

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

WP(C).No. 6714 of 2012 (L)

PETITIONER(S):

B.VISHNU BHAT,
FISHERIES DEVELOPMENT COMMISSIONER,
MINISTRY OF AGRICULTURE,
DEPARTMENT OF ANIMAL HUSBANDRY,
DAIRYING & FISHERIES, KRISHI BHAVAN, NEW DELHI.

BY ADV. SRI.R.KRISHNA RAJ

RESPONDENT(S):

1. THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF COMMERCE, GOVERNMENT OF INDIA,
NEW DELHI - 110 001.
2. THE MARINE PRODUCTS EXPORT DEVELOPMENT AUTHORITY,
REPRESENTED BY ITS CHAIRMAN,
MPEDA HOUSE, PANAMPILLY AVENUE, KOCHI - 682 036.

R1 BY ADV. SRI.N.NAGARESH, ASG OF INDIA
R2 BY ADVS. SRI.V.ABRAHAM MARKOS
SRI.MATHEWS K.UTHUPPACHAN
SRI.BINU MATHEW
SRI.TERRY V.JAMES
SRI.B.J.JOHN PRAKASH
SRI.TOM THOMAS (KAKKUZHIYIL)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
26-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: COPY OF THE OFFICE MEMORANDUM.

EXT.P2: COPY OF THE LETTER OF THE 2ND RESPONDENT.

EXT.P3: COPY OF THE APAR OF THE PETITIONER.

EXT.P4: COPY OF THE APAR OF THE PETITIONER.

EXT.P5: COPY OF THE LETTER OF THE PETITIONER.

EXT.P6: COPY OF THE LETTER OF THE PETITIONER.

EXT.P7: COPY OF THE LETTER OF THE PETITIONER.

EXT.P8: COPY OF THE LETTER OF THE PETITIONER.

EXT.P9: COPY OF THE LETTER OF THE 2ND PETITIONER.

EXT.P10: COPY OF THE EXPLANATION OF THE PETITIONER.

EXT.P11: COPY OF THE EXPLANATION OF THE PETITIONER.

EXT.P12: COPY OF THE LETTER OF THE PETITIONER.

EXT.P13: COPY OF THE LETTER OF THE 2ND PETITIONER.

**EXT.P14: COPY OF THE LIST OF REPORTING OFFICERS OF THE OFFICE OF THE
2ND RESPONDENT.**

EXT.P15: COPY OF THE LETTER OF THE PETITIONER TO THE 2ND RESPONDENT.

**EXT.P16: COPY OF THE LETTER OF THE 2ND RESPONDENT TO THE SECRETARY TO
GOVERNMENT.**

EXT.P17: COPY OF THE APAR OF THE PETITIONER FOR THE YEAR 2010 AND 2011-12.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

A.M.SHAFFIQUE, J

W.P.C.No.6714 of 2012

Dated this the 26th day of February 2015

J U D G M E N T

Petitioner has approached this Court seeking the following reliefs:

a. *quash the adverse remarks made in Exts.P-3 and P-4 by the issue of writ of certiorari or such other writ or order or direction.*

b. *direct the 1st respondent to review the adverse remarks made in Exhibit P-3 and P-4 by the issue of a writ of mandamus or such other writ or order or direction.*

c. *direct the 2nd respondent to provide the petitioner all the details he has requested for in Exhibit P-7 and P-8 and give the petitioner a fresh opportunity to submit a detailed explanation to Exhibit P-3 and P-4 by the issue of a writ of mandamus or such other writ or order or direction."*

2. The short facts involved in this writ petition would disclose that the petitioner was appointed as Director of The

Marine Products Export Development Authority (MPEDA) and while working so, the Annual Performance Assessment Report (APAR) has been prepared by the superior officer, who is the Chairman of MPEDA. There had been several adverse remarks against the conduct of the petitioner and though the petitioner sought for sending the same to the reviewing authority, the 2nd respondent did not act upon it. According to the petitioner, it is mandatory on the part of the Chairman to have sent the APAR for review by the reviewing authority as provided under the office memorandum Ext.P1. Reference is made to Clause 2 of Ext.P1 office memorandum dated 14/05/2009 which reads as under:

“(ii) The full APAR including the overall grade and assessment of integrity shall be communicated to the concerned officer after the Report is complete with the remarks of the Reviewing Officer and the Accepting Authority wherever such system is in vogue. Where Government servant has only one supervisory

level above him as in the case of personal staff attached to officers, such communication shall be made after the reporting officer has completed the performance assessment.”

3. Though it is contended that the remarks of the Chairman is absolutely baseless, learned counsel only seeks for a direction that the APAR may be sent to the reviewing authority. The aforesaid request has been objected to by the 2nd respondent inter alia contending that there is no provision to send the APAR of the petitioner to the reviewing authority as there is no reviewing authority as far as the petitioner is concerned. Chairman is the final authority and there is no practice in sending the APAR to the Ministry as claimed by the petitioner. The petitioner relies upon Ext.P1 as well as Ext.P14 to indicate that there is a reviewing authority to the post of Director who is the Secretary, Ministry of Commerce. The existence of Ext.P14 is disputed by the learned counsel appearing for the respondents.

4. It is submitted that Ext.P14 is a document which is

available with the petitioner and though the petitioner had applied under the Right to Information Act calling upon the 2nd respondent to provide copy of the same, it is not obtained so far.

5. Though the learned counsel for the respondent placed his arguments based on the office memorandum dated 20/05/1972, perusal of the same does not disclose any particular formality by which the APAR of the Director has to be sent to the Reviewing Officer or not. Any APAR, as the case may be, which is prepared by the Head of the Department has to be reviewed by the reviewing authority. In the present case, the Chairman being the Head of the Department, there is no other officer to review the same and therefore definitely this is a matter which has to be taken up before the appointing authority who is none other than the Secretary, Ministry of Commerce.

6. Though it is argued by the learned counsel for the 2nd respondent that no such practice was being followed

earlier, this fact is disputed by the learned counsel for the petitioner by contending that, on previous occasions as far as four Directors were concerned, their APAR's were reviewed by the Ministry of Commerce.

7. Having regard to the overall factual circumstances involved in the matter and especially when there are adverse remarks made by the Chairman in the APAR of the petitioner who was the Director, it requires review and therefore though no specific provisions are made, definitely it has to be sent to the appointing authority for review. It is not in dispute that the petitioner has been appointed as the Director by virtue of orders issued by the Ministry of Commerce and Industries, Department of Commerce, New Delhi.

8. Under such circumstances, there will be a direction to the 2nd respondent to send the APAR of the petitioner for review to the Ministry of Commerce and Industry, Department of Commerce, New Delhi. This shall

be done within a period of one month from the date of receipt of a copy of this judgment.

9. The learned counsel for the petitioner submits that his APAR of 2010 has not been completed yet. It is always open for the petitioner to approach the 2nd respondent to complete the said process as early as possible.

This writ petition is disposed of as above.

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr

