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

+ **W.P.(C) 8365/2016 & CM No.34645/2016**

Date of Decision : 8th February, 2017

**CHAIRMAN & MANAGING DIRECTOR BHARAT SANCHAR
NIGAM LIMITED AND ORS** Petitioners

Through: Mr. Suryakant Singla & Mr. Mayank
Dhawan, Advocates

versus

RAJ RANI CHOUDHARY Respondent

Through: Mr. Ranbir Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

Having heard learned counsel for the petitioners, we are not inclined to interfere with the impugned order dated 10.5.2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, whereby OA No.547/2013 filed by Raj Rani Choudhary has been allowed, directing that the grading 'average' and 'below average' awarded in the Annual Confidential Reports (ACR) by the Reporting and the Reviewing Officer respectively for the year 2008-2009 be expunged. The petitioners were further directed to decide and finalise the respondent's case for grant of second time-bound promotion from the date she became entitled by treating her eligible for appropriate benchmark grading in her ACRs for the year

2008-2009. The respondent, it has been held, would be entitled to all consequential benefits.

2. On the last date of hearing, we had asked learned counsel for the petitioners/BSNL to produce before us copy of the respondent's ACRs for the years 2000 to 2007. The said ACRs have been produced before us. It is accepted and admitted that in the said ACRs, the respondent has been throughout graded as "Very Good."

3. Alluding to the factual matrix, the respondent joined the Department of Telecom on 09.01.1972 as a Junior Draftsman. With effect from 02.02.1980 the post of Junior Draftsman was re-designated as Architect Assistant Grade II. Thereafter, the respondent was promoted to the post of Architect Assistant Grade I on 12.02.1992. The respondent was temporarily promoted to the post of Assistant Engineer (Architecture) [previously designated as Assistant Architect] on three occasions; on 9.5.2002, 11.1.2005 and 30.3.2007 for short spells of time. Both the posts of Architect Assistant Grade I and Architect Assistant Grade II were merged and re-designated as J.T.O. (Architecture) and the respondent was subsequently posted as J.T.O. (Architecture) on 30.3.2007.

4. By the order dated 25.10.2007, the respondent was promoted to the

post of Assistant Engineer(Architecture) and posted at Sunder Nagar, Himachal Pradesh, but she refused to join the said temporary posting and continued to work at her substantive post of J.T.O.(Architecture) on medical and personal grounds. Her request to remain posted as J.T.O. (Architecture) was accepted by the competent authority. The respondent was granted regular promotion to the post of Assistant Engineer (Architecture) vide order dated 19.6.2008 and transferred to Chandigarh, which the respondent refused unconditionally for personal and medical grounds. The authorities had thereupon cancelled the Transfer Order vide order dated 8.8.2008. The respondent was transferred to be posted at Jaipur vide order dated 18.8.2009. She joined the said posting at Jaipur on 21.8.2009.

5. The respondent, in the meantime, had become entitled to first time-bound upgradation in the IDA pay-scale with effect from 1.10.2004. The respondent had cleared the First Time-Bound Upgradation Course on the first attempt, as is accepted vide order dated 24.1.2009. The respondent thereafter became eligible to get second time-bound upgradation in the IDA pay scale, the application for which was forwarded for approval on 18.1.2010 by the Architecture, BSNL, Jaipur to the competent authority.

6. The grant of second time-bound upgradation was rejected in view of

the grading given to the respondent in the ACR for the period 2008-2009.

7. On coming to know of the said grading, the respondent had asked for a copy of the said ACR for the year 2008-2009, and on the same being furnished, had submitted a representation dated 18.6.2010 to the Principal General Manager (Architecture), BSNL, New Delhi for review or upgradation of the said ACR. Another representation dated 2.8.2010 was also made by the respondent.

8. The Chief Architecture, BSNL, New Delhi, rejected the representations by a non-speaking order dated 4.9.2010. The respondent preferred an appeal dated 20.9.2010 to the Principal General Manager (Architecture), BSNL, New Delhi. In the meanwhile, the respondent superannuated from service on 28.2.2011. The respondent, in the given circumstances, sent a reminder dated 5.7.2011. By the letter dated 29.07.2011 the D.G.M. (Architecture), BSNL, New Delhi, informed the respondent that there was no provision for moving an appeal.

9. In the aforesaid circumstances, the respondent had filed OA No.3795/2011, which was disposed of vide order dated 2.7.2012, with a direction to the Chief Architect, BSNL, New Delhi to take into consideration the grounds and pleas taken by the respondent and pass a

quasi judicial order within a period of four weeks.

10. The chief Architecture, New Delhi, vide order dated 8.8.2012, rejected the representation, recording as under:

“Smt. Raj Rani Choudhary, JTO (Arch) Rtd., in her reply dtd. 02.08.2010 has responded to the points raised vide this office letter, referred above, by reiterating that “I have performed all the office work assigned to me by my reporting/reviewing and other superior officers with their satisfaction”. She has neither explained her performance or work done during the period under review nor provided any material evidence in support of her claim. She has not been able to substantiate her claim of good performance through her original application also. In fact on perusal of “Part II SELF APPRISAL” of her ACR for the said period under column 2 & 3 meant for ‘tasks & targets’ and ‘work done’ no details have been entered and have been left mostly blank by her. Accordingly her claim of good performance during the said period falls short on conviction of substance.

After due consideration of the case, having taken the views of reviewing authority into consideration (Reporting authority having since retired) and In accordance with the directions issued by G.L. Deptt. Of Personal & Training O.M. No.21011/1/2011-Estt.A, dt. 13th April, 2010 & O.M. No.21011/1/2005-Estt.A(Pt.II), dt.19th May, 2011 the undersigned is constrained not to expunge the grading of the said ACR in absence of evidence and sufficient reason.

11. The Tribunal examined the validity of the said order and referred to the relevant portions of the ACRs, including self-appraisal and the comments of the Reporting and the Reviewing Officer, which read as under:

***“PART II SELF APPRAISAL
(To be filled in by the Officer reported upon)***

1. *Academic and professional achievement during the year including degree obtained, books/article published etc. The training Course attended during the course of his reporting year need also be mentioned.*

Successfully completed 2 week E1 to E2 training upgradation course in first attempt under Executive Promotion Policy which help to improve company work.

2. *Enumerate items of task and targets assigned to the officer for completion during the year/period from 1.4.2008 to 31.3.2009.*

Master plan A.L.T.T.C. GHAZIABAD (U.P.)

3. *Brief resume of the work done by the officer during the year period from 1.4.2008 to 31.3.2009 BRINGING out any special achievement gap furnish reasons. (The resume should not exceed 300 words).*
4. *Please state whether the annual return on immovable property within the prescribed calendar year was filed within the prescribed date i.e. 31st January or the year following the calendar year. If not, the date of filing the return should be given.*

Yes.

RESUME

During the period 1.4.2008 to 31.3.2009 I fulfill all assign duties. As I have to look administration work and also maintain Imprest. Preparing of newspaper bill & other site work. Above work done to the entire satisfaction of my superiors.

PART III ASSESSMENT OF REPORTING OFFICER

(a) Does the Reporting Officer agree with all that is recorded under part II by the Officer. If not enumerate precisely the extent of disagreement with the reasons thereof.

I partially agree as she had not been given any admin work and she just helped official in preparing A/C of imprest for a short period.

(b) General Comments on the results achieved and the quality of performance and application of knowledge delegated authority and conceptual and professional skill on the job.

Good.

2. Comment clearly and in unambiguous terms on the following attributes of the officer in relation to the performance:

(i) Commitment to the tasks assigned:

Committed.

(ii) Devotion to duty

Devoted

(iii) Human relations (his conduct with his colleagues, superiors and subordinates) and capacity to get work done.

Good.

(iv) Public relations

N.A.

(v) Intellectual honesty, creativity and innovative qualities

Intelligent.

(vi) Integrity

Beyond doubt.

2. A. Effectiveness in the Development and Protection of Scheduled Castes and/or Scheduled Tribes:

N.A.

(a) Attitude towards Scheduled Casts and/or Scheduled Tribes.

(b) Sensitivity to social justice.

(c) Ability to take quick and effective action to prevent and quell atrocities and ensure Justice to Scheduled Castes and/or Scheduled Tribes.

N.A.

(3). Please indicate if on any of the items in this part of Reporting Officer administered any written or oral warning or, counselling and how the officer reacted.

Nil.

4. Grading (Outstanding/Very Good/Good/Average/Below Average)

Average.

Sd/

KANCHAN LATA MAHAJAN

(Name in Block Letters)

Designation A.E. (Arch.)

Date 27.4.09

PART IV - REMARKS OF THE REVIEWING OFFICER

1. Length of service under the Reviewing Officer

08-09(one year)

2. Does the Reviewing Officer fully agree with the remarks of the Reporting Officer recorded in Part III of the Proforma? If he does not agree with any adverse remarks of the Reporting Officer, those remarks should be specifically mentioned for expunction or modification.

Yes. I agree (partially). However, I grade her "BELOW AVERAGE"

3. If the officer reported upon is member of a Scheduled Caste/Tribe please indicate specifically whether the attitude of the Reporting Officer in assessing the performance of the SC/ST officer has been fair and just.

N/A

4. Is the officer reported upon specially suited for a particular job? If so, nature and placement should be suggested.

She is suitable for manual tracing & drafting only.

5. Aptitude and potentials of the Officer reported upon and suggestion for possible lines of growth and development.

Nothing specifics.

Signature of the Reviewing Officer Sd/

Name in Block Letters

DIPANKAR SASMAL

SR.ARCHITECT II

B.S.N.L.NEW DELHI 23."

Date: 15/5-09

12. On a reading of the aforesaid columns, the Tribunal reached the following conclusion:-

"9. A perusal of the self appraisal of ACR of applicant's for the year 2008-09, reveals that the Reporting Officer has partially agreed with the self appraisal of the applicant, wherein she has

given positive remarks in respect of columns 1(b) and 2(i), (ii), (iii), (v) and (vi). The Reporting Officer, while partially agreeing with the applicant self appraisal, has mentioned that the applicant was not given any administrative work and simply helped officials in preparing accounts of imprest for a short period. It is not understandable that the Reporting Officer has nowhere mentioned whether in the given responsibility to the applicant she has failed to perform any duty entrusted to her or not and further the respondents have not disclosed any ground on which basis the Reporting Officer has partially agreed with the self appraisal furnished by the applicant. Not even it is disclosed even through the counter reply whether the applicant had ever failed to discharge her duties during the year 2008-09, which was entrusted to her. It is also not clear that if an employee had not been admittedly entrusted any work under the period in question how Reporting Officer can be justified in partially agreeing with the self appraisal of the applicant. It has not been indicated by the Reporting Officer that while grading the applicant "Average" what is the basis or material on the basis of which he has reached to the conclusion of grading the applicant as "Average" and he has failed to show any substantial reason from which it can be inferred about the deficiency of the applicant who has been graded "Average". In other way, the comments of the Reviewing Officer also suffer from the same lacuna as while judging/grading the applicant "below Average" the Reviewing Officer has also failed to give any justification in support thereof. By any stretch of imagination it cannot be revealed from any document that while grading "below Average" to the applicant. The Reviewing Officer was not in possession of any substantial material which helped him to come to the conclusion of grading the applicant as "below Average". Hence both the gradings "Average and below Average" given by the Reporting Officer as well as the Reviewing Officer respectively is without any basis and any conclusion which is lacking any basis has to be termed as arbitrary or illegal, having not putting on record and clarity and truthfulness. In this regard counsel for applicant vehemently argues that this act of the respondents smacks clearly of arbitrariness and illegality just to deprive the applicant from her legitimate claim of getting Second

Time Bound Promotion at the fag end of her service career just before retirement.”

13. Thereafter, the Tribunal has recorded the following findings:-

“15. In the instant OA neither the Reporting Officer nor the Reviewing Officer has dealt with the case of applicant in terms of the ethos of the above quoted paragraph held by the Hon’ble Apex Court. No where it can be seen or reflected by any action of the respondents that the applicant was ever issued any memos or ever warned to improve her working or any behavior thereof by the higher officers. Hence, it is not understandable how suddenly an officer at the verge of her retirement for a particular year has been graded “Average and below Average”. Being deprived of any opportunity of improvement in working, skill or behavior the applicant arbitrarily cannot be graded average or below average which is well settled principle of law by the various judgments pronounced by the Apex Court, such as Dev Dutt Vs. Union of India and Ors. (2008) 8 SCC 725 and Abhijit Ghosh Dastidar Vs. UOI & Ors (Civil Appeal No.6227/2008). The same spirit and ethos is also held by the Hon’ble Apex Court in the case of S.Ramachandra Raju Vs. State of Orissa (1994 (supp (3) SCC 424), wherein also the Hon’ble Apex Court dealt and explained about the scope, object and proper mode of writing of ACRs. On the issue of rejection of a representation against the adverse entry has been dealt with by the Hon’ble Apex Court in the case of Union of India and Ors. Vs. E.G. Nambudiri and Ors. (AIR 1991 SC 1216), in which it has been observed as follows:-

“10. There is no dispute that there is no rule or administrative order for recording reasons in rejecting a representation. In the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a Government servant against the adverse entries the competent authority is not under any obligation to record reason. But the competent authority has no licence to act arbitrarily, he must act in a fair and just manner. He is required to consider the questions raised by the Government servant and examine the same, in the light of the comments made by the office awarding

the adverse entries and the officer counter-signing the same. If the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons. In the absence of any statutory or administrative provision requiring the competent authority to record reasons or to communicate reasons, no exception can be taken to the order rejecting representation merely on the ground of absence of reasons. No order of an administrative authority communicating its decision is rendered illegal on the ground of absence of reasons *ex facie* and it is not open to the court to interfere with such orders merely on the ground of absence of any reasons. However, it does not mean that the administrative authority is at liberty to pass orders without there being any reasons for the same. In governmental functioning before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion. If the order as communicated to the Government servant rejecting the representation does not contain any reasons, the order cannot be held to be bad in law. If such an order is challenged in a court of law it is always open to the competent authority to place the reasons before the Court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence *aliunde* before the court to justify its action.”

16. Taking into consideration the facts and circumstances of the instant OA, we feel and found that the grading awarded to the applicant by the Reporting Officer as well as the Reviewing Officer as “Average and below Average” in the applicant’s ACR for the year 2008-09 is not based on any material facts and circumstances and obviously suffers from arbitrariness and perverseness.”

14. We are in agreement with the findings recorded by the Tribunal. As noticed above, the respondent was throughout graded as “Very Good” in the ACRs for the years 2000 to 2007. The ACR for the year 2008-2009 is the

single odd ACR, giving her below the average grading. We have also referred to the history and service profile of the respondent and that she had foregone her promotion as Assistant Engineer (Architecture).

15. We have quoted the remarks of the Reporting Officer as well as the Reviewing Officer, which we would observe are perfunctory and cryptic. There is no indication or even a slightest reflection as to why the grading of “average” and “below average” was given by the Reporting and Reviewing Officer, notwithstanding, to the fact that in the earlier years from 2000 to 2007 the respondent had been constantly graded as ‘Very Good’. The down-grading is significant and had the negative consequence of denying the second time bound upgradation. In this way the said grading had adverse and punitive effect. There is also divergence if not dichotomy between average / below average appraisal and grant of promotion to the post of Assistant Engineer (Architecture), in 2008, which the respondent had refused to accept for medical and personal grounds. It is not one aspect alone but several facets which compel us to accept that the impugned order passed by the Tribunal is just, fair and equitable.

16. In these circumstances, we are not inclined to issue notice in this writ petition and the same along with all pending application is dismissed. There

would be no order as to costs.

17. Learned counsel for the petitioners, at this stage, submits that time may be granted to implement the order of the Tribunal dated 10.05.2016. We grant the petitioners six weeks' time to implement the order from the date a copy of this order is received by them.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

FEBRUARY 08, 2017/tp