IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-317-2019 (O&M)
Date of decision : 18.3.2019

Dr. Ashok Khemka .... **Petitioner**

Versus

State of Haryana and others .... **Respondents**

CORAM : HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Shreenath A. Khemka, Advocate for the petitioner.

Mr. D. S. Nalwa, Addl. AG, Haryana.

Mr. Satya Pal Jain, Addl. Solicitor General of India with
Ms. Neha Sharma, Advocate for respondent No. 2.

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KULDIP SINGH, J.

Petitioner-Dr. Ashok Khemka, who is an Indian Administrative Services (IAS) Officer and holding the rank of Principal Secretary to Government of Haryana, has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India for quashing of the impugned order dated 3.12.2018, (Annexure P-1) passed by Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short 'the Tribunal'). Petitioner has also prayed for expunging the adverse remarks and over all grading given by Accepting Authority under Section V-Acceptance of the PAR for the period from 8.4.2016 to 31.3.2017 (Annexure P-2) while restoring the over all grade of 9.92 as given by the Reviewing Authority.

Brief facts of the case are that applicant-petitioner is 1991 batch Indian Administrative Services Officer (IAS), presently posted as Principal Secretary, Department of Sports, Government of Haryana. Under All India Services (Performance Appraisal Report), Rule 2007 (for short 'the AIS (PAR) Rules, 2007, the Performance Appraisal Report (for short 'the PAR') is written for every member of All India Services for each financial year as per Schedule 2. There are general guidelines in the said schedule for filling the PAR for which time frame is given as under: -

Schedule 2, Form II, Guideline 9

Activity	*Cut-Off Dates*	*Time Frame*
Blank PAR form to be given to the officer reported upon	1st June	......
Filling in Section II by the officer reported upon	15th June	15 days
Appraisal by reporting authority	15th July	30 days
Appraisal by reviewing authority	15th August	30 days
Appraisal by accepting authority	**15th September**	**30 days**
Disclosure to the officer reported upon	30th September	15 days
Comments of the officer reported upon, if any, (if none, transmission of the PAR to the DOPT)	15th October	15 days

Activity	*Cut-Off Dates*	*Time Frame*
Forwarding of comments of the officer reported upon to the reviewing and the reporting authority by the accepting authority, in case the officer reported upon makes comments	31st October	15 days
Comments of reporting authority	15th November	15 days
Comments of reviewing authority	30th November	15 days
Comments of accepting authority/ PAR to be finalized and disclosed to him	**15th December**	**15 days**
Representation to the Referral Board by the officer reported upon	31st December	15 days
Forwarding of representation to the Referral Board along with the comments of reporting authority/reviewing authority and accepting authority	31st January	30 days.
Finalization by Referral Board if the officer reported upon represents against the decision of the Accepting Authority	28th February	30 days
Disclosure to the officer reported upon	15th March	15 days
End of entire PAR Process	31st March	15 days

(approximated on 30-days-to-a-month basis)

Applicant-petitioner claims that in his case for the PAR for the period from 8.4.2016 to 31.3.2017, Accepting Authority wrote the remarks on 31.12.2017 and took 184 days in doing the same. Further on the comments of applicant-petitioner under Rule 9 (2) of the AIS (PAR) Rules, 2007, no decision has been taken so far. Petitioner has also made a representation dated 1.6.2018 to the Chairperson of Referral Board stating that due to failure of the Accepting Authority to decide the representation within the prescribed time frame, the views of the Reviewing Authority has acquired the finally *ipso juris* and must be acted upon by expunging the appraisal of the Accepting Authority. However, no response has been received.

Applicant-petitioner moved the Tribunal by filing the Original Application No. 060/01058/2018, titled as *'Dr. Ashok Khemka vs. State of Haryana and another'* on 4.9.2018 claiming the following relief: -

> "(i) expunge the remarks and the overall grade recorded by the Accepting Authority in "Section V-Acceptance" of the Performance Appraisal Report for the period, 8th April 2016 to 31st March 2017 and restore the overall grade of 9.92 as per appraisal done by the Reviewing Authority;
>
> (ii) grant any other relief, which may be deemed to be just and proper; and
>
> (iii) allow he present O.A. with costs."

The plea of the applicant-petitioner did not find favour from the Tribunal which vide its order dated 3.12.2018 held that the Accepting Authority recorded the appraisal report on 31.12.2017 well within the time prescribed under relevant Rule 5 (1) of the AIS (PAR) Rules, 2007 and *para* 9.4 of the General Guidelines. Hence, the application was dismissed.

We have heard learned counsel for the parties and have carefully gone through the case file.

In this case, it is not disputed that for recording the PAR of the IAS Officer, certain time frame has been given as reproduced above. Before the Tribunal, the applicant-petitioner had claimed that the remarks by the

Accepting Authority were time barred and that since his representation under Rule 9 (7B) of the AIS (PAR) Rules, 2007 has not been decided, the views of the Reviewing Authority have become final. Undoubtedly, the statutory representation of the petitioner has not been decided by the Accepting Authority within the time frame. Under Rule 5 of the AIS (PAR) Rules, 2007, the Central Government can make such addition in the form or the cut off date as may be considered necessary or desirable. Therefore, the time frame as fixed for recording the PAR could be varied. The Tribunal has relied upon Rule 5 (1) of the AIS (PAR) Rules, 2007 and *para* 9.4 (1) of the General guidelines which provide that if the PAR relating to the financial year is not recorded by 31st December of the year in which financial year ended, no remarks shall be recorded thereafter, and the officer may be assessed on the basis of overall record and self-assessment of the year concerned, if he has submitted his self-assessment on time. The time frame is the technical aspect of the matter. However, before this Court, it has been argued that even on merits, the views of Accepting Authority are to be rejected.

We have carefully examined the PAR of the applicant-petitioner. It comes out that the applicant-petitioner at the relevant time was working as Principal Secretary to Government of Haryana, Science and Technology, Department. The Reporting Authority, Reviewing Authority and Accepting Authority are as under: -

Name and Designation		Period Worked	
Reporting Authority	Chief Secretary Haryana	08/04/16	31/3/2017
Reviewing Authority	Science and Technology Minister Haryana	23/07/2016	31/3/2017
Accepting Authority	Chief Minister Haryana	08/04/16	31/3/2017

The grading made by the Reporting Authority and Reviewing Authority are reproduced as under: -

Sr. No.		*Reporting Authority*	*Reviewing Authority*	*Initials of Reviewing Authority*
1	Attitude to work	8.1	10	(Anil Vij) Health Minister Haryana
2	Decision making ability	8.3	9.9	
3	Initiative	8.1	9.9	
4	Ability to inspire and motivate	8.2	10	
5	Strategic planning ability/ Innovativeness	8.4	9.8	
6	Coordination ability	8.2	9.9	
Overall Grading on attributes		8.22	9.92	

Sr. No.		*Reporting Authority*	*Reviewing Authority*	*Initials of Reviewing Authority*
1	Accomplishment of planned work	8.3	9.7	(Anil Vij) Health Minister Haryana
2	Quality of output	8.3	10	
3	Accomplishment of exceptional work/unforeseen tasks performed during the period	8.2	9.9	
Overall Grading on attributes		8.27	9.87	

Regarding integrity of the applicant-petitioner, it is recorded that ***"his integrity is beyond doubt"***. The Reporting Officer wrote the following comments on the overall qualities of the officer i.e., the present petitioner which are reproduced below: -

> "Sh. Khemka is an intelligent and experienced officer. The officer possesses a very good understanding of various Acts and Rules. He can examine an issue thread bare bringing out all the pros and cons. He possesses good command over the written and spoken word. Against the revised plan budget estimate of Rs. 26.62 crores of the Science and Technology department, Rs. 25.35 crores was spent. Five years backlog for Haryana Vigyan Ratna and Yuva Vigyan Ratna Awards was cleared by him. The officer fully understands the power of social media. He frequently tweets on diverse subjects, including matters not directly related to his department. He has a sympathetic attitude towards the Scheduled Castes and weaker sections of society."

The Reporting Authority (Minister concerned) wrote the following remarks about the qualities and strength of the officer i.e., the present petitioner which are reproduced below: -

> " Mr. Ashok Khemka is well-known in the county for effective professional integrity under very difficult circumstances. Despite being in a relatively unimportant post, Mr. Ashok Khemka has shown excellent achievements under severe constraints. He is very innovative and was the first to use WHATSAPP in court proceedings to effect service upon the respondent. By his personal example, Mr. Ashok Khemka inspires many young officers. He has immense potential which can be utilized better by the Government."

The Reporting Authority gave the overall grade on the scale of *1-10* as *9.92.* However, the Accepting Authority i.e., the Chief Minister differed with the opinion of the Reviewing Authority and recorded the following remarks: -

> "The Reviewing Authority has differed with the Reporting Authority but not given any reason for the same. At best, his comment that the officer *"has shown excellent achievements under sever constraints"* contained in para 3 of Section IV can be so construed. But this is not substantiated since neither the Reviewing Authority nor the officer himself has specified any constraint what to talk of *"sever constraints"*. I, therefore, think that report of the Reviewing Authority is slightly exaggerated."

We are of the considered view that the remarks recorded by the Accepting Authority are liable to be expunged. The Accepting Authority has recorded that Reviewing Authority has differed with the Reporting Authority but not given any reason for the same. However the same is found to be absolutely incorrect as the Reviewing Authority has given brief reasoning recording that the petitioner is well known in the country for effective professional integrity under very difficult circumstances. Even Accepting Authority has not made any adverse remarks regarding the integrity of officer.

Reference has been made to '*excellent achievements under severe constraints'*. It has also been mentioned that he is very innovative and has immense potential which can be utilized better by government. The Accepting Authority has recorded that the Reviewing Authority or the officer himself has not specified any constraint what to talk of *'severe constraints'*.

We are of the view that some of the matters are better understood than said in expressed words. The *severe constraints* in which an honest and upright officer works under the political leadership are well known. There are so many pulls and pressures and the officer has to work according to the rules despite all these pulls and pressures. The Reviewing Authority has recorded that the petitioner is well known in the country for effective professional integrity under very difficult circumstances.

We are of the view that a person of such professional integrity needs to be protected as the professional integrity in our political, social and administrative system is depleting very fast. Even the Reporting Authority i.e., the Chief Secretary, Haryana has recorded that petitioner is an intelligent and experienced officer. His integrity is beyond doubt. Therefore, an officer with such integrity many time has to face adverse circumstances which have been mentioned by the Reviewing Authority as *'constraints'*. Since number of such officers whose integrity is beyond doubt and who have professional integrity of higher standard is depleting very fast, therefore, they need protection from being damaged by recording adverse remarks against the record.

Consequently, we are of the considered view that leaving aside the time frame, the opinion of the Accepting Officer is liable to be expunged and so is the grading which is given 9.00 by the Accepting Authority. At the same time, we are of the view that the time frame fixed under the Rule for recording PAR is not a water tight compartment and there can be some flexibility in the same. Further it comes out that the Accepting Authority has not decided the representation of the petitioner so far.

For the reasons recorded above, the impugned order dated 3.12.2018, (Annexure P-1) passed by Central Administrative Tribunal, Chandigarh Bench, Chandigarh is set aside. The remarks of the Accepting Officer and the grading of 9.00 given by the Accepting Authority are hereby set aside and the opinion given by the Reviewing Authority is restored. The grading of 9.92 given by the Reviewing Authority is also restored and will prevail upon the grading given by the Reporting Authority.

Accordingly, the petition is allowed.

(RAJIV SHARMA)
JUDGE

(KULDIP SINGH)
JUDGE

18.3.2019
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Whether speaking / reasoned Yes
Whether Reportable: Yes