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

+ W.P.(C) 11953/2018 and CM APPL. 46331/2018, 46333/2018

TUSHAR RANJAN MOHANTY Petitioner

Through: Petitioner-in-person.

versus

UNION OF INDIA Respondent

Through: Mr. Anurag Ahluwalia, CGSC with
Mr. B.K. Mishra, Dy. Director,
Ministry of Statistics & PI.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **13.12.2018**

1. We have heard the petitioner and Mr. Ahluwalia, Central Government Standing Counsel for Union of India.
2. The grievance of the petitioner relates to the downgrading of the assessment in respect of his Annual Performance Appraisal Report (in short 'APAR') for the period 01.08.2012 to 31.10.2012. The Reporting Officer had awarded 7.86 marks out of 10, which translates to "very good" grading. However, his grading was reduced by Professor T.C.A. Anant, who acted as the Accepting Officer. Pertinently, the petitioner was graded as "Outstanding" by the Reporting Officer for the immediately succeeding period i.e. 01.11.2012 to 31.03.2013, and Prof. T.C.A. Anant had reduced the same to "Good" (by reducing the marks awarded to 5 out of 10). The identical note recorded by Prof. T.C.A. Anant while acting as the

“Accepting Authority” reads as follows:-

“I am afraid, I do not readily agree with the assessment of the reporting officers. Though fairly intelligent, Shri Mohanty’s contribution in his assigned objectives was ordinary. At times he was prone to whimsical functioning, and this impeded the organizational goals and the team-work.

His adhoc ways, in routine works, were visible in the printing of TPP calendars, when he did not adhere to the quantum approved by the competent level and caused excess number to be printed.

Shri Mohanty’s unprofessional conduct, when, in full view of the participants, he indulged in loud exchanges with officers of his unit, caused grave embarrassment in the meeting of heads of national statistical offices of BRICS countries.

The releases and publications in RPU are a result of the set of officers and systems in place, including upto the level of DG; Shri Mohanty’s contribution therein was about ordinary.

Having regard to his work output, behavioural competency and functional competency, I would rate him as a ‘good’ officer, 5 on a scale of 0-10.”

3. The petitioner preferred two different Original Applications before the Central Administrative Tribunal, Principal Bench, New Delhi (in short ‘Tribunal’) in respect of the aforesaid two APARs. Whereas, OA No.2144/2014 was preferred in respect of the APAR recorded for the period of 01.08.2012 to 31.10.2012—with which we are concerned, OA No.2252/2014 was preferred in respect of the APAR recorded for the period 01.11.2012 to 04.02.2013. We may observe that in respect of the grading for the period 01.11.2012 to 04.02.2013, after a couple of rounds, the matter stands remanded back to the Competent Authority in terms of the orders dated 09.10.2018 passed by the Tribunal. In terms of the said order, the Competent Authority has been asked to give personal hearing to the petitioner and to thereafter take a decision on the petitioner’s grading for the said period. That exercise is yet to take place.

4. So far as the period 01.08.2012 to 31.10.2012 is concerned, this Court vide order dated 30.09.2015 passed in WP(C) 9368/2015 directed the Hon'ble Minister to consider the representation of the petitioner and to decide the matter within a period of one month. Consequently, the respondents passed the order dated 12.11.2015 rejecting his representation for upgradation of his APAR grading for the period 01.08.2012 to 31.10.2012. The petitioner assailed that order before the Tribunal in OA No.100/4281/2015 and the same has been dismissed on 09.10.2018, which has resulted in the filing of the present petition.

5. While passing the order dated 30.09.2015 in W.P.(C) 9368/2015 this Court had, *inter alia*, observed as follows:-

“6. We are informed that a former General Chief of the Armed Forces is the concerned Minister in the present case. In our view, the concerned Minister during his career would have had many opportunities to record the ACRs and also would have faced such situations as detailed in the order of the Tribunal.

7. We have full faith that the Hon'ble Minister would act in a fair and just manner. We also have no hesitation in saying that the Hon'ble Minister would apprise himself based on record and not any hearsay information from any quarters. The Hon'ble Minister would consider the material in his right perspective, grant a personal hearing to the petitioner and thereafter decide the matter expeditiously and in accordance with law as the petitioner is due for promotion in the month of February, 2016.

*8. **The Hon'ble Minister shall also consider the representation, more particularly the fact that Sh. T.S.A. Anant has been shown as the Accepting Authority instead of Reviewing Authority and also clubbing of two ACRs of the year 2012 & 2013. We request the Minister to decide the matter within the period of one month from receipt of the order.***

9. With these directions, the writ petition is disposed of.”

(emphasis supplied)

6. The order dated 12.11.2015 reproduces the Minutes recorded by the

Hon'ble Minister after grant of personal hearing to the petitioner on 09.11.2015, which read as follows:-

“1. Reference notes ante.

2. I afforded opportunity to Shri T.R.Mohanty to interact with me and heard his averments. I have also gone through all the notings and records. I am not convinced by the averments made by Shri T.R.Mohanty and do not find any injustice to him based on rules and records available.”

7. The first submission of the petitioner is that the Minutes recorded by Hon'ble Minister do not reflect upon consideration of his submissions which find mention in the order dated 30.09.2015 passed in WP(C) 9368/2015. The petitioner has submitted that Prof. T.C.A. Anant acted as the “Accepting Officer”, though he was the “Reviewing Officer”, as disclosed in the relevant APAR form itself. The “Accepting Officer”, over and above the “Reviewing Officer”, was the then Hon'ble Minister concerned Shri Srikanta Kumar Jena—as disclosed in the relevant APAR for itself.

8. The petitioner has submitted that by acting as the “Accepting Officer” Prof. T.C.A. Anant—who was in fact the “Reviewing Officer”, prevented the further consideration of the APAR by the Hon'ble Minister at the relevant point of time viz. Shri Srikant Kumar Jena. His submission is that Shri Srikanta Kumar Jena, the then Hon'ble Minister, had seen the work of the petitioner, and the mere consideration of the petitioner's representation, in terms of the order dated 30.09.2015, by the then Hon'ble Minister could not have remedied the prejudice suffered by the petitioner, since the Hon'ble Minister, who considered the representation in terms of the order dated 30.09.2015, had, in fact, not seen the work of the petitioner.

9. The further submission of the petitioner is that even though he had

squarely levelled allegations of personal *mala fide* against Prof. T.C.A. Anant in the representation submitted by him for consideration of the Hon'ble Minister, he could not bring to the notice of the Hon'ble Minister the judicial pronouncement—upholding the allegations of personal *mala fides* against Prof. T.C.A. Anant, due to the fact that the said findings were returned at a later point of time vide order dated 27.11.2015 passed in OA No.1973/2014, whereas the personal hearing had already been held on 09.11.2015. In the said order the Tribunal observed in para 20 and 21 as follows:-

“20. The issue of mala fide in the instant case is not to be decided on the basis of the pleadings on mala fide alone but in consonance with other issues raised in this OA.

21. We find that though earlier we have held, as stated above, that the allegation of mala fide was held not sustainable in his earlier OA No.2252/2014 decided on 25.08.2015 on the sole ground that he had been an intervener in OA No.1653/2010 decided on 20.10.2011 (S.K. Das versus UOI), which was set aside by the Hon'ble High Court in WP(C) No.8124/2011 decided on 17.09.2013. However, in the instant case, we are influenced by two other factors. In the first place, we find that there is a departure in showing the APAR to the applicant as per the procedure prescribed. In the second place, we find that no recordable warning has been delivered to the applicant. As we have already discussed in respect of Issue No.1 above that the purpose of recording APAR is to bring about improvement in the performance of an employee in whose respect, the APAR is being recorded, therefore, wherever the employee concerned is performing below par, he ought to be advised on the subject. We have also seen in respect of Issue No.4 that such advice had been missing. We have further taken note in respect of both in not showing the APAR to the applicant and non-delivering of any advisory to improve upon his performance, and viewed that allegations of the applicant regarding his role in exposing the acts of corruption in the department and in opposing other actions of the respondent no.2 point towards creation of a bias against the

applicant. Whenever something is done out of course and sufficient explanation is not forthcoming, it is an indication of mala fide. Therefore, in the instant case also, we find the mala fide inferred from the unbroken chain of incidents.”

(emphasis supplied)

10. It has, however, been pointed out by the petitioner himself that the respondents have challenged that order of the Tribunal before this Court by preferring WP(C) 10816/2016, which is still pending consideration. He further submits that the identical adverse remarks for both the periods i.e. 01.08.2012 to 31.10.2012 and 01.11.2012 to 04.02.2013—in respect of the same incident could not be granted, as these are separate periods and should have been assessed independently.

11. In the light of the aforesaid, we are of the considered view that to be fair to the petitioner, it would be appropriate to direct the concerned Hon’ble Minister to have a fresh look, and without being influenced by the earlier consideration, at the petitioner’s representation, keeping in light the aforesaid circumstances, particularly, the fact that the Tribunal has returned a finding of *mala fide* against Prof. T.C.A. Anant in relation to his assessment of the petitioner for the period November, 2011 to March, 2012 i.e. for the period in close proximity with and a little before the period 01.08.2012 to 31.10.2012. The grounds on which the writ petition had been preferred before this Court—along with the relevant material, should also be considered by the Hon’ble Minister. He should also specifically consider the aspects taken note of in the order dated 30.11.2015, which we have elaborated and explained hereinabove.

12. As to why Prof. T.C.A. Anant acted as the “Accepting Authority” when, in fact, he was only the “Reviewing Authority” should be examined,

and it should be assessed whether he did so, so as to prevent reversal of his grading given to the petitioner by the “Accepting Authority” viz. the Minister Shri Srikanta Kumar Jena. All the relevant records should be placed before the Hon’ble Minister at the time of consideration.

13. Since the petitioner’s representation in respect of the subsequent period i.e. 01.11.2012 to 04.02.2013 is also pending consideration before the Competent Authority i.e. the Hon’ble Minister, the aforesaid aspects also be taken into consideration by the Hon’ble Minister while examining the petitioner’s case for the said period as well. Accordingly, we direct that the petitioner may be granted personal hearing by the Hon’ble Minister, and that during the personal hearing, the Hon’ble Minister, while considering the APAR for the period 01.11.2012 to 04.02.2013, may also grant personal hearing to the petitioner for reconsideration of his APAR for the period from 01.08.2012 to 31.10.2012. For that purpose, the petitioner may also submit a fresh representation within two weeks. A copy of this order should also be placed before the Hon’ble Minister for consideration of the matter.

14. The petition stands disposed of in the above terms.

VIPIN SANGHI, J

A. K. CHAWLA, J

DECEMBER 13, 2018

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