

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

Date of Order : April 5, 2018

+ **W.P.(C) 11893/2015 & CM No. 33490/2016**

ALOK TRIPATHI Petitioner

Through: Mr. A K Bhardwaj, Advocate
with petitioner in person

versus

COMPETITION COMMISSION OF INDIA & ORS

..... Respondents

Through: Mr. Pallav Saxena with Ms. Bindu
Das, Advocate

+ **W.P.(C) 10099/2017**

ALOK TRIPATHI Petitioner

Through: Mr. A K Bhardwaj, Advocate
with petitioner in person

versus

COMPETITION COMMISSION OF INDIA & ANR.

...Respondents

Through: Mr. Pallav Saxena with Ms. Bindu
Das, Advocates

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

% **(ORAL)**

1. With the consent of learned counsel for the parties, the above-captioned two petitions have been heard together and are being decided

by this common order.

2. In the above double-captioned petitions, petitioner is aggrieved by rejection of representations made against adverse Annual Performance Appraisal Reports (*hereinafter referred to as 'APAR'*), for the period from 1.4.2013 to 5.12.2013 ; 1.4.2014 to 31.3.2015 and 1.4.2015 to 22.7.2015. Petitioner has been given adverse grading for the aforesaid period.

3. In the above captioned first petition, the challenge is to the Minutes of the Meeting of 17.3.2015 of respondent-Commission. Infact, order of 12.5.2015 (*annexed as Annexure R-2 along with the counter affidavit*) in the above-captioned first petition conveys rejection of petitioner's representation against adverse APARs for the period from 1.4.2013 to 5.12.2013.

4. In the above captioned second petition, the challenge is to order of 21.7.2016 whereby petitioner's representation against adverse APAR for the period from 1.4.2014 to 31.3.2015 and for the period from 1.4.2015 to 22.7.2015 stands rejected.

5. Learned counsel for petitioner submits that detailed representations were made by petitioner against adverse APARs wherein bias and *mala fides* have been alleged against *Shri R N Sahay*, Advisor in respondent-Commission. It is the submission of petitioner's counsel that the adverse APARs were conveyed to petitioner in September, 2016 and so, the adverse APARs are non-est in view of the Office Memorandum of 16.2.2009. It is vehemently submitted by learned counsel for petitioner that the Reporting Officer, Reviewing Authority and the Accepting Authority were very much party to rejection of petitioner's representation

and it is so evident from the Minutes of the Special Meeting of the Commission held on 16.3.2015. So, it is submitted that the impugned rejection of petitioner's representation by respondent-Commission cannot be sustained. Reliance is placed upon Office Memorandum of 13.4.2010 issued by Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, which highlights that the competent authority has to consider the representation against adverse APARs objectively and in a quasi-judicial manner on the basis of the material on record.

6. Learned counsel for petitioner vehemently submits that petitioner's APARs for the period prior and post, to the period in question have been outstanding and adverse APAR for the period in question has been given so that petitioner does not get promoted as a Director in respondent-Commission.

7. It is submitted by petitioner's counsel that impugned rejection does not deal with the stand taken by petitioner in the detailed representation and so, in view of the dictum of Division Bench of this Court in *A.K.S. Rathore Vs. National Small Industries Corporation (NSIC) Ltd. & Ors.*, 2014 SCC OnLine Del 2044, impugned order deserves to be quashed.

8. On the other hand, learned counsel for respondent-Commission maintains that impugned orders are valid and to submit so, attention of this Court is drawn to minutes of special meeting of respondent-Commission held on 16.3.2015 to point out that petitioner's Representation was duly considered by respondent-Commission and in the said meeting, the Reporting Officer, Reviewing Authority and the

Accepting Authority were not party to the rejection of petitioner's representation. The petitioner's allegations of mala fides and bias against second respondent are strongly refuted by learned counsel for respondent-Commission. It is submitted on behalf of respondent-Commission that the delay in conveying the adverse APARs to petitioner occurred as adverse APARs were misplaced in the Registry and since the delay was bona fide, therefore, the impugned APARs be not declared as non-est.

9. Attention of this Court is drawn by learned counsel for respondent-Commission to the counter affidavit filed to highlight that respondent No.2-*Shri R N Sahay* against whom the allegations of bias and mala fides are made, did not participate in the meeting when petitioner's representations were considered by respondent-Commission. So, it is submitted that these petitions ought to be dismissed.

10. Upon hearing and perusal of impugned orders, material on record and the decision cited, I find that the delay in conveying the impugned APARs stands explained, but it appears to be very strange that petitioner's APARs for the period prior and post to the period in question have been outstanding and only for the period in question, petitioner's performance has been adversely commented upon.

11. During the course of hearing, it was not disputed that petitioner's Reviewing Authority for the APARs in question was *Shri S L Bunker*, who was a Member of respondent-Commission. In such a situation, *Shri S L Bunker* ought not to have participated in the Special Meeting of respondent-Commission in which petitioner's representation was

considered and rejected. Although, it is asserted in the counter affidavit filed by respondent-Commission that respondent No.2 – *Shri S L Bunker* did not participate in the Meeting in which petitioner's representation against adverse APARs were rejected, but impugned rejection orders are silent on this vital aspect. Thus, the stand taken in the counter affidavit is an improvement as in the Special Meeting of respondent-Commission held on 16.3.2015 to consider petitioner's representation against adverse APARs, does not record that *Shri S L Bunker*, Member of respondent-Commission had recused. This is a fundamental defect which nullifies the impugned order. Another reason to quash the impugned orders is that the specific allegations of bias and *mala fides* levelled by petitioner in his representation against respondent no.2-*Shri S L Bunker* have not been dealt with in the impugned orders.

12. The Minutes of the Special Meeting of respondent-Commission held on 16.3.2015 reveal that petitioner's representations against adverse APARs have been dealt with in the following manner:-

“Additional Agenda Item No. 1: Note on representation from Shri Alok Tripathi, Joint Director regarding adverse remarks in his APAR (from HR Division) (Only for the Commission)

Decision :

“The Commission considered the agenda item. After considering the representation and all materials on record and keeping in mind the fact that each year's report is distinct and separate, the Commission decided to reject, the request of the officer for expunging adverse remarks.”

13. A bare perusal of the aforesaid decision on petitioner's representation reveals that the representations made by petitioner against adverse APARs has not been dealt with objectively and certainly not in a quasi-judicial manner. It is relevant to note that Office Memorandum of 13.4.2010 issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training requires a competent authority to objectively consider the representations against adverse APARs in a quasi-judicial manner. Non-compliance of aforesaid Memorandum of 13.4.2010 adversely impacts the impugned orders. Infact, impugned orders disclose non-application of mind to vital aspects, highlighted above.

14. *Sine-qua-non* of a quasi-judicial order is that it ought to be a speaking order. A Division Bench of this Court in *A.K.S. Rathore* (Supra) while dealing with somewhat similar case, where the previous and post ACRs were found to be good/outstanding, had directed re-consideration of the representation seeking up-gradation of ACRs.

15. In view of the above and in light of the decision in *A.K.S. Rathore* (Supra) impugned orders cannot be sustained and are hereby quashed with direction to respondent-Commission to consider petitioner's representation afresh in light of the Office Memorandum of 13.4.2010, within a period of six weeks from today and its fate be conveyed to petitioner within two weeks, so that petitioner may avail of the remedy as available in law, if need be. Respondent-Commission shall pass a speaking order on petitioner's representation.

16. With above directions, both the petitions and applications are

accordingly disposed of.

(SUNIL GAUR)
JUDGE

APRIL 05, 2018

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