

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Harish Tandon
And
The Hon'ble Justice Shampa Dutt (Paul)

WP.CT 5 of 2022

Praveen Kumar Thakur
Vs.
The Union of India and others.

For the Petitioner : Mr. Surojit Samanta,
Mr. Debojit Samanta,
Mr. Biswajit Samanta,
Ms. Sohini Samanta.

For the Respondents : Mr. Partha Ghosh,
Mr. Rahul Sarkar,
Ms. Bidisha Das.

Heard on : 22.06.2022.

Judgment on : 22nd June 2022.

The Court.

Untrammelled with the rhetoric of Mr. Surojit Samanta, learned Advocate appearing on behalf of the writ petitioner, while assailing the order of the tribunal where a substantial relief was granted in favour

of his client, we are constrained to say that the writ petitioner cannot be said to be a person aggrieved by such order.

Taking a clue from the stray observations made in case of **U.P. Jal Nigam and others vs. Prabhat Chandra Jain and others**, reported in **(1996) 3 SCC 363**, it is submitted that the moment the adverse remark in the Annual Confidential Report is not communicated to the employee, the same should be ignored.

On the conspectus of such observation, it is submitted by Mr. Samanta that the tribunal order is infirm to the extent that relegating the matter to the authority for reconsideration would amount to a matter to be dealt with by caesar to a caesar's wife. According to him, it would be a futile exercise to remit the matter to the authority for reconsideration of the objections/representations filed by the writ petitioner against the remarks made in the Annual Confidential Report and invite the same result, which was achieved and made patent in the impugned communication.

The matter pertains to the appointment at the promotional post and the process postulates three tiers; firstly, written examination, secondly, evaluation of service performance and thirdly, viva voce. According to the writ petitioner, he secured highest marks in the written test but has been denied an opportunity to enjoy the usufruct of the promotional post solely on the basis of the performance in service.

It is no doubt true that the remarks made in the Annual Confidential Report, be it adverse or favourable, must be communicated to the employee to achieve twin purposes; firstly, it would encourage the employee to excel his performance in the coming quarters and year, as the case may be and, secondly, it would provide

an opportunity to such employee to raise objection to such adverse remarks or the better remarks for revisitation and/or review of the evaluation done by the competent authority.

In **Dev Dutt vs. Union of India**, reported in **(2008) 2 SCC (L&S) 771**, the Apex Court has reiterated and resisted the law enunciated in **U.P. Jal Nigam and others (Supra)** and has further held that the infraction and/or violation of the mandates given in **U.P. Jal Nigam and others (Supra)** would offend the provisions contained under Article 14 of the Constitution of India.

The law expounded as herein above leaves no ambiguity in our mind that it is obligatory on the part of the employer while assessing the performance of an employee and making the remarks in the Annual Confidential Report, to communicate such remarks within a reasonable time and not to keep it secret or in a closed enclosure.

On the conspectus of the enunciation of law in this aspect, this Court finds that in an earlier round of litigation before the tribunal, the grievance raised therein relates to a non-consideration of the objections/representations filed against the remarks made in the Annual Confidential Report and a direction was passed upon the said authority to dispose of the same. Subsequently, the authority communicated the decision taken on the said objections/representations on 22nd February 2018 that the competent authority has reviewed the remarks/grading made in the Annual Confidential Report and found that the same to be good.

A further challenge was made to the tribunal and by the impugned order the tribunal in unequivocal terms held that such decision, as communicated, appears to be cryptic as the authority has not disclosed the reasons for assessing the remarks made in the

Annual Confidential Report nor any finding is returned on the points of objection raised in the objections/representations filed by the writ petitioner.

It is beyond cavil of doubt that the order passed by an authority lacking reasons is no order in the eye of law. The reasons are the heartbeat of the order and the person against whom such order is passed has a right to know the reasons. Though the Writ Court is not concerned with the decision of the authority but certainly the process by which such decision has been achieved and, therefore, the reason plays a very important role in dispensation of justice and deciding the cause by an appellate forum.

Precisely for such reason, the tribunal set aside the order of the authority and directed reconsideration bearing in mind the points, which have now projected by Mr. Samanta before us. While remitting the matter to the authority for a fresh decision, the tribunal in categorical and unequivocal terms indicated that the said authority shall not be trammled by its earlier decision and certainly makes an independent decision taking into account the points of objections raised therein.

We do not accept the contention of Mr. Samanta that the said authority would take the decision and make the order replicating the earlier one as the said authority cannot act in violation of the spirit of the order passed by the tribunal to expose itself susceptible to be dealt with under the Contempt of Courts Act. Once the tribunal has sufficiently taken care of such situation having a latent impression that the authority may replicate the earlier decision made on specific finding that the same cannot be a basis for taking an independent decision. Any decision taken in terms of the order will constitute a

fresh cause of action and the remedy is provided in the statute and, therefore, it cannot be said that the writ petitioner is rendered remediless.

We, thus, do not find any illegality and/or infirmity in the order of the tribunal. The writ petition is, thus, dismissed.

Since the writ petition is dismissed, the connected application is, accordingly, dismissed but for abandon precaution we made it clear that any facts pleaded in the said application shall not be deemed to have been decided by us on merit nor will create any hindrances in considering the same in any future litigation filed by the respective parties.

There shall, however, be no order as to costs.

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(Harish Tandon,J.)

(Shampa Dutt (Paul), J.)