(2018) 08 CAT CK 0143

In the Central Administrative Tribunal

Case No : Original Application No. 4218 Of 2015, Miscellaneous Application No. 3824, 3825, 3826 Of 2015

Tushar Ranjan Mohanty APPELLANT

Vs

Union Of India And Ors RESPONDENT

Date of Decision : 07-08-2018

Acts Referred:

Citation : (2018) 08 CAT CK 0143

Hon'ble Judges : L. Narasimha Reddy, J;K. N. Shrivastava, Member (A)

Bench : Division Bench

Advocate : R. V.Sinha, Vaibhav Pratap Singh

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J

1. The applicant is an officer in the Indian Statistical Service, holding the position of Deputy Director General. He filed this OA assailing the office memorandum dated 10.11.2015 (Annexure AA-1). Through the said memorandum, the representation made by the applicant as regards his APAR for the period 01.04.2012 to 31.07.2012 was rejected.

2. For the period referred to above, the reporting authority gave a final grading of 7, which is equivalent to 'very good'. The reviewing authority upgraded the grading to 7.8, which is also equivalent to 'very good'. The accepting authority, however, differed with the gradings awarded by the reporting and reviewing authorities, and gave final grading of 5, which equals to 'good'. Feeling aggrieved by this appraisal, the applicant filed OA No.2096/2014. By that time, an appeal preferred by him to the appellate authority was pending. During the pendency of the OA, the appeal was rejected through memorandum dated 14.10.2014. The OA was disposed of on 20.08.2015 setting aside the memorandum dated 14.10.2014, and directing the appellate authority to dispose of the appeal afresh, after giving an opportunity of being heard to the applicant. It is after such a

remand, that the impugned order came to be passed.

3. Several grounds are raised by the applicant, most of which are not immediately relevant to the present issue. It is contended that the accepting authority was not at all justified in taking a view different from the one taken by the reporting and reviewing authorities. It is also stated that the reporting authority and the reviewing authority had assigned cogent reasons for their appraisal, whereas the accepting authority reversed such an appraisal, mostly on account of his personal views. It is pleaded that the appellate authority, though has given an opportunity of personal hearing, did not consider the various submissions made by the applicant.

4. On behalf of the respondents, counter affidavit is filed. It is stated that on remand of the matter by this Tribunal through order dated 20.08.2015 in OA No.2096/2014, the appellate authority examined the matter in detail, and the impugned order was passed. It is also stated that the instructions issued by the DoP&T from time to time, prescribing the procedure for writing the APARs were strictly followed.

5. We heard the applicant who appeared in person, and Shri R. V. Sinha, learned counsel appearing on behalf of the respondents, in detail.

6. Hardly any week, if not a day, passes for the Tribunal, during which one case or the other, instituted by the applicant, does not appear in the list. To a specific question as to how many proceedings he may have instituted before the Tribunal, the applicant was fair enough to state that it would be approximately 500, though, according to the respondents, it is much more. An additional factor that needs to be taken into account is that all the cases are argued by the applicant himself, and the average size of the bundle of each of his cases would be roughly 500 pages. The present file contains 728 pages. We have observed him arguing his case without holding even a single paper on hand, even while making us to hold and turn the heavy bundle. One should only appreciate the genius of the applicant that he attends the courts on almost every hearing, without applying for leave, and satisfies his seniors with his work. He is a rare genius and multi-faceted personality. Obviously, for this reason, he does not permit anything to go unchallenged, if it is not to his liking. Otherwise, one just cannot explain as to what would be the necessity for a person to institute so many hundreds of cases in relation to his grievances.

7. Now, about the issue raised in the OA. As regards the period in question, the reporting officer observed as under:

"Sh. Mohanty is an extremely intelligent and a dynamic officer. However, he is quite temperamental and works according to his own style which is a little inconvenient some times. He needs to take more interest and initiative and be more systematic in his work plan especially he has the potential to contribute more effectively. He is also expected to develop a greater team spirit rather than using coercive authority to seek their cooperation. A greater involvement in work planning and execution altogether, conscious efforts to take his team along can help in optimizing output."

The final grading awarded by the reporting authority was 7, which is equivalent to 'very good'. The reviewing authority almost agreed with the observations of the reporting authority, and maintained the final grading at 7.8. He observed as under:

"I agree with some remarks given in the pen picture by the Reporting Officer and not with some remarks given by the Reporting Officer. He is extremely intelligent and meticulous in his work. The quality of output of his work is very good. He tries to maintain a strict discipline in his Division. He is very sympathetic towards backward section of the society and deals with them accordingly."

His gradation was 7.8, which of course, equals to 'very good'.

8. Then comes the observation made by the accepting authority. He observed as under:

"Shri T. R. Mohanty, DDG, worked as DDG in the R.P. Unit. The reporting officer has not agreed with Shri Mohanty's claim of exceptional contribution nor was he aware of any initiative by him in the area of statistical auditing. He also notes that Shri Mohanty is quite temperamental and works according to his own style which is a little inconvenient at times. He points out that he is expected to develop a greater team spirit rather than coercive authority. I generally agree with the import and substance of the assessment made by the reporting officer. It should be noted that Shri Mohanty by appearing in CAT on 11/4/2012 violated the provisions 3(1)(iii) of CCS Conduct Rules and was issued a minor penalty charge sheet which led to the issuance of CENSURE by the Disciplinary Authority on 20/8/2013."

The accepting authority awarded the grading of 5, and rated his work as 'good'.

9. It is in this background that the appellate authority dealt with the matter and passed the impugned order. Though it is not common, the appellate authority has given an opportunity of being heard to the applicant, and recorded cogent reasons.

10. The very purpose of having various levels of assessment of an officer is to ensure that the method of his functioning is evaluated objectively, and that no prejudice, or any favour is shown in the process. The form of appraisal requires the reporting, reviewing and accepting authorities to record reasons, particularly when an extremely higher or extremely lower evaluation is made. From a perusal of the appraisal made by the reporting authority in this case, it is clear that it was not at all a case of unqualified appreciation of the work of the applicant. Even while acknowledging the intelligence of the applicant, more than one note of caution was added as to how his working pattern was not up to the mark, or that it needed change. The reviewing authority hardly gave any reasons for further upgradation of the appraisal. He was under an obligation to mention any

specific instances of performance of very high order, than to be abstract, when he is to award a higher grading.

11. The accepting authority kept before him both the appraisals, and has pointed out as to how they cannot support the gradation assigned to the applicant. Here again, the Tribunal does not sit as an appellate authority, and the effort is only to examine whether the accepting authority has failed to assign reasons in support of its conclusions. According to him, appearance in one case by the applicant in CAT has led to initiation of proceedings under the relevant provision of law. One can easily imagine as to what would be the effect of the applicant's appearance for hundreds of times in respect of numerous cases instituted by him in the Tribunal. The applicant stated honestly that he does not apply for leave whenever he appears in the Tribunal or Courts. However, it appears that the superior authorities of the applicant are a bit scared of touching him, lest they are dragged to court, and forced to defend themselves. Experience has shown that if an officer tries to control the applicant, he reacts like a spring and institutes proceedings against such officers by naming them personally, compelling them to defend themselves. In a country governed by Rule of law, such exceptions, howsoever undesirable, cannot be avoided.

12. The appellate authority is only to examine as to whether the reasons recorded by the three authorities are either perverse or contrary to the record. The applicant was also given a personal hearing, and on overall consideration of the matter, the appellate authority was not inclined to interfere with the appraisals.

13. The extent to which the courts or tribunals can review or interfere with the appraisals is too well known. The observations of the Hon'ble Supreme Court in Air Vice Marshal S. L. Chhabra v Union of India [1993 Supp (4) SCC 441], in this regard are relevant. They read 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 to that aspect. No serious legal infirmity is pointed out vis-à-vis the impugned order.

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

