was reduced.

4. The respondents filed a detailed counter affidavit opposing the OA. It is stated that there was delay on the part of the applicant himself in submitting the APAR, and the Reporting Authority, on the one hand and Reviewing Authority on the other hand, have made their appraisals based upon their observations and experience vis-à-vis the applicant, and that the impugned order does not suffer from any legal or factual infirmity. It is also stated that judicial review of the appraisals, is somewhat unknown.

5. It is almost as a regular practice that the designated officers make their appraisals on the performance of their subordinates. Clear and distinct parameters are stipulated by the rule making authority. Section III (A) of the Appraisal form makes a provision for evaluation on as many as 24 items. Para 6 of the APAR directs that wherever the appraisal under parts 1 (a), 2 (a) or 3 (a) is below 2 or the overall grading in part-7 is also below 2 or above 8, detailed factual reasons for the same must be given. The same form contains Section IV (A) providing for evaluation by a Reviewing Authority. It is almost repetition of the exercise which has been undertaken by the Reporting Authority. Here again, the Reviewing Authority is required to furnish reasons, if he intends to take a different view from that of the reporting authority. The points that have to be taken into consideration while making the review are mentioned in para 6 (a) of Section IV (B).

6. Coming to the case of the applicant, the Reporting Authority awarded 8.5 points "Work Output", 9 points"Attributes" and 8.3 points for "Functional Competency". The average of this works out to 8.6. Since, it is more than 8, the Reporting Officer was required to give detailed factual reasons. Heading of Column 6 of Section III (A) of the appraisal reads as under:-

"6. If the grading in any row of Section III parts 1 (a), 2 (a) or 3 (a) is below 2 or the overall grading in part-7 is also below 6 or above 8 then please give detailed factual reasons for the same."

The reasons mentioned by the Reporting Authority read as under:-

"The officer is computer savvy and resourceful. Despite of one ITO and not so much support of other subordinates, he could achieve the targets. The success of ASK had a lot to do with his contribution."

For three items, referred to above, the gradation given by the Reviewing Authority was; 2, 1.8 and 1.5 respectively. It aggregated to 5.3. Under Column 6 (a) of Section IV (B), the Reviewing Authority furnished following reasons:-

"Shri Sarabjeet Singh seems to have developed an attitude of not listening to his superiors. Before finalization of the assessment in the case of Green World Corp. at least on two occasions, I had specifically advised him to examine allowability of deduction u/s 80 IB exhaustively, following the approach adopted by the CIT, Shimla during proceedings u/s 263 of the Act. Not only he ignored that advice completely, but his explanation for not following the advice also suggest that superiors could not have advised the A.O."

In another case, where a TEP was received and my predecessor had given certain directions, the CIT, Delhi-VII had to initiate proceedings u/s 263 of the Act, as Shri Singh had not handled the case properly."

In his representation, the applicant prayed that, either the Reviewing Authority"s remarks to be treated as non est or the adverse remarks be expunged, and the comments of the Reporting Officer be treated as final.

7. It must be said to the credit of the competent authority, that he has undertaken a detailed and thorough discussion on each and every aspect. The remarks made by the Reporting Authority on the one hand and the Reviewing Authority on the other were discussed objectively. The order discloses that the Reviewing Authority had occasion to indicate and deal with the applicant on several times, and he furnished specific instances where the performance of the applicant was far from satisfactory. This could have been countered, had the Reporting Authority furnished any specific instances of the meritorious functioning of the applicant. Except stating that the applicant is computer savvy and that he reached the target, nothing extraordinary about him was stated. In contrast, the Reviewing Authority stated reasons in support of his conclusions regarding the rating awarded to the applicant.

8. It is fairly well settled that the extent of judicial review of the appraisals made by the Reporting Authority and Reviewing Authority is highly restricted. In Air Vice Marshal S. L. Chhabra vs. Union of India, 1993 Supp (4) SCC 441, the Hon"ble Supreme Court held as under:-

"...According to us, neither the High Court nor this Court can moderate the appraisal and the grading of the appellant for a particular year. While exercising the power of judicial review, a court shall not venture to assess and appraise the merit or the grading of an officer...."

It is only when the appraisals are made in contravention of the prescribed procedure, that there may exist some possibility of requiring the concerned authority to bestow attention with that aspect. Another instance is where the officer under observation is able to demonstrate beyond any pale of doubt, that the Reporting or Reviewing Authorities have any clear grudge or enmity against him. In the absence of such factors, the appraisals given by the concerned officers need to be taken on their face value. The very purpose of maintaining and preparing appraisals is to know the method of functioning of an officer, and this can be possible if only the immediate superiors are required to undertake a dispassionate assessment and appraisal of the officer.

9. We do not find any basis to interfere with the impugned order. The OA is accordingly dismissed. There shall be no order as to costs.