

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C)(CAT) No.3 of 2024

Smt. Rekha Das

..... Petitioner(s)

V E R S U S

The Union of India and others

..... Respondent(s)

For Petitioner(s) : Mr. Somik Deb, Sr. Advocate,
Mr. Sankar Bhattacharjee, Advocate.

For Respondent(s) : Mr. B. Majumder, Deputy SGI,
Mr. Pannalal Debbarma, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S. D. PURKAYASTHA**

_O_R_D_E_R_

25/06/2024

Heard Mr. Somik Deb, learned senior counsel assisted by Mr. Sankar Bhattacharjee, learned counsel for the petitioner. Also heard Mr. B. Majumder, learned Deputy SGI assisted by Mr. Pannalal Debbarma, learned counsel for the respondent Nos.1 to 5.

[2] In the Annual Performance Assessment Report (APAR) for the period 2014-15 till 2018-19, petitioner was graded very good for the years 2014-15, 2015-16, 2016-17, 2018-19 but for the year 2017-18 though she was graded as 'very good' by the Reporting Officer, the Reviewing Officer graded her as 'good' which aggrieved the petitioner who was serving as Scientist, Fishery (Fish Genetics & Breeding), ICAR Research Complex for N.E.H. Region, Tripura Center, Lembucherra. She made a representation vide Annexure-A/5 through proper channel on 12.10.2018 followed by another representation vide Annexure-A/6 dated 05.12.2018. Her representation has been rejected by the competent authority communicated through letter dated 01.11.2019 (Annexure-A/8) which

was the subject matter of challenge before the learned Central Administrative Tribunal (CAT), Guwahati Bench, Circuit Bench at Agartala.

[3] The learned Tribunal on consideration of the pleadings on record and submissions of the parties *inter alia* declined to interfere in the matter holding as under:

“14. Heard the learned counsel of both the sides; perused the relevant documents and records and went through the quoted judgments of the Hon'ble Apex Court.

15. The Applicant was graded as “Very Good” in financial Years 2014-15; 2015-16 and 2016-17; and in the financial year 2017-18 although the Reporting Officer had graded her as “very good” with a score of 7.05 but the Reviewing Authority modified the grading from “Very Good” to “Good” with a score of 6.78. “Good” is not an adverse entry. This downgrading by the Reviewing Authority was based on rational and objective criteria which were communicated to the Applicant. There was no mala fide, personal bias/prejudice or ill will of the Reviewing Authority. In our considered opinion the sole purpose of this exercise was to alert the Applicant to ‘raise the bar’; improve upon her performance and deliver better quality and productive research. Subsequently when the Applicant took this cue and improved upon her research performance, she was awarded ‘Very Good’ by the Reviewing Authority in financial Year 2018-19. As a result based on these APARs, the Applicant has already been promoted to next higher grade vide Order dated 30.03.2022 and thus now there is no ground to agitate. All grievances of the Applicant have been redressed.

16. In the light of the above, we see no reason to interfere with the impugned Letter No.RC/AAR/4/2013 dated 01.11.2019 (Annexure-A/9). There is no need now to expunge the so-called adverse entry made in the APAR of the Applicant for the Financial Year 2017-18. There is no need to direct the Respondent Authorities not to count the so-called adverse entry in the APAR of the Applicant for the financial Year 2017-18 as “Good” is not an adverse entry and the Applicant stand promoted to the next higher grade from 30th March 2022.

17. The instant O.A. therefore, is devoid of merit; deserves to be dismissed and is accordingly, dismissed with no order as to costs.”

Therefore, being aggrieved, the petitioner has preferred this writ petition.

[4] Mr. Somik Deb, learned senior counsel for the petitioner has drawn the attention of this Court to the comments made by the Reporting Officer for the relevant year from 1st April, 2017 to 31st March, 2018 which are at page Nos.83 to 90 of the writ petition. He has also drawn the attention of this Court to the remarks of the Reviewing Officer which is at page No. 91 of the writ petition.

Specific attention has been drawn to the comments of the Reporting Officer at paragraph-3.2 and also the marks allotted under six indicators for final grading of the petitioner for the relevant year which in aggregate came to 7.05 and thus led to 'very good' grading by the Reporting Officer. The Reviewing Officer in his remarks has agreed to the comments made by the Reporting Officer in paragraph-3.2 but in respect of paragraph-3.3 he has deferred with a remark 'over estimation of the performance during the period'. The allocation of the marks has been modified as per four out of the six indicators i.e. 2. Resource Generation; 3. Professional growth & development; 4. Personal attributes; and 6. Participation in Institutional activities. This variation has resulted in the aggregate marks of 6.78 which correspond to the grade 'good'. Good though cannot be said to be an adverse remarks. But in matters of consideration for promotion as per the bench mark fixed by the Departmental Promotion Committee, petitioner got deferred promotion only on 30.03.2022 instead of an anterior period.

[5] Mr. Somik Deb, learned senior counsel for the petitioner submits that though the petitioner made a detailed representation pointing out to her performance on all these indicators and absence of sound reasons for reduction of marks against the four indicators by the Reviewing Officer but her representation has been rejected without any reason evident on the face of record. The learned Tribunal seems to have been persuaded by the reason that since the Annual Performance Assessment Reports are in the domain of administrative authorities i.e. the Reporting and Reviewing authority and no mala fide or bias has been alleged or proved against them and that the petitioner has also got promotion to the next higher grade on 30.03.2022, no case of interference is required. The matter was contested before the learned CAT by the respondents by filing a

detailed counter affidavit but the learned Tribunal did not find any substance in the plea and accordingly dismiss the original application.

[6] Petitioner seeks interference by this Court under Article 226 of the constitution of India. Learned counsel for the petitioner has sought to rely upon certain decisions which were also placed for consideration before the learned CAT and have been taken note of by the learned Tribunal.

[7] Respondents in their counter affidavit have also sought to supplement the reasons which persuaded the Reviewing Authority to modify the grading given by the Reporting Authority from 'very good' to 'good' by reducing the overall score of 7.05 to total score of 6.78. Respondents have also averred that communication of the Annual Performance Assessment Report for the year 2017-18 has led to improvement in her performance in the next year where she has been graded as 'very good'. The assessment of the Reporting Officer and the Reviewing Officer is done in a highly objective manner under the present APAR system. The respondents also relied upon certain decisions before the learned CAT which has been taken note of by the learned Tribunal on principles regarding interference in such matters.

[8] Mr. B. Majumder, learned Deputy SGI has countered the submission of the learned senior counsel for the petitioner. He has submitted that the remarks rendered by the Reviewing Officer are not amenable to scrutiny unless they are actuated by mala fide or bias which is not alleged in the present case or are not based on rational and objective criteria. Therefore, the impugned judgment needs no interference.

[9] We have considered the submissions of the learned counsel for the parties and taken note of the relevant materials placed from record. We are

conscious of the legal position that unless a clear case of mala fide or complete absence of any rational and objective criteria in matters of grading in APAR of an officer is made out, judicial interference under article 226 of the Constitution of India is not warranted. We therefore, refrain from examining the contentions of the petitioner on the variation of the grading rendered by the Reviewing Officer which led to reduction of marks on four out of the six indicators i.e. Resource Generation; Professional growth & development; Personal attributes; and Participation in Institutional activities. Petitioner in her representation has sought to dispel the factors which the Reviewing Officer seems to have taken into account for reduction in marks against the four indicators leading to the grading as 'good' from 'very good' for the relevant year 2017-18. However, we find that her representation has been rejected in a cryptic manner without any reasons. The communication containing the rejection dated 01.11.2019 (Annexure-A/8) by the competent authority is extracted hereunder as it is self explanatory:

“INDIAN COUNCIL OF AGRICULTURAL RESEARCH
ICAR (RC) for NEH Region
Umlam, Meghalaya – 793103

No. RC/AAR/4/2013 Dated Umlam, the 1st Nov, 2019

To,

Dr. Rekha Das
Scientist (Fishery)
ICAR Research Complex for N.E.H. Region
Tripura Centre, Lembucherra -799210.
Tripura.

Sub: Communication of a copy of full APAR-Reg.
Ref: Your e-mail dated 03.10.2019.

Madam,

I am directed to inform you that your representation has been examined and it has been decided by the Competent Authority that the entries made in your APAR gradings for the period of 1.4.2017 to 31.3.2018 stands valid and cannot be altered or changed hereafter. This is for your kind information please.

Yours faithfully,
Sd/-
(K.K. Kulshreshtra)
Chief Administrative Officer”

[10] Reasons are the soul of an order. [*See Kranti Associates Private Limited and another versus Masood Ahmed Khan and others* rendered in (2010) 9 SCC 496]. In the absence of reasons judicial scrutiny is inhibited as to the factors which prevailed upon the competent authority to reject the representation of the concerned employee for restoration of her grading for the relevant year 2017-18. As such, we are inclined to remit the matter to the competent authority to pass a fresh order on her representation in accordance with law. The impugned rejection order dated 01.11.2019 is accordingly set aside. The competent authority would consider the representations of the petitioner dated 12.10.2018 (Annexure-A/5) and 05.12.2018 (Annexure-A/6) within a reasonable period preferably three months from the date of receipt of copy of this order. Needless to say, dependant upon the decision taken by competent authority of reconsideration, consequences in law would follow in favour of the petitioner.

[11] Accordingly, the instant petition is disposed of. Pending application(s), if any, also stands disposed of.

(S. D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ