

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Writ Petition No.4783 of 2017

Date of Decision: September 06, 2017

Union of India through Secretary to the Government of India, New Delhi

...Petitioner

Versus

Bhagwan Dass Garg & others

...Respondents

**CORAM: HON'BLE MR.JUSTICE AJAY KUMAR MITTAL, JUDGE
HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE**

**Present: Mr.Jagjot Singh Lalli, Advocate,
Senior Panel Counsel for the petitioner.**

AMIT RAWAL, J.

1. The petitioner has invoked the writ jurisdiction of this Court under Articles 226/227 of the Constitution of India, seeking setting-aside of the order dated 17.3.2016 (Annexure P-3) passed by the Central Administrative Tribunal, Chandigarh Bench (for short "CAT"), whereby, while partly allowing O.A.No.1312/CH/2012 filed by respondent No.1- Bhagwan Dass Garg, has issued direction that the Annual Confidential Reports for the period 1.1.2008 to 31.3.2008 and 1.4.2008 to 20.8.2008 be ignored for consideration of respondent No.1 for future upgradation/promotion.

2. Brief facts of the case are that respondent No.1 is a direct recruit of India Telecom Services (ITS) of 1979 Batch. In 1992, he was promoted as Junior Administrative Grade (JAG) and in 1995 was granted Functional Selection Grade. Thereafter, in the year 2000, respondent No.1

was promoted as Senior Administrative Grade (SAG). During this period, his service record remained very good or outstanding except for the period 2002-03. In 2008, when respondent No.1 was working under respondent No.2-Bharat Sanchar Nigam Limited, he became eligible for non-functional HAG w.e.f. July, 2012 and before considering him for the same, the petitioners conveyed the below bench mark ACR relating to the relevant period. Due to vindictive attitude of respondent No.4, below bench mark grading was given in two part ACRs for the period 1.1.2008 to 20.8.2008. He was also given below bench mark grading for the period 21.8.2008 to 9.12.2009 by the successor of respondent No.4 without application of mind and in violation of DOPT instructions.

3. On 12.2.2012 and 13.2.2012, respondent No.1 submitted three representations expressing his grievance and vide order dated 18.5.2012, the same were rejected. He sought information under Right to Information Act qua his ACR from July 1981 to December, 2007. Vide memo dated 4.9.2012, the information for the period 1995-96 to December, 2007 was supplied, which showed that except for the year 2001-02 and 2002-03, the ACRs of respondent No.1 remained 'Very Good' or 'Outstanding' and during these two years, his ACRs were 'Good'. Respondent No.2-BSNL, instead of rectifying the earlier irregularity committed in writing of the ACRs, again did the same thing by conveying two entries for the period from 1.4.2009 to 9.12.2009 (Good entry) and 10.12.2009 to 31.3.2010 (period too short to comment, having only 17 working days), against which respondent No.1 submitted representation dated 25.10.2012.

4. Mr.Jagjot Singh Lalli, learned Senior Panel Counsel for Union of India submitted that most of the averments mentioned in the Original

Application pertained to BSNL and did not require the comments of the Government or DOPT. There is already an existing mechanism in the Government, which monitors recording of ACRs. Grading given by the Reporting Officer is reviewed by the Reviewing Officer and in case of any dissatisfaction of the employee concerned, the employee has an opportunity to represent against the grading in terms of DOPT OM's dated 14.5.2009 and 13.4.2010.

5. It was next contended that the competent authority, after receiving the comments of the Reporting and Reviewing Officers relating to entries in the ACRs regarding which representations had been filed by respondent No.1, decided the same in accordance with law. As per the erstwhile prevailing guidelines/instructions of Government of India, there was no provision for communicating below benchmark grading. The only provision was for communicating adverse entries, but keeping in view the DOPT OM's dated 14.5.2009 and 13.4.2010, the contents of the relevant ACRs had been conveyed to respondent No.1 before considering him for HAG.

6. Learned counsel also argued that the CAT had failed to appreciate that the ACRs for the period 1.1.2008 to 31.3.2008 and 1.4.2008 to 20.8.2008 had already been considered by the department while deciding the representation of respondent No.1, which order has been upheld by the Tribunal. The CAT also erred in directing the department to ignore the aforementioned ACRs despite proper procedure had been followed and the comments of the Reporting and Reviewing Officers were obtained. The remarks were found to be justified. No reasons have been given by the CAT for giving benefit of doubt to respondent No.1.

7. It was also submitted that the CAT had observed that the DOPT and Government of India issued amended instructions with regard to APARs in 2009 and 2010 in pursuance of the judgment of the Apex Court dated 12.5.2008 rendered in Dev Dutt Versus Union of India and others, Civil Appeal No.7631 of 2002. It was directed that the complete content of each APAR would be conveyed to all officers after the completion of the APAR and the prescribed date fixed for such completion was 31st August of each year. These instructions were to be applied in respect of APAR recorded for the period 2008-09 onwards. Whenever, guidelines are issued to the Departments and PSUs with regard to changes in procedure in administrative matters, it takes time for such instructions to percolate to the implementing offices/officers. Perhaps, because of that reason, there was delay of almost two years in conveying the contents of the APARs from 2008-09 onwards to respondent No.1. No loss has been caused to respondent No.1 on this account as he had an opportunity to represent against the grading in these APARs.

8. It was further argued that there was no need for issuing direction to the petitioner to ignore the aforementioned ACRs as the DPC was having full powers to consider the case on merits. So far as ACR for the period 1.4.2008 to 20.8.2008 is concerned, the CAT had observed that respondent No.1 did not adhere to the prescribed period/date for submitting his self-appraisal to the Reporting Officer. Regarding ACR for the period 1.4.2009 to 9.12.2009, respondent No.1 submitted the same on 24.5.2010, i.e., long after the date of 15th of April prescribed for submission of self-appraisal. The Reporting Officer recorded his remarks on 31.7.2010 and the ACR remained un-reviewed because the Reviewing Officer had already

retired on 31.5.2010. This ACR cannot be considered to be incomplete. Delay in submitting the self-appraisal was on the part of respondent No.1 and not the petitioner. The CAT also failed to appreciate the fact that while considering the case of an employee for promotion, the Departmental Promotion Committee can make its own assessment separately by adopting uniform standards, yard sticks and norms and, thus, urged the Court for quashing of the impugned order.

9. We have heard the learned counsel for the petitioner and appraised the paper book and are of the opinion that there is no merit and force in the submissions of the learned counsel for the petitioner and the writ petition deserves to be dismissed.

10. The Tribunal, after appreciating the material on record, concluded that ACRs for the period 01.01.2008 to 31.03.2008 and 01.04.2008 to 20.08.2008 may be ignored for consideration of applicant-respondent No.1 for future upgradation/promotion. However, the decisions of the Competent Authority dated 18.05.2012 and 14.12.2012 rejecting the representation of the applicant qua the APARs for the period 21.08.2008 to 31.03.2009 and 01.04.2009 to 09.12.2009 was upheld.

11. The DOPT and the Government of India had issued the amended instructions regarding APARs in 2009, 2010 in view of the ratio decidendi culled out in **Dev Dutt's** case supra, wherein it was held that APAR should be conveyed to each officer after the completion of the APAR and the prescribed date was 31st August of each year. Even instructions were to be applied in respect of APARs recorded for the period 2008-09 onwards.

12. The challenge in this writ petition is relating to the remarks

recorded in the ACRs for the period 01.01.2008 to 31.03.2008 and 01.04.2008 to 20.08.2008. As regards the ACRS for the period 01.01.2008 to 31.03.2008, it is a matter of record that the ACR form for the period from 1.1.2008 to 31.3.2008 was submitted by the applicant-respondent No.1 on 30.4.2008. There is no mention of any date on his report. ACR was not reviewed and the reason for not doing so, has also not been explained and, therefore, it has rightly been treated as incomplete.

13. As regards part of ACR for the period 1.4.2008 to 20.8.2008, the ACR form was submitted by the applicant on 6.5.2009. Reporting Officer recorded remarks on 29.6.2009 and the Reviewing Officer recorded his remarks for this period together with the ACR for the period 21.8.2008 to 31.3.2009 grading him to be '*Poor*', whereas the ACR for the period 21.8.2008 to 31.3.2009 was submitted on 8.5.2009 and the Reporting Officer recorded his remarks on 13.8.2009 and the Reviewing Officer recorded remarks with the date 3.8.2009. The Tribunal had concluded that the ACR for the period 01.04.2008 to 20.08.2008, the applicant had alleged bias on the part of Sh.P.K.Paliwal-respondent No.4. It had noticed that though the respondent-BSNL had obtained the comments of the Reporting and Reviewing Officer as available, but had granted benefit of doubt to the applicant because of allegations as noticed hereinbefore and thus, ACR for the period 01.04.2008 to 20.08.2008 was also directed to be ignored. However, the remarks for the period 21.08.2008 to 31.03.2009 and 01.04.2009 to 09.12.2009 were upheld.

14. No serious allegations with regard to integrity have been levelled against respondent No.1 and, therefore, the findings of the CAT for ignoring the ACRs for the period from 1.1.2008 to 31.3.2008 and 1.4.2008 to

20.8.2008 and other benefits reflected in the impugned order cannot be said to be unjustified, unreasonable or perverse. The applicant-respondent No.1 has not chosen to impugn the finding with regard to taking into consideration APARs for the period 21.8.2008 to 31.3.2009 and 1.4.2009 to 9.12.2009, but in view of our above observations, we do not find any reason to differ with the findings rendered by the CAT. While upholding the same, the writ petition is dismissed.

**(AJAY KUMAR MITTAL)
JUDGE**

**(AMIT RAWAL)
JUDGE**

**September 06, 2017
ramesh**

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No