

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2023 OF 2022

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Abay Narayan Tripathi
s/o Raghuraj Ram Tiwari .. Petitioner
Vs.
The Union of India and ors. .. Respondents

Mr. A. N. Tripathi, Petitioner-in-person.
Mr. P. P. Kakade, GP a/w Mrs. R.A. Salunkhe, AGP for State.
Mr. Ashok Shetty a/w Ms. Neeta V. Masurkar, for Respondents
No. 1 & 2.

**CORAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE: MARCH 16, 2022

P.C.:

1. This writ petition dated September 26, 2019 impugns an order dated July 10, 2019 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai (hereafter "the Tribunal", for short) while disposing of Original Application No. 183 of 2019. The original application, at the instance of the writ petitioner, sought for *inter alia* the following relief:

"(A) This Hon'ble Court be pleased to call for the records and proceedings of the present case and after examining the legality and propriety thereof,

a. Quash and set aside the adverse comments and below benchmark grading in the APAR of the applicant for the period from 1st of April, 2017 to 8th of February 2018;

b. Declare the comments made by the Reporting Officer in the APAR of the applicant as void ab-initio.

c. As a consequence upgrade the APAR of the applicant on the basis of the target achievements during the reporting period and also by taking into consideration the past records of the Petitioner, and

d. Restrain the respondents from taking into consideration the APAR for the year 2017-18 written by an incompetent officer for the purposes of applicant's promotion and/or deputation during the remaining service period of the applicant.

(B) This Hon'ble Tribunal be pleased to hold and declare that the APAR of the applicant for the period from 1st of April 2017 to 8th February, 2018 is void ab-initio and accordingly quash and set aside the same and direct the respondents to duly upgrade the same and/or in any case not to take the same into consideration for the purposes of applicant's promotion and/or deputation."

2. The Tribunal noted the grievance of the writ petitioner that his performance appraisal during the relevant period, i.e., April 1, 2017 to February 8, 2018, had been made by an officer junior in grade to which the writ petitioner belonged and that despite the writ petitioner having objected to such grading by submitting repeated representations, neither the Chief Secretary (being the Reviewing Authority) nor the Minister-in-charge (being the Accepting Authority) acted on such representations, resulting in the grading given to the writ petitioner by a junior officer becoming final. While taking note of such grievance of the writ petitioner, the Tribunal was of the view, and rightly, that it could not substitute itself for the Administrative Authority and give an appropriate grading to the writ petitioner for the relevant period. According to the Tribunal, it was for the Administrative Authority to first take a decision in the matter and if such decision were ultimately found to be adverse to the interest of the writ petitioner, the same could be made the subject matter of challenge before the Tribunal in a subsequent proceeding. On the basis thereof, the Tribunal proceeded to pass the following order:

"6. Therefore, the respondents are directed to obtain orders of the Competent Authority within a period of eight weeks and during this time, the APAR in question shall not be considered for any purposes of promotion or grant of higher scale of pay in any DPC that may be held in this regard. The orders so passed by the Competent Authority shall be communicated to the applicant within two weeks thereafter.

7. In the aforesaid terms, the Original Application is disposed of without any order as to costs. "

3. Acting in compliance with the order of the Tribunal, the Additional Principal Chief Conservator of Forest (Mantralaya), Revenue & Forest Department, Govt. of Maharashtra by his order dated July 26, 2019 informed the writ petitioner to the following effect:

"Shri Abhay Narayan Tripathi, IFS has filed original application No. 183/2019 before the Central Administrative Tribunal, Mumbai Bench Mumbai against below bench mark grading recorded in the APAR for the period from 1st April, 2017 to 8th February, 2018. In the above mentioned O.A. Hon. Tribunal has given order on 10th July, 2019 and directed to obtain orders of the Competent Authority on the representation submitted by Shri Tripathi on said APAR.

Accordingly, the Competent Authority and Minister, Women & Child Development has given the decision on the representation of Shri. Tripathi and his APAR grading for the period from 1st April, 2017 to 8th February 2018 has been enhanced from '6.03' to '8.5' and this grading shall be treated as final grading of Shri A.N. Tripathi, IFS for the year 2017-18.

By order and in the name of the Governor of Maharashtra."

4. It was after receipt of such order that the writ petitioner has approached this Court laying challenge, as noted above.

5. Mr. Tripathi, the petitioner appearing in-person contends that he had challenged before the Tribunal the matrix for grading of performance, but the Tribunal did not adjudicate the same and, therefore, this has occasioned a failure of justice.

6. Hearing such submission, we took the pains of looking into the prayers in the original application once again. The prayers, which have been extracted (*supra*) from the original application, would bear testimony to the fact that it was not the writ petitioner's prayer that the matrix for performance grading should be amended or changed.

7. The writ petitioner seeks to contend that such a claim for change of matrix was raised in the rejoinder affidavit filed before the Tribunal. If indeed such submission is correct, nothing turns on it. A new case cannot be built up in a rejoinder affidavit. What was required of the writ petitioner in such a circumstance was to seek amendment of the original application and introduce a new prayer in it for consideration by the Tribunal.

8. Be that as it may, it is significant to note the prayers made in this writ petition. It reads:

"a) That the writ petition be allowed and admitted.

b) that this Hon'ble court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction, these by calling for the records and proceeding of original application No. 183/2019 from the file of Hon'ble Tribunal Bombay Bench Mumbai and after examining the legality and validity of the judgment and order dated 10/07/2019 be quashed and set aside and admit the prayer made in the O.A.No. 183 of 2019.

c) that this Hon'ble Court be pleased to issue the directions to the Respondents to finalise the Performance Appraisal Report of the Petitioner for the year 2016-2017 (01/04/2016 to 31/03/2017) as laid down in the proviso clause of sub rule (1) of rule 5 and rule 7(B) All India Service (Performance Appraisal Report) Rule 2007 amended in 2017.

d) that this Hon'ble Court be pleased to issue direction to respondents to modify the contents of Section 1 of Form No. II for writing Performance Appraisal Report of year 2018-19 (20th August 2018 to 31/03/2019) by replacing the Principle

Secretary, (Forest) with the Head of Forest Force as Reviewing authority."

9. There is no prayer that the matrix be changed or amended. We cannot allow the petitioner to claim a relief not traceable in the prayers.

10. Surprisingly, prayer clauses (c) and (d) relate to finalization of the performance appraisal report of the writ petitioner for the periods April 1, 2016 to March 31, 2017 and August 20, 2018 to March 31, 2019. Evidently, these periods are prior to and post the relevant period and were not even remotely the subject matter of challenge before the Tribunal in the original application. It seems to be clear that the writ petitioner seeks to set out a new case before this Court which was not raised before the Tribunal. This course is not permissible in law. The Tribunal being the court of first instance, prayers (c) and (d) should have been raised before the Tribunal, and not for the first time before this Court in its writ jurisdiction.

11. Having regard to the fact that the impugned order of the Tribunal has been substantially complied with and that the petitioner's grade has been enhanced from 6.03 to 8.5 for the relevant period, which would be treated as final grading of the writ petitioner for the year 2017-18, we find no merit in the writ petition. The same stands dismissed. No costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)