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

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W.P.(C) 8711/2017

PRAKASH CHANDRA RAMAWAT

..... Petitioner

Through: Ms Anjali Gupta, Advocate.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Ms Bharathi Raju, CGSC for UOI/R-
1 & 2.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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17.10.2019

1. The Petitioner is aggrieved by the order dated 28th September, 2016 passed by the Central Administrative Tribunal ('CAT') in OA No. 3296/2016 filed by the Petitioner.

2. By the aforementioned application before the CAT, the Petitioner had challenged an order dated 19th April 2016, communicated to him by the Director General of Human Resources Development, Central Board of Excise & Customs, enclosing therewith the minutes of the Referral Board meeting, whereby his representation for upgradation of his Annual Performance Appraisal Report (APAR) for the periods from 15th June, 2009 to 29th December, 2009 and 30th December, 2009 to 31st March, 2010, was rejected.

3. The relevant facts are that prior to his superannuation on 31st August, 2012, the Petitioner was serving as Joint Commissioner. Admittedly, the Petitioner suffered a cerebral stroke on 28th December, 2008 and was under medical treatment for almost six months. He resumed his duties on 15th June, 2009. The periods under review are those commencing from the date that he resumed duties i.e. 15th June, 2009 to 29th December, 2009 ('first period') and 30th December, 2009 to 31st March, 2010 ('second period')

4. This Court has perused the copies of APARs for both the first and second periods and in particular, the notings of the Reporting Officer and thereafter, the Reviewing Officer.

5. Learned counsel for the Petitioner made a reference to the Office Memorandum ('OM') dated 23rd July, 2009 issued by the Department of Personnel & Training ('DoPT') on preparation and maintenance of APARs. Enclosed with the said OM as Annexure-1, are the 'guidelines regarding filling of the APAR, with numerical grading'. She referred to clause (ii) of these guidelines, which reads as under:

“(ii). It is expected that any grading of 1 or 2 (against work output or attributes or overall grade) would be adequately justified in the pen-picture by way of specific failures and similarly, any grade of 9 or 10 would be justified with respect to specific accomplishments. Grades of 1-2 or 9-10 are expected to be rare occurrences and hence the need to justify them. In awarding a numerical grade the reporting and reviewing authorities should rate the officer against a large population of his / her peers that may be currently working under them.”

6. It is urged that in the present case, for both periods, the Reporting Officer

gave the Petitioner the Grade of ‘1’ by merely referring to his medical condition and without indicating in the pen picture, specific instances of failure by the Petitioner to satisfactorily perform his duties. On the other hand, learned counsel for the Respondents referred to the fact that the Reporting Officer did make an assessment of the performance of the Petitioner and this assessment was concurred with by the Reviewing Officer. According to her, since this was a concurrent opinion of the Reviewing Officer, there was no requirement that the Reviewing Officer should also set out the reasons for giving the grading as 1 or 2.

7. The Court notices that as far as the first period i.e. 15th June, 2009 to 29th December, 2009 is concerned, in Section 3 titled ‘appraisal’, the Reporting Officer has made detailed comments. In particular, he notes as under:

“The officer after joining on the strength of medical fitness certificate, was allotted several charges, which were progressively reduced since he was officially fit and refused to proceed on leave, he had to be allotted some work. He failed in performing his basic supervisory duties. His contribution was nil, more specifically with regard to audit work allotted to him. He did not attend to any work and his entire contribution was limited to putting his signatures on three to four files belonging to technical and audit. In other areas of work allotted, even his signatures were missing.

8. In the pen-picture of the Reporting Officer, in column 9, while a reference was made to the Petitioner having met with an accident with impairment in his body and mental functioning, it is noted that despite the Reporting Officer’s advice, the Petitioner refused to take leave and, at the same time, “he was in no position to do justice to any work allotted to him”. Since the

Petitioner claimed to be fit, no medical board was constituted to test his fitness. The Reporting Officer then notes “I rate him totally unfit on the basis of his work output. In no area of work allotment made to him, he could make any contribution during the reporting period. His contribution has been zero”.

9. It is thus seen that in the first period, the Reporting Officer did advert to the specific duties allotted to the Petitioner and rated him on his work output. It would, therefore, not be correct to state that the grading of 1 given by the Reporting Officer did not have sufficient basis. As far as the Reviewing Officer is concerned, while he does state that since the Petitioner has not been keeping in good health, he would grade his performance as 2, it is seen that the Reviewing Officer has essentially concurred with the Reporting Officer and, whether the grade was 1 or 2, it would be in the range of a low grade, where reasons had to be given and those reasons are adequately brought out in the assessment made by the Reporting Officer, which has been concurred with by the Reviewing Officer.

10. Turning now to the second period, here again, it is seen that the Reporting Officer has made detailed comments on the Petitioner not being able to attend to the work allotted to him, and his contribution being virtually nil. It appears that even during his period, there was essentially no difference in the work performance of the Petitioner. Here again, the Reviewing Officer appears to have accepted the assessment of the Petitioner by the Reporting Officer.

11. The Referral Board appears to have examined the record carefully and come to the conclusion that the grading was justified.

12. Learned counsel for the Petitioner referred to paragraph 7 of the report of the Referral Board titled 'discussions and findings' and submitted that this was a mere reproduction of the comments of the Reporting and Review Officers. Having perused the said paragraph carefully, the Court is not able to agree with the above submission. The Referral Board does offer its own comments on the notings of the Reporting and Reviewing Officers and has expressed a view that "the Reporting Officer had judged the performance of the officer properly and with full justification". It cannot therefore be said that the exercise undertaken by the Referral Board was a mechanical one.

13. In the circumstances, the conclusion reached by the CAT in the impugned order does not call for any interference. The petition is dismissed. No costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

OCTOBER 17, 2019

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