

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE N. BALAYOGI

WRIT PETITION No.31582 of 2016

ORDER: (Per Justice Sanjay Kumar)

The petitioner is the applicant in O.A.No.1010 of 2011 on the file of the Central Administrative Tribunal, Hyderabad Bench, which was dismissed by order dated 12.09.2013. The petitioner is a Chief Medical Officer in the service of the Central Government. The cause for his approaching the Tribunal was with regard to his grading as 'average' in his Annual Confidential Report (ACR) for the year 2003-04.

Earlier, the petitioner was communicated the adverse remarks entered in the ACR for the year 2003-04 under Memorandum dated 26.11.2004. The said adverse remarks read as under:

“He was issued ‘Warning’ by DG CISF vide No.E-32025/6/03/Rectt/212 dated 23.01.04, for his casual and lackadaisical approach in recruitment work.”

Aggrieved thereby, he filed O.A.No.577 of 2005 before the Tribunal, which was allowed vide order dated 23.12.2005 quashing the adverse remarks conveyed to the petitioner vide Memo dated 26.11.2004. The order of the Tribunal was implemented by the Central Government under Order dated 11.05.2006 issued by the Inspector General/North Sector, Central Industrial Security Force, Ministry of Affairs, Union of India. However, when the ACR for the year 2003-04 in its entirety was communicated to the petitioner sometime in the year 2010, he found that despite the expunging of the adverse remarks aforesaid, the grading continued to be shown as average basing on the very same adverse

remarks. Thereupon, he made representation dated 27.08.2010 to the authorities bringing to their notice that the adverse remarks in the ACR for the year 2003-04 had been expunged and therefore his grading should be shown as 'very good'. However, the authorities confirmed his grading as 'average' for the year 2003-04 under the assessment sheet dated 30.11.2010. Aggrieved thereby, he approached the Tribunal by way of O.A.No.1010 of 2011.

Perusal of the order passed by the Tribunal in the said O.A. reflects that the Tribunal was of the opinion that despite the expunging of the adverse remarks extracted supra, the opinion of the Reviewing Officer to the effect that "I do not agree with the remarks of the Reporting Officer. He has been over assessed" had not been expunged and therefore, the same would be sufficient to sustain the grading 'average'. However, this understanding of the Tribunal runs contrary to the requirements of the Reviewing Officer's report.

Perusal of the petitioner's ACR for the year 2003-04 reflects that his grading by the Reporting Officer was 'very good'. Thereupon, the matter was referred to the Reviewing Officer. Clause 2 of Part-IV which deals with the report by the Reviewing Officer reads as under:

"Does the Reviewing Officer fully agree with the remarks of the Reporting Officer recorded in Part III of the proforma. If not, the details thereof. Please also indicate adverse remarks, if any, are to be expunged or modified.

I don't agree with the remarks of the Reporting Officer.
He has been over-assessed.

He was issued 'Warning' by DG CISF vide No. E-32025/6/03/Rectt/212 dt. 23/01/04, for his casual and lackadaisical approach in recruitment work."

However, the reasoning of the Reviewing Officer starting from the words 'He was issued' up to 'recruitment work' stood expunged by virtue of the order passed by the Tribunal in O.A.No.577 of 2005. In effect, the opinion tendered by the Reviewing Officer was bereft of reasoning.

Clause 2 referred to above however makes it clear that the Reviewing Officer, if he disagrees with the remarks of the Reporting Officer, had to furnish details therefor. In the present case, the details offered by the Reviewing Officer stood expunged and his opinion thereafter remained as a superstructure without foundation. Except for his bare opinion that he did not agree with the remarks of the Reporting Officer and that the petitioner had been over assessed, there is no other basis for the general remarks of the Reviewing Officer that the petitioner should be graded as 'average'.

In that view of the matter, we are of the opinion that once the adverse remarks in relation to the petitioner's ACR for the year 2003-04 stood expunged, the grading of average based on an unreasoned opinion of the Reviewing Officer cannot be sustained.

The writ petition is accordingly allowed. The respondent authorities shall give effect to the grading given to the petitioner by the Reporting Officer for the year 2003-04.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

N. BALAYOGI, J

31st January, 2017.
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