IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

(Appellate Side)

Coram: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.A 11876 of 2021

Reserved on : 16.05.2024
Pronounced on: 19.06.2024

Jayesh Chandra Rai

...Petitioner

-Vs-

The Coal India Limited & Ors. ...Respondents

Present:-

Mr. Partha Ghosh
Mr. Amal Kumar Datta
Ms. Simran Sureka
Mr. Debashis Das

... for the Petitioner

Ms. Amrita Pandey
Ms. S. Singh

....for the Respondents.

Rajarshi Bharadwaj, J:

1. The present writ petition has been preferred to contest the unlawful actions and omissions of the respondents, namely, Respondent No.1, herein Coal India Limited; Respondent No.2, herein the Chairman-cum-Managing Director of Respondent No.1; Respondents No.3 and 4, herein executives and office bearers of Respondent No.1; Respondent No.5, herein a subsidiary of Respondent No.1 and Respondents No.6-9, herein executives and office bearers of Respondent No.5. The respondent authorities have purported to endorse the imposition of a zero rating upon the petitioner for PAR (Performance Appraisal Report) no. 3661 and 3826 for the year 2018-19 under the Performance Management System (PMS) process.

2. The facts in a nutshell are that the petitioner having been duly qualified, was inducted into the payroll of respondent no.1 as an Executive on August 17, 1987 and was initially placed in Grade JET (Junior Executive Trainee) E1. The Petitioner has rendered service to the Respondent Authorities for a period of 34 years with an impeccable and exemplary performance record, which has been periodically recognized and appreciated by the Respondent Authorities. The Petitioner has progressed from Grade E1 to Grade E7 in over 21 years, consistently striving to perform and achieve the tasks and targets assigned by the Respondent Authorities.

3. On July 1, 2017, the Petitioner was promoted as the General Manager (Mining) in Grade E8. In April 2018, the Petitioner was posted as on Agent, Chinakuri Group of Mines, Sodepur Area, under Eastern Coalfields Limited and was assigned an annual Performance Appraisal Report (PAR) bearing No. 3055 under the Respondent Authorities' Performance Management System (PMS).

4. The Respondent Authorities implemented a system for assigning targets to their executives, referred to as "Goal Setting," which must be accomplished within specified timeframes. Executive’s performance was annually assessed and evaluated based on the PMS manual guidelines, which include Self Appraisal, Feedback Review, Feedback Discussions with the Reporting Authority, Feedback Discussions with the Accepting Authority, Personal Qualities and Special Achievements. For the Petitioner, Goal Setting was conducted in consultation with the Director (Technical).

5. Upon the Petitioner’s posting as an Agent, Chinakuri Group of Mines, Sodepur Area, specific Goal Settings were issued by the Respondent Authorities and the Petitioner performed his duties in accordance with these goals. Subsequently, on May 15, 2018, the Petitioner was transferred to the

Sripur Area as an Additional General Manager and was later re-designated as Area General Manager, Sripur Area, effective from December 17, 2018.

6. Consequently, a new PAR, No. 3826, was created on December 19, 2018, with a Goal starting from the period, December 19, 2018, to January 3, 2019. The Goal Setting was completed by the Petitioner within the specified timeframe and was accepted by the Reporting Authority. In recognition of the Petitioner's outstanding performance and timely execution of assigned duties, particularly for the period 2018-2019, Respondent No.2, by letter reference No. CIL:CH:52:234 dated April 5, 2019, acknowledged and encouraged the Petitioner's continued diligence and dedication.

7. The Petitioner, as directed by the Subsidiary Level Nodal Officer for PRIDE and PAR, voluntarily completed and submitted his PAR Self-Assessment Form for the designated PARs, namely 3055, 3661, and 3826. These submissions were duly verified and confirmed by the nodal officer responsible for managing the PMS process, although such submissions were not mandatory for employees in Grade E8. In October 2020, the Petitioner discovered that he had been assigned a 'Zero Rating' for the period 2018-2019 in the PMS system, ostensibly due to his alleged failure to submit Self-Assessment reports for PAR 3661 and 3826.

8. The Petitioner sought reconsideration of his evaluation through a letter addressed to Respondent No.2 on October 16, 2020. This communication was subsequently forwarded to the General Manager of CIL by a letter dated November 17, 2020. The Deputy General Manager of ECL further forwarded his representation to the concerned authorities via an email dated March 17, 2021, indicating that the Petitioner had failed to submit PARs 3661 and 3826.

9. Finally, by a letter dated April 20, 2021, the General Manager of ECL informed the Petitioner that despite reminders, he had failed to submit his Performance Appraisal Report for PAR 3826. This was corroborated by an email from the General Manager on April 13, 2021, which communicated to the respondent authorities that the Petitioner had not submitted his performance appraisal reports, resulting in a zero-appraisal rating.

10. Being aggrieved by such imposition of Zero Rating based on apparent ignorance and/or misreading of the true spirit and purpose of the PMS process, the petitioner has preferred the present petition.

11. The Learned Counsel representing the petitioner submits that the petitioner did not receive any SMS or email notifications regarding the non-submission of his PAR. Through the order dated January 28, 2021 and the PMS system manual, it is evident that prior to 2021, it was not obligatory for employees above the E7 grade to submit self-assessment reports. Any internal communications or directives mandating such submissions require the approval of Respondent No.1, herein the CIL Board.

12. Moreover, pursuant to the order dated January 28, 2021, failure by E8 employees to submit self-appraisal forms results in a 4% deduction from their final appraisal rating. This order pertains to FY 2019-20 and is inapplicable in the present case. It suggests that the failure to submit a self-appraisal does not justify a zero rating. There was no official communication regarding the PAR rating and the petitioner asserts that he believed his PAR ratings had been accepted. Additionally, executives have the right to appeal the evaluations under the PMS, but the petitioner was not afforded this opportunity.

13. The Learned Counsel for the respondent authorities submits that employees of E8 and E9 grades are mandated to submit their Performance Appraisal Reports (PAR), as stipulated by the communication dated March 3, 2015. This mandate, effective from fiscal year 2015-16, requires these employees to establish objectives and complete self-assessments, per the directive to the Director (Personnel) dated March 6, 2015.

14. The petitioner submitted only PAR No. 3055, covering a period of less than two months, and failed to submit the requisite PARs 3661 and 3826. PAR No. 3055, valid from April 1, 2018, to May 14, 2018, encompassing 44 days, was disregarded as it did not satisfy the minimum three-month requirement. Conversely, PAR No. 3661, valid from May 15, 2018, to December 16, 2018, was considered since it exceeded the three-month threshold. However, due to the absence of a self-appraisal by the executive, a zero rating was assigned in accordance with applicable regulations. Similarly, PAR No. 3826, valid from December 17, 2018, to March 31, 2019, covering 105 days, was considered but also received a zero rating in the absence of a self-appraisal as per the Non-Compliance of PMS Process of the Coal India PMS Manual. Consequently, based on PAR Nos. 3661 and 3826, the executive was assigned a zero rating for the fiscal year 2018-19. This outcome aligns with the office order dated April 29, 2015, which stipulates that non-submission results in a 'poor' rating with a zero score.

15. Moreover, the petitioner was notified via an email dated October 29, 2019, sent to his official email address, that the self-assessment for the Performance Appraisal Reports (PARs) for the fiscal year 2018-19 was required to be submitted by the deadline of October 30, 2019, failing which a zero rating would be assigned. Prior notifications to the same effect were sent to the petitioner on May 29, 2019, clearly outlining the submission timeline, and further reiterated on June 4, 2019. Additionally, the respondent authorities communicated these requirements to the petitioner via his personal email address. Despite multiple notifications, the petitioner failed to submit the self-assessment for the PAR, thereby precluding any claim of ignorance or lack of information.

16. On perusal of the documents brought to the Court and considering the submissions made on behalf of the parties, it is observed that despite having been duly notified on multiple occasions regarding the necessity of submitting Performance Appraisal Reports (PARs) for the fiscal year 2018-19, the petitioner failed to adhere with the stipulated requirements. The petitioner was duly informed through official communications, both via his official as well as personal email addresses, about the requirement to submit self-assessments for the PARs for the relevant periods. The respondent authorities provided clear deadlines and reiterated the necessity of compliance to avoid a zero rating. Despite receiving several reminders, including detailed notifications dated May 29, 2019, June 4, 2019 and October 29, 2019, the petitioner failed to submit the necessary self-assessments for PARs 3661 and 3826 within the prescribed timelines. The respondent authorities acted in accordance with the guidelines stipulated in the Performance Management System (PMS) manual, which mandates a zero rating for non-compliance.

17. The Supreme Court in **Bhavnagar University v. Palitana Sugar Mill (P) Ltd.** reported in **(2003) 2 SCC 111** held that:

"*We are not oblivious of the law that when a public functionary is required to do a certain thing within a specified time, the same is ordinarily directory but it is e qually well settled that when consequence for inaction on the part of the statutor y authorities within such specified time is expressly provided, it must be held to be imperative.*"

The Apex Court thus, highlights that there is an important exception to this rule. If the law explicitly states consequences for failing to act within the specified timeframe, then the requirement becomes "imperative" or mandatory. In such cases, the petitioner must have complied with the timeframe and failure to do so thus, resulted in the stipulated consequences.

18. The petitioner's contention that he was unaware of the requirements is untenable. The system of Goal Setting and performance evaluation was transparent and communicated effectively. His promotion and assignments were conducted within this framework, which he had successfully adhered to in the past. The administrative actions taken by the respondent authorities were consistent with the established PMS guidelines and communicated expectations. Thus, the actions of the respondent authorities are in accordance with the legal and procedural requirements

19. For the foregoing reasons the writ petition is devoid of any merits and is consequently dismissed. All pending applications are accordingly disposed of. However, there will be no order as to costs.

20. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(RAJARSHI BHARADWAJ, J)

Kolkata
19.06.2024
PA (BS)