



2024 :DHC:9627



\$~141

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

%

Date of Decision: 06th December, 2024

+ W.P.(C) 9356/2022

MR. J. CHAKRABORTY

.....Petitioner

Through: Mr. Barun Kumar Sinha, Ms. Pratibha Sinha, Ms. Sneh Vardhan and Mr. Sidhant Thakur, Advocates.

versus

M/S GAIL (INDIA) LIMITED & ANR.

.....Respondents

Through: Mr. Sandeep Prabhakar, Senior Advocate with Mr. Amit Kumar and Mr. Vikas Mehta, Advocates for the Respondents.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India, laying a challenge to order dated 11.02.2020, whereby his appeal/representation against PAR for the Assessment Year 2018-19 has been rejected. Challenge is also laid to PARs for the periods 2015-16 to 2020-21 on the ground that they were illegally downgraded. Direction is sought to Respondent No.1 to reassess the said PARs and after upgrading them, hold a Review Departmental Promotion Committee ('DPC') for promotion to E-7 level. However, during the course of hearing arguments were restricted to the PARs for the periods 2018-19 and 2020-21.



2024 :DHC:9627



2. Factual matrix to the extent necessary and as averred in the writ petition is that Petitioner joined Respondent No. 1 Corporation as Deputy Manager (F&S) in E-3 level in November, 1996. Being deprived of his promotion to E-4 level, Petitioner filed W.P. (C) No. 18295/2004 in this Court, which was decided on 03.11.2011 and pursuant to the judgment, Petitioner was promoted to E-4 level w.e.f. 01.04.2003. Respondent No. 1 revised its Promotion Scheme for the Executives vide Circular dated 05.04.2002 and Clause 3.2 thereof provided the criteria for promotion which included marks against various factors such as qualification, experience, performance rating and DPC Modulation. Annexure-I provided the detailed marking system for allocation of marks. The Promotion Scheme was made applicable upto 31.03.2016 whereafter the policy was revised in 2016 and then in 2022.

3. It is averred that the revised Policy dated 26.02.2016 provided for criteria for promotion in Clause 3.2 wherein marks were allocated under different heads for promotion. 40 marks are allocated to performance rating and thus performance rating of the officers, which is in turn based on PARs, plays a pivotal role in promotion. Downgrading of the impugned PARs has thus adversely impacted the overall assessment for promotion in the case of the Petitioner. Circular dated 22.11.2011 was issued by Respondent No.1 whereby Performance Management System (PMS) was formulated for Executives upto E-7 grade and Clause 3 thereof provides the road map and timelines for rendition of PARs. The PMS structure broadly involves 05 steps for rendition of PARs to ensure objectivity and transparency in reporting but in the case of the Petitioner the procedure was not adhered to.



2024 :DHC:9627



4. Grievance of the Petitioner, as eloquently articulated by learned counsel for the Petitioner, is that PARs of the Petitioner for the periods 2018-19 and 2020-21 have been downgraded by the Reviewing and the Accepting Authority to 'Very Good' from an 'Outstanding' gradings rendered by the Reporting Officer and this has caused serious prejudice to the Petitioner as under the criteria for promotion in Clause 3.2 of Circular dated 26.02.2016, 40 marks have been allocation to performance rating. It is submitted that there was no reason or justification to downgrade the PARs once the Reporting Officer under whom the Petitioner actually worked, assessed his work and performance as 'Outstanding'. It is urged that in ***Dev Dutt v. Union of India and Others, (2008) 8 SCC 725*** and ***Sukhdev Singh v. Union of India and Others, (2013) 9 SCC 566***, the Supreme Court has observed that when comparative merit is considered for promotion, even a 'Good' or a 'Very Good' entry becomes adverse and thus the impugned PARs, which have impeded Petitioner's promotions between 2015 to 2021 while his juniors have been promoted upto E-7 grade, deserve to be set aside. Learned counsel highlights that the result of the downgrading is that *albeit* Petitioner was entitled to be considered for promotion to E-6 level w.e.f. 01.04.2011 and to E-7 level in 2015 on completion of 04 years service in E-6 grade, he was promoted to E-6 level only w.e.f. 01.04.2015 and consequentially deprived of the next promotion, which effected his career progression.

5. Learned counsel also argues that Respondent No. 1 has introduced a Performance Management System keeping in view transparency and objectivity required in rendition of PARs and as per the PMS Manual, 2011 PMS System involves 05 steps viz. performance planning/goal setting;



2024 :DHC:9627



mid-year review and course correction; year-end appraisal; normalisation process; and communication of ratings, following by Representation/Appeal Mechanism, which must be followed. This step-by-step procedure has been violated in case of the Petitioner inasmuch as assuming there was any deterioration in the performance of the Petitioner, he ought to have been informed during the mid-year review for course correction, which was never done.

6. Mr. Prabhakar, learned Senior Counsel for Respondent No. 1 submits that there is no merit in the petition. As per extant procedure, in the beginning of year-end appraisal process, Executives are given opportunity to carry out self-assessment of their performance wherein they highlight their achievements with respect to given assignments and mention their exceptional contributions etc. including constraints, if any, which hindered their performance. Thereafter, the Appraising Authorities award performance ratings after carrying out exhaustive review of performance of employees based on actual achievements against parameters of KRAs (Key Result Areas)/KPIs (Key Performance Indicators), demonstration of Functional/Cross-functional competencies and behavioural competencies by the appraisees during the assessment year and award final rating after going through the self-appraisal reports of employees, which includes exceptional contributions and achievements stated by them. Assessment is done on the basis of holistic review of actual performance of employees for the assessment period which includes review of achievements against given targets, demonstration of desired functional/cross-functional and behavioural competencies and self-appraisal report submitted by the Executive. The performance ratings are awarded to an Executive keeping in mind the larger



organization perspective and relative performance of the Executive, besides individual assessment of Job Performance of the Appraisee. Furthermore, all policies and procedures related to Performance Management are communicated to the employees and after finalization of ratings, the entire Performance Appraisal and Development Report ('PADR') is shared along with marks/remarks given by Reporting, Reviewing and Accepting authorities to maintain fairness and transparency in the appraisal process. There is a process of moderation/normalization which is undertaken to achieve a defined percentage of 'outstanding' ratings in PADRs for a particular assessment year in accordance with the notified ceilings, pursuant to the directives of the Department of Public Enterprises, Government of India, notified vide Circular dated 01.01.2010. Clause 2(e) of the Circular provides that for Executives upto E-7 grade for the year 2011 and onwards, the percentage ceiling for 'Outstanding' grading will be upto 15% and the Circular is not under challenge. Impugned PARs were graded as 'Very Good' as per the said ceiling constraints and this is demonstrated from the remarks endorsed in the said PARs.

7. Heard learned counsel for the Petitioner and learned Senior Counsel for Respondent No. 1 and examined their rival submissions.

8. In this petition, Petitioner essentially assails his PARs for the periods 2018-19 and 2020-21 on the ground that while the Reporting Officer in both the reports had graded him 'Outstanding', the Reviewing and the Accepting Officers have downgraded the same to 'Very Good' and in this context, reliance is placed on the judgments of the Supreme Court in *Dev Dutt (supra)* and *Sukhdev Singh (supra)*. There can be no quarrel with the legal proposition that if an APAR is downgraded below the benchmark, it has an



adverse impact on the promotion of the employee. In fact, in the two judgments relied upon by the Petitioner, the Supreme Court has held that all ACRs of an employee must be communicated irrespective of the gradings as this is in conformity with Article 14 of the Constitution of India. However, in the present case, as brought forth on behalf of Respondent No.1, the organisation follows a special policy of PAR grading, incorporated and coded in the Circular dated 01.01.2010, which was issued to review PMS for the Executives. Clause 2(e) of the Circular prescribes the percentage ceiling of Executives assessed against different performance ratings and for the Executive upto E-7 grade for the year 2011 and onwards the percentage ceiling for 'Outstanding' grading was 15%. Relevant part of the Circular is as under:-

(e) Percentage ceiling of executives assessed against different performance ratings

In terms of DPE guidelines, not more than 10% to 15% executives are to be graded as "Outstanding/ Excellent" and 10% of executives as "Below Par".

It has been decided to adhere to following percentage ceilings against different performance ratings from assessment year 2009 onwards:

Performance Rating	Percentage ceiling for executives upto E-7 grade		
	Year 2009	Year 2010	Year 2011 and onwards
Outstanding	Upto 25%	Upto 20%	Upto 15%
Very Good	55% (approx.)	60% (approx.)	65% (approx.)
Good	15% (approx.)	15% (approx.)	15% (approx.)
Satisfactory	Upto 5%	Upto 5%	Upto 5%
Poor (Below Par)			

9. From a reading of the aforesaid Clause 2(e), it is amply clear that Respondent No. 1 has adopted a moderation/normalisation policy where the PARs are moderated to ensure that the 'Outstanding' gradings do not cross the threshold ceiling of 15%. In the case of *Commodore P.K. Banerjee v. Union of India and Others*, (2018) 4 SCC 355, relied upon by learned



2024 :DHC:9627



counsel for the Petitioner, the Supreme Court was examining a similar system of moderation/PARBING in the Indian Navy. This judgement does not support the Petitioner as here the Supreme Court did not interfere with the PARs of the officer which were PARBED/moderated as per the applicable Instructions.

10. From the impugned PARs, which are on record, it can be clearly seen that the Reviewing and the Accepting Authorities have not downgraded the PARs for the reason of Petitioner's non-performance. In fact, both the Authorities agreed with the Reporting Officer with respect to the performance of the Petitioner but gave the grading of 'Very Good' due to ceiling constraints in consonance with the Circular dated 01.01.2010 and in the absence of challenge to the said circular, this Court finds no ground to expunge or set aside the impugned APARs.

11. Much emphasis was laid by learned counsel for the Petitioner on the Performance Management System introduced by Respondent No. 1 to bring in objectivity and transparency in reporting and urged that Step-2 required the Competent Authority to conduct a mid-year review during the period of the PARs in question for course correction but the same was not done and the two impugned PARs were communicated to him only at the end of the reporting period with final gradings of 'Very Good'. This Court is unable to read into the PMS System any requirement of communicating the PARs in the middle of the year as these are annual reports and are endorsed only at the end of the reporting period. Communication of ratings is at Step-5, which is at the end of reporting period. No doubt, the system requires a mid-year review and provides for a course correction but this requirement would come into play only where the performance of the ratee deteriorates or falls,



2024 :DHC:9627



which is not the case here. As noted above, the gradings of ‘Very Good’ are not on account of any fall in the performance of the Petitioner but was on account of a policy of moderating ‘Outstanding’ gradings upto a prescribed ceiling i.e. 15%.

12. For all the aforesaid reasons, I am of the view, that no interference is warranted in the impugned order dated 11.02.2020 as well as the impugned PARs for the periods 2018-19 and 2020-21 and accordingly, the writ petition is dismissed.

JYOTI SINGH, J

DECEMBER 06, 2024
YA/shivam