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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on 09.01.2012

+ **W.P.(C) 129/2012**

RAJ KUMAR KAPOOR

.... Petitioner

versus

UNION OF INDIA

.... Respondent

Advocates who appeared in this case:

For the Petitioner : Petitioner-in-person

For the Respondents : Mr Sunil Kumar

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K.JAIN

V.K. JAIN (ORAL)

1. This Writ Petition is directed against the order of Central Administrative Tribunal dated 22.09.2009, whereby Original Application No. 2657/2010 filed by him was dismissed.

2. The petitioner, while working as Deputy Director with National Sample Survey Organization (NSSO), in the Ministry of Planning, Department of Statistics, Government of India, was given ACR grading for the years 2000-01 and 2001-02, which were below the benchmark prescribed for promotion to the next higher post of Junior Administrative Grade (JAG). The aforesaid gradings, however, were not communicated to the petitioner. He was granted *ad hoc* promotion as JAG on 01.04.2004. When the batch mates and juniors of the petitioner were promoted to the post of JAG on regular basis and the petitioner was ignored, he made a

representation to the Cadre Controlling Authority on 11.01.2008 against his supersession. However, there was no response to the representation made by him though he was again given *ad hoc* promotion to the post of JAG on 15.06.2007. The batch mates and the juniors of the petitioner were appointed to the post of Non-Functional Selection Cadre (NFSC) on 01.08.2007 w.e.f. 29.11.2006, while claim of the petitioner to the aforesaid post was ignored. In reply to the representation made by him on 11.01.2008, the petitioner was informed that he was considered for vacancies for the year 2004-05, but was not found fit. The petitioner filed Original Application No.2380/2008 before the Tribunal which directed the respondents to communicate all the 'below the benchmark' ACRs to the petitioner and also gave him an opportunity to make a representation in respect of those ACRs. It was also directed if the gradings given to the petitioner were improved, a review DPC would be held to consider his claim for promotion. The respondent, in compliance of the order passed by the Tribunal, conveyed observations of the Reporting Officer in his ACRs for the year 2000-01 and 2001-02. The aforesaid decision of the respondent was challenged in Original Application No. 2657/2010 which came to be dismissed by the Tribunal on 22.09.2011.

3. A perusal of the order of the Tribunal would show that the Reporting Officer commented in the following terms of the representation made by the petitioner:-

“RO says that many a times Sh. Kapoor delayed submission of cases; has notings on the files were causal without application of mind, his knowledge of rules was not to the mark, he was unable to handle his subordinates and give them adequate advice. RO has also claimed that normally Sh. Kapoor was advised verbally but sometimes comments were made in the files submitted by Sh. Kapoor. According to RO the files could not be produced since large number of them have been weeded out by the FOD. The RO has given a list of 16 files which according to him shows careless/casual approach, delay in submission, lack of confidence and officer like quality, non application of mind, poor examination of cases and disobedience on the part of Sh. Kapoor. The RO has also mentioned that Sh. N. Neelakanthan, the then DDG considered as one of the most upright officer has also endorsed the assessment.”

The Reviewing Authority, whose comments were also called on the representation, however, stated as under:-

“I have gone through the Representation of Shri R.K. Kapoor EX-ISS (JAG) officer carefully.

At this point in time, I do not have access to the official records based on which the observations made in his APAR have been recorded and the points he has raised in his representation against the adverse entries, as I have retired from the Post of Additional DG of FOD, NSSO on 31.03.2004. I have reviewed his CRs for both years in my official capacity as Reviewing Officer. In his CR for 2000-02, I have considered his performance as Satisfactory on assignments given to him as DD (Admn.) at HQs. I also found him sincere and hardworking which has been recorded in my Review. In his CR for 2001-02 also, I have recorded in my Review that Shri Kapoor was a sincere and hardworking officer.

Shri Kapoor was a Grade III ISS officer when he was given Administrative assignments in FOD HQs during these two years. Looking after Administrative responsibilities in a big Field Organization like FOD is certainly a challenging task. As noted above, I had considered him a sincere and hardworking officer during the time when he was given administrative assignments as in my view he had tried his best to attend to the tasks assigned to him.

I therefore would recommend to the Competent Authority that Shri R.K. Kapoor could be given the benefit of doubt and adverse remarks may be expunged from his APAR for both years, 2000-01 and 2001-02.”

The final decision on the representation made by the petitioner was taken by Secretary of the Ministry, who is the Cadre Controlling Authority. The view taken by him reads as under:-

“On careful perusal of the representation of Sh. Kapoor, the concerned ACRs, the comments of the Reporting Officer and the views of the then Reviewing Officer, I do not find any basis on which to alter the grading. **Although Sh. N. Neelakanthan has suggested that Sh. Kapoor may be given the benefit of doubt, he has in no manner indicated that he had made an error as the Reviewing Officer. Consequently, the only doubt that exists is the one caused by the passage of time, which is not an adequate basis for changing the grading. Therefore, the overall grading of Sh. Kapoor may not be upgraded at this stage.**”

(Emphasis supplied)

4. It would thus be seen that the representation submitted by the petitioner was duly considered by the Cadre Controlling Authority, in the light of the comments

received from the Reporting Officer and the Reviewing Authority. The Reviewing Authority, while opining that the petitioner is a senior and hardworking officer and suggesting that he could be given benefit of doubt and adverse remarks could be expunged, did not change the overall grading given by him to the petitioner for the years 2000-01 and 2001-02. The Reviewing Authority also admitted that he did not have access to the relevant record while giving its comments on the representation made by the petitioner. The Reporting Officer, as would be seen from his comments, maintained his assessment about the work of the petitioner during the aforesaid period and gave specific instances of careless, casual approach, delay in submission, lack of confidence and officer like quality, non-application of mind, poor examination of cases and disobedience on the part of the petitioner.

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.

V.K.JAIN, J

BADAR DURREZ AHMED, J

JANUARY 09, 2012

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