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

+ **W.P.(C) 727/2017**

Date of decision: 25th January, 2017

T.M. SAMPATH

..... Petitioner

In person.

versus

UNION OF INDIA & ORS.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J.

The petitioner-T.M. Sampath, in this writ petition, has challenged his Annual Performance Appraisal Report (APAR) grading for the period 1st April, 2013 to 30th March, 2014.

2. This is the second round of litigation as the petitioner's had earlier filed OA No.55/2015 which was disposed of by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short) on 7th January, 2015 with a direction to the respondent authorities to decide the representation of the petitioner by a reasoned and speaking order.

3. The Memorandum dated 13th March, 2015 rejected the petitioner's

representation for upgradation of his APAR grading recording as under:-

“The Hon’ble Central Administrative Tribunal (Principal Bench), New Delhi vide order dated 07.01.15 in OA No.55/2015 filed by Shri. T.M. Sampath, Administrative Officer issued following directions:

4. OA disposed of at the admission stage, without going into the other merits of the case, by directing the respondents to consider the representation of the applicant and to pass appropriate speaking and reasoned orders thereon, in accordance with law, within eight weeks from the date of receipt of a copy of this order.

2. In compliance of above order the Hon’ble CAT, the representation dated 30.10.2014 of Shri. T.M. Sampath, Administrative Officer has been considered by the Competent Authority i.e. the Director General, NWDA, wherein Shri Sampath has raised following issues:-

That only after 09.10.2014, Shri R.K. Jain, CE who was holding his APAR for the period 1.4.2013 to 20.1.2014 has reviewed the APAR but by writing a false date of 31.7.2014. It is for Shri R.K. Jain, CE to explain if the APAR has been reviewed on 31.7.2014 why it has not been disclosed till filing of OA No.3590/2014 on 7.10.2014. It is submitted that Shri R.K. Jain, CE is misusing his official position to settle score with him for making complaint against him for recruitment scam in the appointment of 9 LDCs during the year 2011.

Shri Sampath has further submitted that during the period 1.4.2013 to 20.1.2014 he had carried out the work of scrutiny of medical claims of officials worked at Palika Bhawan up to the level of lower rung of Group ‘A’ which got completed at the level of Shri O.P. Singh Kushwah, SE himself and there was no occasion for Shri R.K. Jain

to see any of his work during the 1.4.2013 to 20.1.2014.

Since Shri R.K. Jain, CE not seen any of the work carried out by him during the period 1.4.2013 to 20.1.2014 and he has reviewed the APAR after the prescribed date of 31.7.2014 without disposing the representation dated 14.7.2014 of him, the action of Shri R.K. Jain, CE to review his APAR for the period 1.4.2013 to 20.1.2014 is not only illegal deliberate attempt to spoil the career of his three level junior subordinate officer.

Lastly, he has requested to disregard the review part of APAR for the period 1.4.2013 to 20.1.2014 and initiate disciplinary action against Shri R.K. Jain, CE.

After careful consideration of the points raised by Shri T.M. Sampath in his above referred representation, Competent Authority i.e. the Director General, NWDA has reached to the following conclusions:-

1. Shri T.M. Sampath, Admn. Officer was posted under Shri. O.P.S. Kushwah, Superintending Engineer for the period from 1.4.2013 to 1.1.2014 and thereafter under Deputy Director (Admn) vide O.M. No.4/14/2009-Admn./08-20 dated 02.1.2014 during the year 2013-14. This was also conveyed to his Memorandum No.10/2/2014-Admn/6746-49 dated 7.5.2014 while providing blank APAR form for the period from 1.4.2013 to 1.1.2014. Therefore, his version that he worked under Shri O.P.S. Kushwah up to 20.1.2014, is not correct.

2. Shri T.M. Sampath himself assumed change in the reporting period to 20.1.2014 in place of 1.1.2014 which is highly objectionable and it was conveyed to him vide O.M.6/2/2014-Vig./16008 dated 14.10.2014.

3. Shri R.K. Jain, CE (HQ) has supervised the work of Shri O.P.S. Kuswah, Superintending Engineer and

Deputy Director (Admn.) during the complete year. Further, not only work but other aspects like quality of output, analytical ability, attitude of work, maintenance of discipline, leadership quality, inter-personal relations etc. are also to be considered by the Reporting and Reviewing officer. In such circumstances, Shri R.K. Jain, CE has rightfully reviewed his APAR for the year 2013-2014.

4. The employee has no authority to decide as to who will be his Reviewing Officer or whether there is any need for reviewing or not. So far his allegations that false date of 31.7.29014 has been written, Shri R.K.Jain has confirmed that he reviewed that APAR on 31.7.2014. However, Shri. T.M. Sampath is asked to provide evidence in support of his allegation, within 07 days, failing which it will be presumed that he has the habit of levy false allegations against his seniors.

In view of above no merit has been noted in his above referred representation. ”

4. It is an undisputed position that during this period the petitioner was working as an Administrative Officer in the National Water Development Agency, respondent No.2 herein. As per the APAR placed on record, the petitioner's Reporting Officer Mr. O.P. Singh Kushwah had given him overall numerical grading of 6.07 vide his recording dated 20th July, 2014. However, the Reviewing Officer Mr. R.K. Jain, who was working as a Chief Engineer, had disagreed with the numerical assessment of attributes given by the Reporting Officer and reduced the grading to 5.0. He had given the following reasons for disagreement in his noting dated 31st July, 2014:-

“3. In case of disagreement, please specify the reasons. Is there anything you wish to modify or add.

Numerical gradings not agreed as these does not match with his performance in quality and quantity. His work, attendance, devoition, sincerity are just average. Further he want (sic) to decide his controlling officers.

4. Pen Picture by Reviewing Officer. Please comment (in about 100 words) on the overall qualities of the officer including area of strengths and his attitude towards weaker sections.

Shri. T.M. Sampath AO has been working with undersigned since more than 5 years. He is a chronic litigant in Hon’ble High Court & CAT.

In the case relating to Motor Car Advance CAT observed in its order that he has misled the dept. He is continuously showing defiant and refuses to obey order of the seniors. He use (sic) his knowledge of rules but in a revenge manner. So remark of present controlling officer for fruitful utilisation of his capabilities (column 5) is not justified.”

5. We would observe that the petitioner has been involved in a number of litigations with the authorities. There can be cases where an employee can have genuine grievance and concern. However, in the present case, the position is rather different, for two High Courts’ decisions record and observe that the petitioner was a chronic litigant, who has been spending more time in the corridors of the Tribunal and the High Court and has embroiled his department in several litigations. LPA No. 906/2011 decided

on 8th November, 2011 records as under:-

“3. Rather than remand the matter before the learned Single Judge to have a re-look at the locus standi of the appellant to maintain the writ petition, we would simply highlight that the appellant is a disgruntled employee of R-2 and is a habitual and chronic litigant, having lost at every stage on every issue which he agitated against R-2. He has embroiled R-2 in 14 writ petitions being W.P.(C) No.7662/2002, W.P.(C) No.4385/2003, W.P.(C) No.6972/2003, W.P.(C) No.488/2004, W.P.(C) No.2220/2005, W.P.(C) No.3629/2005, W.P.(C) No.14074/2006, W.P.(C) No.2644/2007, W.P.(C) No.5981/2007, W.P.(C) No.7745/2008, W.P.(C) No.186/2009, (which two petitions were transferred to the Central Administrative Tribunal for adjudication) W.P.(C) No.7509/2009, W.P.(C) No.8052/2009, W.P.(C) No.8645/2009, W.P.(C) No.9083/2009 and W.P.(C) No.9099/2009. Besides, he has litigated 10 times against his ex-employer before the Central Administrative Tribunal. Twice as per W.P.(C) No. 7745/2008 and W.P.(C) No.186/2009 which were transferred to the Central Administrative Tribunal for adjudication and O.A.No.639/2008, O.A.No.2037/2008, O.A.No.2141/2008, O.A.No.2504/2008, O.A.No.58/2009, O.A.No.85/2009, O.A.No.251/2009, O.A.No.405/2009 and O.A.No.599/2009.

4. Deciding O.A.No.639/2008 the principal bench of the Central Administrative Tribunal as per its decision dated 28.7.2008 observed that the appellant evidences chronic litigious behaviour as also paranoiac behaviour.

5. We note that the appellant had raised frivolous service related disputes and lost successively. There is enough evidence that the appellant is litigating with malice and not pro-bono and thus we hold that the

appellant is not entitled to maintain an action praying that a writ of quo warranto be issued qua the appointment of R-3 as Director (Finance) by R-2. We dismiss the appeal but refrain from imposing any cost.”

6. Similarly, the decision dated 8th March, 2013 disposing of W.P. (C) No. 5124/2012, ***T.M. Sampath Vs. UOI & Ors.*** records that there were as many as 16 writ petitions in the High Court and 9 litigations before the Tribunal. The subject matter of this writ petition also pertained to average grading in the APAR for the period between April, 2003 to September, 2003.

7. The Tribunal, in the impugned order dated 29th July, 2016 has referred to the contention raised that the Reviewing Officer was biased, as the petitioner had made a written complaint to the Central Vigilance Commission against involvement of the Reviewing Officer in the recruitment scam and other illegal activities. The Tribunal, in our opinion, has rightly rejected the said contention as there was no evidence or substance to support the said contention. There is nothing on record to show and establish that the Central Vigilance Commission had found any substance in the allegation, or even asked for comments from the officer concerned. Similarly, the Tribunal has rejected the contention that the observations of the Reviewing Officer dated 31st July, 2014 were ante dated.

The said contention is clearly flawed and cannot be accepted as it is only based and predicated on one single argument that there was some delay in disclosing the grading in the APAR. Lastly, the contention that R.K. Jain was not competent to review his grading does not merit consideration, for R.K. Jain was the officer supervising the work of Mr. O.P. Singh Kushwah, Superintending Engineer under whom the petitioner was directly working.

8. In view of the aforesaid, the writ petition has no merit and is accordingly dismissed. There would be no order as to costs.

CHANDER SHEKHAR, J.

SANJIV KHANNA, J.

JANUARY 25th, 2017
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