

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

% **Date of decision: 6th April, 2021**

+ **W.P.(C) 725/2020 & CM APPL.2120/2020**

KRISHAN KUMAR AGARWAL Petitioner

Through: Mr. Vishwendra Verma &
Ms. Shivali, Advocates.

Versus

DIRECTOR (HR) BHARAT SANCHAR NIGAM LIMITED AND
ORS. Respondents

Through: Mr. Rajat Bhalla, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J. (Oral)

1. The present Writ Petition impugns the order dated 18th November, 2019 passed by Central Administrative Tribunal (CAT), Principal Bench, New Delhi. Vide the said impugned order, the CAT has dismissed OA No.3337/2017 filed by the petitioner wherein the petitioner had sought setting aside of order/memo dated 26th February, 2017 passed by the respondents; the expunging of adverse remarks/comments given in his Annual Performance Appraisal Report (APAR) for the period of 2012-13 and setting aside the letter dated 14th July, 2017 by which the respondents have rejected the appeal of the petitioner on the point of maintainability.

2. The brief facts relevant for deciding the present petition are set out hereinafter.

3. The petitioner joined the Department of Telecommunications as Assistant Divisional Engineer Telephones in the year 1999. Thereafter, he became an employee of BSNL, respondent no.1. He was promoted to the post of Divisional Engineer Telephones in the year 2003; Director in the year 2008 and Deputy General Manager (DGM) in the year 2011. The petitioner was posted as DGM, Tezpur on 28.06.2011.

4. On 19th July, 2013, the petitioner was communicated the APAR for the period of 1st April, 2012 to 2nd February, 2013 by the respondents which was below the benchmark. The petitioner sent representations dated 26.09.2013 and 31.05.2016 to the respondents for upgrading of the overall grading and expunging the remarks/comments in APAR for the period of 1st April, 2012 to 2nd February, 2013, which was below the benchmark. The said representations of the petitioner were rejected by the respondents on 28th February, 2014 and 26th February, 2017 respectively. The petitioner filed an appeal before the Competent Authority; however, the same was rejected on the ground of maintainability. Aggrieved by the order/memo dated 26th February, 2017, the petitioner filed the OA before the CAT, from which the present petition arises.

5. The said OA before the CAT was contested by the respondents by filing counter affidavit. The grievance of the petitioner was that for the period in question i.e. 1st April, 2012 to 2nd February, 2013, the Reporting Authority gave 01 out of 10 numerical grading to the petitioner and in the *pen picture* of the petitioner, serious dissatisfaction was expressed about his

performance. Reviewing Authority agreed with the said assessment made by the Reporting Authority. The petitioner claims that the said assessment was without any basis and Reviewing Authority has accepted the remarks of the Reporting Authority in a mechanical manner without any application of mind.

6. The CAT, in the impugned order, observed that (i) the method of preparation of APARs is almost foolproof and the likes and dislikes of any superior officer are not permitted to be reflected in the APAR, as there are many safeguards provided in the system; (ii) further, when a representation is made by an employee to the Competent Authority, the Competent Authority satisfies himself by calling for remarks of the Reporting and the Reviewing Officers for the concerned period and it is only when he finds a serious error or when the employee concerned demonstrates that the assessment was not proper, that the Competent Authority can interfere; (iii) the petitioner did not even plead that there was any personal animosity on the part of the Reporting/Reviewing Officer against him; (iv) there is a finality to the order passed by the Competent Authority. The judgment relied upon by the petitioner before the CAT viz. ***Union Public Service Commission Vs. Hiranyalal Dev and Ors***, (1988) 2 SCC 242 was distinguished on the ground that in that case adverse remarks were not communicated to the officer concerned which is not the position in the present case; (v) the decisions of CAT relied upon by the petitioner in OA No.3897/2011 – ***Inspector (Exe.) Anil Kumar Vs. Union of India & Ors.***, decided on 22nd May, 2012 and order dated 20th September, 2018 passed by

Chandigarh Bench of CAT in OA No.418/2017 were also distinguished. Accordingly, CAT was pleased to dismiss the OA filed by the petitioner.

7. The present petition was filed by the petitioner impugning the above said order of CAT. The said petition was contested by the respondents by filing counter affidavit.

8. We have heard counsels for the parties. Ld. Counsel for the petitioner has contended that there was no basis whatsoever for the petitioner being granted 01 out of 10 in the overall grading for the period from 1st April, 2012 to 2nd February, 2013; the remarks given against various parameters in the Reporting Format are completely arbitrary and without any basis; the remark of “doubtful” against “Integrity” was without any material in support; the *pen picture* drawn by the Reporting Officer was completely inaccurate. The petitioner has also contended that the Reviewing Officer has mechanically agreed with the said assessment without applying his mind to the same. It is vehemently contended on behalf of the petitioner that throughout his long career, all his APARs have been ‘very good’ and therefore, the poor grading in the APAR for the period 1st April, 2012 to 2nd February, 2013 is an aberration and should be set aside.

9. The respondents along with their counter affidavit have filed all the APARs of the petitioner for the period 1999 to 2018 along with a table that summarizes APARs for each of the aforesaid years. A perusal of the aforesaid table would demonstrate that it is not just for the period in question that the performance of the petitioner has been graded below bar. Even, for the period 18.08.2011 to 31.03.2012, the petitioner has been given a grading of 02 out of 10 with the remarks that “the officer does not have

any knowledge in any field and highly indisciplined, corrupt and no dedication to work". Further, the *pen picture* for the said period states, that "the officer need to improve on all attributes". Further, the integrity was also noted as "Doubtful". It may be pertinent to mention here that the Reviewing Officers who reviewed the APAR of the petitioner for the said two periods are different. Further, the petitioner did not file any representation against the APAR for the said period of 18.08.2011 to 31.03.2012.

Even for the subsequent periods, though the grading given to the petitioner is 'good', but the *pen picture* in respect of the petitioner is not satisfactory. In this regard, reference may be made to the APARs of the petitioner from the period from 1st October, 2013 onwards. The contention of the petitioner that just because he has got 'good'/ 'very good' grading in the earlier and the subsequent periods, he cannot be given low grading in a particular period is without any merits. Every person can have ups and down in his performance and the performance of a person cannot be judged on the basis of his performance in earlier or later periods. In the present case, the grading given to the petitioner has been duly reviewed by a Reviewing Officer and thereafter, the Competent Authority has considered the report of both the Reporting Officer as well as the Reviewing Officer and found the same to be in order. Further, for the period from 1st April, 2012 to 31st March, 2013, two different Reporting Officers have given him low grading. As per the own case of the petitioner, his posting at Tezpur was tough and therefore the petitioner could not perform his work satisfactorily. APARs for both the aforesaid periods were duly disclosed to the petitioner and the

petitioner has duly submitted his representations against the said APARs, which have been duly considered. That being the position, there is hardly any scope of interference by the Court in the APARs of the Petitioner.

10. In light of the above, no case is made out for interference with the order of the CAT.

11. The present petition is dismissed.

AMIT BANSAL, J.

RAJIV SAHAI ENDLAW, J.

APRIL 06, 2021

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