
(2012) 08 GAU CK 0038
In the Gauhati High Court
Case No : Writ Petition (C) No. 2494 of 2011

Shri Bharat Singh Panwar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 03-08-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 1 GLD 300 : (2013) 2 GLT 1096

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : I.H. Saikia and Ms. S. Kanangoe, for the Appellant; S. Dasgupta, CGC, for the Respondent

Final Decision : Allowed

Judgement

B.K. Sharma, J.—The petitioner presently working as Executive Engineer (Civil), N.F.S.G. under the respondents has filed this writ petition making a challenge to the overall gradings given to him in the ACRs pertaining to the periods from (a) 01.04.2003 to 25.09.2003, (b) 01.04.2006 to 31.03.2007 and (c) 14.04.2007 to 24.01.2008 (Annexure-5 series). He has also challenged the Annexure-7 office memorandum dated 26.04.2011 by which his representation against the purported adverse remarks in the ACRs for the aforesaid periods has been rejected. Further prayer made in this writ petition is to consider his case for promotion to the post of Superintending Engineer without taking note of the purported adverse remarks pertaining to the said periods. I have heard Mr. I.H. Saikia along with Ms. S. Kanangoe, learned counsel for the petitioner as well as Mr. S. Dasgupta, learned CGC. None has appeared for the private respondent.

2. Mr. Saikia, learned counsel for the petitioner referring to the pleadings in the writ petition as well as the documents annexed to the writ petition, submits that there was improper consideration of the case of the petitioner towards recording overall gradings, but for which the petitioner would have earned the bench mark "very good" entitling him to a meaningful consideration for promotion to the post

Superintending Engineer. Placing reliance on the decisions reported in (i) Dev Dutt Vs. Union of India (UOI) and Others, , (ii) Abhijit Ghosh Dastidar Vs. Union of India (UOI) and Others, , (iii) 2011 (1) GLT 614 (U.C. Panda (Dr.) vs. Union of India and ors.), (iv) U.P. Jal Nigam and others Vs. Prabhat Chandra Jain and others, , (v) State of U.P. Vs. Yamuna Shanker Misra and another, and (vi) Amar Kant Choudhary Vs. State of Bihar and Others, , Mr. Saikia, learned counsel for the petitioner submits that since the overall gradings pertaining to the ACRs in question were below the bench mark, the same ought to have been communicated to him and that without communicating the same, the case of the petitioner could not have been rejected. He also submits that as per the own guidelines of the authority, in case of down grading the overall grading given by the Initiating and Reviewing authority, the Accepting authority is obliged to record reasons thereof and in absence of any such reasons, such down grading of the ACRS is not sustainable in law.

3. Per contra, the learned CGC submits that since the petitioner has been communicated with the adverse remarks entitling him to make representation against the same, but he having failed to pursue the authority to take a different view of the matter, this Court exercising the writ jurisdiction under Article 226 of the Constitution of India, will not sit on appeal over the findings recorded by the authority. The representation of the petitioner has also been rejected vide the impugned Annexure-7 office memorandum dated 26.04.2011. Referring to the records of the DPC and the procedure thereof, he submits that the DPC being an independent body, it had considered the gradings in the ACRs independent of the overall gradings given by the two authorities responsible for writing ACRs and as such the findings arrived at by the DPC cannot be interfered with by exercising the writ jurisdiction.

4. I have considered the submissions made by the learned counsel for the parties and also perused the entire material on record including the records produced by Mr. Dasgupta, learned CGC. Upon consideration of the submission advanced by the learned counsel for the parties and the materials on record, my findings and conclusions are as follows:

5. For promotion to the post of Superintending Engineer, an officer is required to have the bench mark of three "very good" in the ACRs preceding five years of the consideration year. In paragraph-7 of the writ petition supported by the relevant records annexed to the writ petition, the petitioner has shown his gradings as follows for the relevant periods making a grievance against which the instant writ petition has been filed.

ACR period

Initiating Officer

Reviewing Officer

Accepting Officer

01.04.2003 to 25.09.2003

Good

Good

R.O. and A.O. is the same person

01.04.2006 to 10.11.2006

Very Good

Very Good

Good

10.11.2006 to 31.03.2007

Very Good

Very Good

Good

01.04.2007 to 24.01.2008

Good

Good

R.O. and A.O. is the same person

6. Referring to the above gradings, it is the case of the petitioner that the grading "good" given to him for the period from 01.04.2003 to 25.09.2003 and 01.04.2007 to 24.01.2008 is adverse compared to the bench mark required for promotion which is "very good". As regards the periods from 01.04.2006 to 10.11.2006 and 10.11.2006 to 31.03.2007, it is the case of the petitioner that while the Initiating Officer and Reviewing Officer graded him as "very good", the Accepting Officer could not have reduced and/or down graded the same to "good" and that too, without recording any reason. In this connection, Mr. Saikia, learned counsel for the petitioner has drawn my attention to Annexure-1 dossier of preparation and maintenance of confidential reports. Learned counsel for the petitioner has also referred to Annexure-3 guidelines dated 12.04.2010 issued by the Director General, Border Roads, Seema Sadak Bhawan, New Delhi for filling up of annual performance assessment report.

7. As reflected in dossier of preparation and maintenance of confidential reports, the system of Confidential Reports on the performance of Government servants is a means to an end and not an end in itself. The ultimate goal is to optimise the achievement of Government policies and programmes. This is possible only if the Confidential Reports lead to the optimisation of the performance of the concerned Government servants. The main focus of the Reporting officer should, therefore, be developmental rather than judgmental. A Confidential Report

should be a true indicator of the achievement of the Government servant; it should not be a mere tool to control or discipline him.

8. The system of Confidential Reports has two principal objectives and the Reporting officer should have a very clear perception of these objectives. The first and foremost is to improve the performance of the subordinate in his present job. The second objective is to assess the potentialities of the subordinate and prepare him through appropriate feed back and guidance for future possible opportunities in service. To a great extent, the second objective is dependent on the achievement of the first.

9. It is the duty of the superior officer to give the subordinate a clear understanding of the tasks to be performed and to provide requisite resources for his performance. The subordinate is required to contribute to the best of his capacity to the qualitative and quantitative achievement of the given tasks making optimum use of the resources provided. Also, both the superior and his subordinate have to be necessarily aware of the ultimate goal of their organisation, which can be achieved only through the joint efforts of both of them. This is the basic philosophy underlying any system of Confidential Report.

10. The performance of every Government servant is assessed annually through his Confidential Report, which is an important document providing the basic and vital inputs for assessing the performance of the Government servant and for assessing his suitability for his further advancement in his career on occasion like confirmation, promotion, crossing of E.B., selection for deputation, selection for foreign assignment etc. Performance appraisal through confidential reports is a tool for human resource development in order to enable a Government servant to realise his true potential. It is not a fault finding process, but a developmental one.

11. In Annexure-3 guidelines dated 12.04.2010, it has been provided that a very cautious approach is required while awarding the grading and that any grading below the bench mark is to be adequately justified by citing specific reasons. Whatever adverse entry is made, same should be substantiated by counselling letters/warning letters or other relevant documents. It is also provided that in case of any difference of opinion, reasons for the same are required to be recorded. Emphasising the responsibility of the Accepting Authority, it has been provided that the said authority has to ensure that all the ACRs are duly initiated/reviewed within time. It also provides that adequate counselling/advise should be provided to its subordinates whose ACRs are written for overcoming the deficiencies and shortcomings.

12. As noted above, the petitioner was graded as "good" for the period from 01.04.2003 to 25.09.2003 with the following remarks:

During the period the officer as OC 115 Rce has executed the works as per the laid down specifications and the unit has achieved the proportionate targets. His performance overall was good.

13. In column 23 of the ACR comments answering the query "Have you endorsed any adverse remarks ?", say yes or no, the remark furnished by the Initiating Officer, is "no". Similarly, for the period from 01.04.2007 to 24.01.2008, the petitioner has been graded as "good" with the following remarks.

Sincere and hard working officer who is having adequate professional knowledge and experience. He is capable of achieving good results with his sincere efforts and due responsibility. At times, he has proved his assignment with and timely completed his assigned duties.

His overall performance is graded as "GOOD".

14. As noted above, for the remaining periods, i.e. 01.04.2006 to 10.11.2006 and 10.11.2006 to 31.03.2007, although the petitioner was graded as "very good" by the Initiating and Reviewing Officer, but the Accepting Officer down graded the same to "good" with the following remarks:

This person tried to apply himself to the task assigned to him as DD(vig) and offs Div. (DTS). His analysis of the issue and handy of DTS matters has been satisfactory. He is graded "good".

Both IO and RO have written an inflated report. The officer's performance has been average. His overall grading is "good".

15. As will be seen from the above remarks, there is hardly any reason as to why the petitioner has been graded as "good" and his overall grading "very good" was down graded to "good". It is in this connection, Mr. Saikia, learned counsel for the petitioner has emphasised on the need for advice, counselling etc. so that the officer concerned knows the position in respect of his deficiency, if any. He has further submitted that the Accepting authority and for that matter every one of the three authorities, is required to record reasons for awarding grading below bench mark. Another aspect of the matter to which Mr. Saikia, learned counsel for the petitioner has highlighted is that the same Initiating Officer who had graded the petitioner "very good" for the period 10.11.2006 to 31.03.2007 has down graded the petitioner for the period of 01.04.2007 to 24.01.2008. He submits that there is no objectivity attached to such recording of ACR.

16. Mr. Dasgupta, learned CGC submits that since the guidelines to which the learned counsel for the petitioner has referred to is of 2010, the parameters and yardsticks laid down therein cannot be applied to the case of the petitioner in respect of his ACRs pertaining to the aforementioned periods.

17. Even leaving aside the said guidelines, requirement of writing ACRs applying due objectivity need not be overemphasised. Since the ACRs and the overall gradings given by the authorities form the basis for promotion, same are required to be recorded with due care applying the test of objectivity. It is in this connection, the dossier of preparation and maintenance of the confidential reports has emphasised the need for cautious approach in recording ACRs. The guidelines dated 12.04.2010 are only consolidation of the basic principles

relating to recording of ACRs which are required to be followed in recording ACRs.

18. In *Dev Dutt* (supra), the Apex Court has emphasized the need for communication of even "very good" grading as the same is considered in the context of eligibility for promotion. In *Abhijit Ghosh Dastidar* (supra), the Apex Court observed that uncommunicated adverse remarks cannot be considered for promotion. In *U.C. Panda (Dr.)* (supra), this Court has held that non-communication of the adverse remarks causes prejudice and amounts to violation of principles of natural justice. In *(U.P. Jal Nigam)*, the Apex Court dealing with down grading of entry in the ACRs, held that in case of any down grading reasons are required to be recorded.

19. In case of *Yamuna Shanker Mishra* (supra), the Apex Court emphasizing on the objectivity of writing ACR, held that same is a public responsibility of the reporting/reviewing officer and that the ACRs are required to be written accurately on the basis of the facts and overall assessment. In the said decision, it has also been emphasized that the reporting/ reviewing officer should confront the reported officer with his knowledge before forming an opinion to make adverse remarks so that the reported officer gets opportunity either to improve himself or to explain his conduct. Similar principle has been emphasized in *Amar Kant Choudhury* (supra).

20. Apart from the deficiencies noticed in recording the ACRs of the petitioner for the aforementioned period, what also noteworthy is that the representation made by the petitioner has been rejected by a stroke of pen vide Annexure- 7 office memorandum dated 26.04.2011. As in the case of down grading the ACRs without any reason, in case of disposal of the representation made by the petitioner also, the authority simply rejected the same with the remark "duly considered, but nothing exemplary work has been found in their performance during the period and hence the representation for upgradation of their ACRs have been rejected by the competent authority"

21. In the counter affidavit filed by the respondents, it has been stated that in case of recording grading "good" there was no requirement to communicate the same to the petitioner as the same was introductory only on 13.04.2010.

22. It is not for the authority to decide as to whether adverse remarks should be communicated or not and from which date, when the requirement of law is to communicate any adverse remarks to the person concerned. There cannot be any escape from the liability of the authority to communicate the adverse remarks to the officer concerned enabling him to make effective representation so as to persuade the authority to take a different view of the matter and also to explain the adverse remarks.

23. In the instant case, what has emerged from the above discussions, are as follows:

i) In down grading the overall grading "very good" to "good" by the Accepting

officer, he did not record any reason.

ii) While recording the overall grading "good" both the authorities, i.e. the Initiating and Reviewing Officer did not consider that the same would result in disqualification of the petitioner for consideration of his case for promotion to the post of Superintending Engineer. Although in the above quoted remarks granting overall grading "good" to the petitioner, there is nothing adverse against him, yet the petitioner was awarded only "good" grading.

iii) Both the Initiating and Reviewing authority graded the petitioner as "very good" for the periods mentioned above, but the Accepting authority graded the petitioner as "good" virtually without recording any reasons thereof.

iv) The representation made by the petitioner with detailed particulars was not dealt with by the authority in its true perspective, but simply rejected the same without recording any reasons thereof.

24. In view of the above, the writ petition is allowed by setting aside and quashing the office memorandum dated 26.04.2011 (Annexure-7) remanding the matter back to the respondents for fresh consideration consistently with the observations made above and in accordance with law. Let the fresh exercise be carried out as expeditiously as possible, preferably within three months. Whatever may be the outcome of consideration of the case of the petitioner, same shall be communicated to him. Needless to say that depending upon the outcome of the consideration, the petitioner will be entitled to consequential benefits. One promotional post is already vacant pursuant to the interim order passed in this proceeding. There shall be no order as to costs.