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

+ **W.P.(C) 226/2021**

RAJESH PRATAP KANCHAN

..... Petitioner

Through: Mr. Kumar Rajesh Singh, Advocate.

versus

UNION OF INDIA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

% **04.05.2021**

[VIA VIDEO CONFERENCING]

1. This petition, under Article 226 of the Constitution of India, impugns the order dated 20th February, 2020 of Central Administrative Tribunal (CAT), Principal Bench, New Delhi, of dismissal of O.A. No. 494/2020 preferred by the petitioner, working as Assistant Director in Ministry of Commerce and Industry, impugning his annual confidential report (ACR) for the period 01st October, 2005 to 31st March, 2006.
2. This petition came up first before this Court on 11th January, 2021, when notice thereof was ordered to be issued without expressing any *prima facie* view also as to what was the perversity in the order of CAT.
3. Today, none appears for the respondents.
4. The counsel for the petitioner states that counter-affidavit directed to be filed has not been filed.
5. However, having perused the impugned order of CAT and being of

the *prima facie* view that there is no perversity in the impugned order of CAT and there is no need for a counter affidavit, we have heard the counsel for the petitioner.

6. The petitioner filed the O.A. aforesaid, pleading that (i) a charge sheet dated 13th February, 2007 was issued to the petitioner, of having remained absent from duty with effect from 27th March, 2006 to 14th May, 2016 and of having disobeyed the instructions of Director (Supplies), ST Directorate/Deputy Director-General (Supplies) and of the petitioner having submitted files unnecessarily on trivial matters, which could have been sorted out at his level and of the petitioner lacking application of mind, being indifferent to work and defiant and having not obeyed instructions; (ii) the petitioner, vide Memorandum dated 26th June, 2008, was for the first time informed of the adverse remarks i.e. “He is disobedient, defiant and refuses to do the work to an extent. Already the matter pertaining to ST case was reported to senior officers. Administration is ceased of the matter including absenting from duties unauthorisedly” in his ACR for the period 01st October, 2005 to 31st March, 2006; (iii) the petitioner made a representation dated 21st July, 2008, seeking that the adverse remarks should not be entered in the ACR; (iv) vide Memorandum dated 9th September, 2009, the representation of the petitioner was rejected; (v) the adverse remarks in the impugned ACR were relatable to the charge-sheet issued to the petitioner; (vi) that by an order dated 22nd August, 2016, the petitioner was exonerated from all the charges; (vii) ACR of the petitioner, for the period from 1st October, 2005 to 31st March, 2006, was communicated to the petitioner on 20th April, 2018, when the petitioner learnt that he had been graded ‘average’ including qua his integrity; and, (viii) after being so

exonerated, the petitioner, on 3rd May, 2018 sought review of his aforesaid ACR but which, vide memorandum dated 18th February, 2019, was only partly allowed, by modifying the entry against the column of integrity only.

7. CAT, vide the impugned order, has dismissed the O.A. aforesaid preferred by the petitioner, reasoning (i) that the petitioner did not submit his self-appraisal for the subject period from 1st October, 2005 to 31st March, 2006; (ii) that left with no alternative, the Reporting and the Reviewing Authorities proceeded to make their own assessment, recording that the petitioner, in spite of being reminded twice, had not furnished his self-appraisal and that the same reflected the attitude and behaviour of the petitioner; (iii) that against the column pertaining to integrity in the ACR, the Reporting and Reviewing Authorities had filled in ‘average’; (iv) however on representation of the petitioner, the said entry was changed to “not watched the officer’s work for sufficient time to form a definite judgment but nothing adverse has been reported to me about the officer”. (v) that with the aforesaid, the grievance of the petitioner with respect to his integrity having been marked as ‘average’, stood satisfied; (vi) that the plea of the petitioner was that his integrity must be specified in positive terms – the said argument could not be accepted, as unless the Reporting and the Reviewing Authorities had an occasion to observe, they could not be expected to form an opinion qua integrity; and, (vii) as far as the other aspects are concerned, the petitioner had himself to blame – once he did not submit his self-appraisal, despite two reminders, the Reporting and Reviewing Authorities cannot be expected to remain idle.

8. In view of the aforesaid reasoning in the order of CAT, we have enquired from counsel for the petitioner, under which law can the Reporting

and Reviewing Authorities be directed to grade the officer qua integrity, if had no occasion to judge the integrity of the officer. All that could be mentioned in such a situation is that there was nothing adverse against the officer.

9. The counsel for the petitioner has not been able to give any answer.

10. Though the counsel for the petitioner has not argued, but we have also considered, whether, once the Reporting and the Reviewing Authorities did not have occasion to assess the petitioner qua integrity, could they have had an occasion to assess the petitioner on other parameters in his ACR, and are of the opinion that though the Reporting and Reviewing Authorities, without having observed the officer/employee concerned for a sufficiently long time, may not be able to assess his/her integrity but can, within the said time, assess the other efficiency parameters of the officer/employee. We say so because the other parameters can be assessed from the records of past-performance, though not during the presence/tenure of the Reporting and Reviewing Authorities.

11. A perusal of the subject ACR of the petitioner shows the Reporting and the Reviewing Authorities to have marked the petitioner 'average' against (i) knowledge of sphere of work; (ii) attitude to work, (iii) responsiveness to indenters, suppliers and purchase officer/inspectors; and, (iv) supervisory ability.

12. The subject ACR also records, (i) "The officer reported has not filled out his resume in Part II and hence no comments. The officer reported was also reminded twice for furnishing resume. This reflects the attitude and behaviour of the officer"; (ii) "The officer's quality of performance in regard to alertness, initiative and thoroughness is average"; (iii) "His ability of

decision making, ability to weigh pros and cons of alternatives is average”; (iv) “His capacity and resourcefulness in handling unforeseen situations is just average never seen any willingness to take additional responsibility to new areas of work”; (v) “His capacity to motivate, to obtain willing support by own conduct to inspire confidence among staff is average”; (vi) “He has got average ability to communicate & to present arguments”; (vii) “His quality of relationship with superiors, colleagues and subordinates were not good but just average because of his behaviour in general. He has got average capacity to work as a member of a team and to promote team spirit and optimise the output of the team”; (viii) “The Officer is just average achieving co-ordination in formulation & implementation of tasks and programmes by different functionaries involved” and, (ix) “The officer reported is recommended for all short of training for improving his behaviour, attitude in order to improve the effectiveness and ability of the officer. He is also recommended for training in computerization training for procurement activity”.

13. We have enquired from the counsel for the petitioner, how the assessment of the petitioner by the Reporting and Reviewing Authorities on the aforesaid parameters, can be said to be affected by the outcome of the disciplinary proceedings initiated against the petitioner. The assessment on the said parameters is *de-hors* the adverse entry in the ‘remarks’ column. We cannot substitute ourselves for the Reporting and the Reviewing Authorities and cannot assess the petitioner for a period, more than 15 years prior hereto, and without any *mala fide* being attributed to the Reporting and the Reviewing Authorities, and which has not been done, there is no reason to interfere with the assessment of the performance of the petitioner for the

relevant period. Reference in this regard may be made to *State of Orissa Vs. Jugal Kishore Khatua* 1997 SCC (L&S) 1768, *M.V. Thimmaiah Vs. Union Public Service Commission* (2008) 2 SCC 119, *Vinod Kumar Vs. State of Haryana* (2013) 16 SCC 293, *Union Public Service Commission Vs. M. Sathiya Priya* (2018) 15 SCC 796, *Rajinder Singh Sehrawat Vs. Union of India* (2001) 93 DLT 417 (DB), *Union of India Vs. Tarseem Lal Verma* 2009 SCC OnLine Del 2467 (DB), *Raj Kumar Kapoor Vs. Union of India* 2012 SCC OnLine Del 123 (DB) [Special Leave Petition (SLP) (Civil) No. 15927/2012 preferred whereagainst dismissed on 4th July, 2012], *Manjit Rai Vs. Chairman-Cum-Managing Director* 2015 SCC OnLine Del 13124 (DB), *Pramod Ramjee Sahare Vs. Union of India* 2015 SCC OnLine Del 6394 (DB) [SLP (Civil) No. 12837/2015 preferred whereagainst was dismissed on 20th July, 2015] and *Jai Prakash Vs. Union of India* 2019 SCC OnLine Del 7326 (DB).

14. Though the petitioner has pleaded that the grading of the petitioner for earlier years was ‘very good’, but we are of the opinion that since the performance is required to be assessed periodically, merely because the performance for an earlier period is better, would not persuade the Court to find fault with the assessment of the performance of a subsequent period, if not as good as for the earlier period. Reference in this regard may be made to *D.S. Pandey Vs. Union of India* (2005) 121 DLT 177 (DB), *B.S. Grewal Vs. Union of India* MANU/DE/1511/2009 (DB) and *Sanatan Prasad Vs. High Court of Delhi* 2012 SCC OnLine Del 699 [SLP (Civil) No. 29289/2012 preferred whereagainst was dismissed on 2nd September, 2014].

15. We may also notice that there is no pleading whatsoever as to the ACRs/grading of the petitioner for the period subsequent to the subject

period.

16. No ground for interference with the impugned order of CAT is thus made out.

Dismissed.

RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

MAY 04, 2021

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