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

\+ **W.P.(C) 12153/2018 and C.M.No. 47173/2018**

TUSHAR RANJAN MOHANTY ..... Petitioner

Through: Petitioner in person.

versus

UNION OF INDIA AND ORS ..... Respondents

Through: Mr.R.V.Sinha and Mr. A.S. Singh, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **16.10.2019**

1. The present petition has been filed against an order dated 9th October, 2018 passed by the Central Administrative Tribunal (CAT), Principal Bench in O.A.No.2197/2007.

2. The Petitioner who is a direct recruit officer of the Indian Statistical Service of the 1981 batch, was serving as the Deputy Director General in the National Sample Survey Office (NSSO), Field Operation Division (FOD), Ajmer during 2015-16. He superannuated on 31st August, 2018.

3. The Petitioner states that he prepared his self-appraisal for the Annual Performance Appraisal Report ('APAR') for the period 1st April, 2015 to 28th December, 2015 on 31st December, 2015 and submitted it through his office at Ajmer. In support of this assertion, he has enclosed with the petition a copy of an e-mail sent by the NSSO (FOD, Ajmer) addressed to

the NSSO Headquarter at Delhi, confirming that it was indeed dispatched by speed post. Photocopies of the dispatch register and the details of speed post giving the ER No. 601493776 by EM dated 2nd January, 2016 have been enclosed with this e-mail.

4. The Petitioner states that all of a sudden he received an Office Memorandum (OM) dated 5th June, 2017 issued by the Ministry of Statistics and Programme Implementation, APAR Section, Government of India, stating that as per the communication of the FOD (HQ) dated 3rd March, 2017, no record of the APAR in respect of the Petitioner for the period 2015-16 was available with them. Reference was made to the OMs dated 23rd September, 1985 and 16th February, 2009 issued by the Department of Personnel and Training (DoPT), requiring the submission of APAR by 31st August of the year in which the financial year ended. It was accordingly recorded that in terms of the said OMs, the APAR of the Petitioner for period 2015-16 had become 'time barred'. It was further stated that if the APAR was received in the future in the Ministry, it would be treated as *non est* and will neither be accounted for nor will be placed in his APAR dossier.

5. Aggrieved by the aforementioned OM dated 5th June, 2017, the Petitioner filed O.A. No. 2197/2017 in the CAT. The CAT in the impugned order dated 9th October, referred to the aforementioned e-mail and then to para 16 and 21 of the reply filed by the Respondent, reiterating that a letter had been received by the Ministry from NSSO (FOD) (HQ) that the APAR of the Petitioner had not been received. On that basis, the CAT proceeded to dismiss the O.A., concluding that there was no infirmity in the impugned

OM dated 5th June, 2017.

6. When this petition was first heard by this Court on 14th November, 2018 while directing notice to issue, the Court required the Respondents to make a definite statement on the following aspects:

> "(1) Whether the Annual Performance Appraisal Report ('APAR') of the petitioner for the year 2015-16 (01.04.2015 to 28.12.2015) was submitted by the petitioner?
>
> (2) Whether the said APAR is available in the official record of Respondent No. l at Ajmer or at Delhi or both?
>
> (3) Whether the respondent's office dispatched the said APAR from Ajmer to Delhi, as claimed by the petitioner (reference may be made to page 75 of the record)?
>
> (4) Whether the APAR was received at Delhi office? The respondent should specifically refer to Receipt and Dispatch Register maintained in Delhi office in this regard.
>
> (5) Whether the APAR, if received, was actioned by the competent authorities, and if so, its outcome? And
>
> (6) If the APAR received was not actioned, the consequence thereof under the law?"

7. In response to the above order an affidavit has been filed by Respondent No. 1 where, *inter alia,* in response to the specific query by the Court whether the APAR was despatched from Ajmer to Delhi, reference is made to the two replies received from NSSO (FOD) Regional Office, Ajmer. The first is an e-mail dated 27th April, 2017, stating that no record is available about the submission of the APAR in the year 2015-16. However, after the OM dated 5th June, 2017 was issued, a subsequent e-mail dated 8th June,

2017 was admittedly received from the NSSO (FOD) Regional Office Ajmer stating that such APAR was indeed dispatched by speed post and enclosing a photocopy of the dispatch register as well as details of speed post, both of which have been referred to earlier. Nevertheless, it is still maintained by the Respondents that the APAR 'has not been received in the Respondent Ministry'.

8. The question that remains is whether the Petitioner, having complied with the requirements of having sent the APAR within time by speed post, proof of which is on record, can be made to suffer only because it has not been received in the Respondent Ministry?

9. This was the query the Court posed in its order dated 17th July, 2019, which reads as under:

> "Mr. Mohanty submits that he does not wish to file affidavit in terms of the last order. He states that he would proceed with the submissions on the basis of the counter-affidavit filed by the respondent No. l. He specifically places reliance on the email dated 8.6.2017 issued by the RO, Ajmer, relevant portion whereof is extracted in para 15 of the counter affidavit. On that basis Mr. Mohanty submits that since the petitioner, admittedly, did submit his self appraisal but the same apparently did not reach the Headquarters, the petitioner would be satisfied if the APAR for the period 2015-2016 is treated as non-reported and non-reporting certificate is issued to him in supersession of the CM dated 5.6.2017, which proceeds on the basis that the petitioner has not submitted his self-appraisal report. The respondents should take specific instructions in this regard."

10. Today Mr.Sinha, learned counsel for the Respondents states that his instructions are only to reiterate what is stated in the affidavit already filed

by Respondent No. 1 and there is nothing further to add in that regard.

11. The above submissions have been considered. The Court finds that Respondent No. 1 has not been able to dispute the fact that the Petitioner did send his APAR for the year 2015-16. Photocopies of the dispatch register and speed post details are already on record and this is even acknowledged by the Respondent No.1. A copy of the APAR has been enclosed in the present petition at page 185 and copies of this petition are already available with the Respondent.

12. The Court is of the considered opinion that, in the circumstances referred to above, the Petitioner's responsibility of sending the APAR in time should be taken to have been fulfilled. Consequently, the impugned OM dated 5th June, 2016 stating that the APAR would be treated as *non est* is hereby set aside. The Respondent would now proceed on the basis that it did receive the Petitioner's APAR for the year 2015-16, a copy of which is already enclosed with the petition, within time. The impugned order of the CAT dated 9th October, 2018 is accordingly set aside.

13. The petition is allowed in the above terms. The consequential orders be passed by the Respondents within a period of eight weeks. The application is also disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

OCTOBER 16, 2019/*mr*