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2022**

Ct. No. 04

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(Via Video Conference)

WP.CT 422 of 2013

**Dr. Partha Pratim Biswas
Vs.
The Union of India and others.**

**Mr. Achintya Kumar Banerjee,
Ms. Indumouli Banerjee.
... for the Petitioner.**

The order of the Central Administrative Tribunal, Calcutta Bench, passed on 13th April 2013 in OA 992 of 2011 is the subject matter of challenge in the instant writ petition.

The pivotal point urged before us is that the employee has an inchoate right to know the remarks and the evaluation done by the superior officer in the Annual Confidential Report and once such right is denied, it impinges all such actions of the authority taken subsequent thereto. In other words, it is contended that the employee has a right to know the evaluation of his performance noted in the Annual Confidential Report and, if dissatisfied, has a right to make a representation for revisitation of such grade, which has, in fact, been denied in the instant case.

It is undeniable that the petitioner was initially appointed as Insurance Medical Officer, Grade-II, in the Employee State Insurance Corporation on 6th April 1994. He was blessed with two promotions on 8th July 1998 and 8th July 2004 respectively and was promoted to function as Chief Medical Officer. At the time of dispute having arisen, the petitioner was posted in Employee State Insurance Corporation Hospital situated

in Joka, South 24-Parganas. While in service, the post in Deputy Medical Commissioner/Medical Superintendent /Director (Medical) in non-functional selection grade fell vacant and since the post, which the petitioner held at such relevant point of time, was a feeder post, the petitioner claimed to come within the zone of consideration.

Since the petitioner was ineligible to be considered for such promotional post because of the standard norms and parameters, he felt aggrieved and filed the tribunal application. According to the petitioner, his performance since advent of his joining in the organization was evaluated as 'good' and 'very good', except for the year 2006-2007, where the superior officer assessed his performance as 'average'.

The standard norms/parameters for bringing the candidate within the zone of consideration for such promotional post is that the candidate must get at least three 'good' and two 'very good' remarks preceding five years. There is no challenge to such parameter having set to bring the candidate within the zone of consideration.

What has been projected before the tribunal as well as before us is that it is a bounden duty of the organization to communicate the performance evaluated by a competent officer. At the relevant point of time there was no communication, which could be perceived from the findings returned by the tribunal in the impugned order. However, an application was made by the petitioner under Right to Information Act and the designated officer refused to divulge such information, as it is a privileged communication.

The decision was carried by the petitioner to an appellate authority, who categorically observed that "the Commission finds the claim of Section 8(1)(g) as being

almost derogatory for the organization itself. It implies that if an employee learns about a senior officer having passed certain remarks which will effect the employee of the public authority, such employees are likely to endanger the physical safety of the senior officers. If this is a true assessment of the employees of an organization it is indeed a sad comment because employees of an organization may endanger the physical safety of the reporting/reviewing officer. The Commission does not find this as a reasonable argument and unless there are clear grounds which can be quoted with some certainty the fundamental right of a citizen under Right to Information cannot be abrogated. The PIO has quoted certain decisions of the Commission in file nos. CIS/MA/A/2008/00786, CIC/MA/A/2008/00578 and CIC/MA/A/2008/00533 to justify his denial of information. The Commission does not find any justification for supporting the grounds quoted by the PIO in these decisions. The Commission would also like to observe that the Supreme of India has also held that the ACR's of any employee must be given to him".

From the above observations it is amply clear that the appellate authority did not find justification in the reasons assigned by the PIO while rejecting the application filed by the petitioner and ultimately directed the organization i.e. Employee State Insurance Corporation to provide the copies of the Annual Confidential Report to the petitioner on or before 30th July 2010. In fact, the grievance of the petitioner was taken care of and the copy of such documents, which contains evaluation of performance of the petitioner, were directed to be delivered to him. Apropos such direction, the organization forwarded the copy of the Annual Confidential Reports for the period 2000-2001 to 2006-2007 to the petitioner on 13th July 2010.

The petitioner may have a grievance at one point of time that the Annual Confidential Reports and remarks made under have not provided to him by the authority but he cannot escape from the fact that such copy of the Annual Confidential Reports was provided to him by the authority, may be in terms of the order passed by the appellate authority, under Right to Information Act.

Learned Advocate for the petitioner could not dispute that after receiving the copy of the Annual Confidential Reports, an exhaustive representation was made to the competent authority for reviewing the assessment recorded in the Annual Confidential Reports and the authority did not find any fault in the grade i.e. 'average' given in the year 2006-2007.

The point of non-supply of the remarks made in the Annual Confidential Reports get obliterated the moment the copies thereof have been supplied to the petitioner and right to make representation was duly exhausted. The employee cannot compel the authority to change the remarks made in the Annual Confidential Reports in the garb of a right to make representation. Right to make representation stands on different footing than the decision to be taken by the authority thereupon. Once the superior authority/reviewing authority did not find any fault in the remark made in the Annual Confidential Report for the year 2006-2007, the petitioner cannot fall back on a stale plea that the copy of the Annual Confidential Reports was never supplied to him.

The tribunal further finds that even if the contention of the petitioner seeking parity with another similarly circumstanced person, namely, Dr. Mohanty, is taken as a hypothetical case yet the petitioner could not satisfy the basic criteria required for coming within the zone of consideration. The aforesaid observation came for the simple reason that the similarly

circumstanced person made representation and the authority changed the remark and evaluated his performance as 'good' from 'average', which was initially given.

As indicated above, the parameter set forth for bringing the candidate within the zone of consideration is that he must have two 'very good' and three 'good' remarks in preceding five years. Even if hypothetically the contention of the petitioner is taken into consideration that instead of 'average' he is entitled to 'good' remark yet he cannot fulfill the criteria set forth therefor, as he will only have one 'very good' preceding five years.

From whatever angle the case of the petitioner is perceived, we do not find that the petitioner, in fact, can come within the zone of consideration and, therefore, we do not find any infirmity and/or illegality in the order of the tribunal.

The writ petition is, accordingly, dismissed.

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

(Harish Tandon, J.)

(Rabindranath Samanta, J.)