



W.P.No.4386 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:13.12.2023

Delivered on: 15.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.DHANABAL

W.P.No.4386 of 2017

Dr. A. Ajith S/o. A. Ramayyan Nadar

... Petitioner

Vs.

1. The Central Administrative Tribunal,
Chennai Bench – represented by its Registrar,
City Civil Court Building,
High Court Complex, Chennai.

2. The Union of India,
represented by Director General,
Ordinance Factories,
S.K. Bose Road, Kolkatta – 1.

3. The General Manager,
Heavy Vehicles Factory,
HVF, Avadi, Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the 1st respondent Tribunal pertaining to O.A. No.595/2012 dated 24.08.2016



W.P.No.4386 of 2017

confirming the proceedings of the 3rd respondent in No.02302/GM/APAR/2011 dated 15.07.2011 and the proceedings of the 2nd respondent in No.098/ACR/RA/A/M dated 02.04.2012 and quash both the orders.

For Petitioner : Mr. N. Balamuralikrishnan

For Respondents : Mr. B. Sudhir Kumar,
SCGSC [for R2 and R3]
Tribunal [for R1]

JUDGMENT

(Judgment of the Court was made by P.DHANABAL,J.)

This Writ Petition has been filed by the petitioner to issue a Writ of Certiorari or any other appropriate order or direction calling for the records of the 1st respondent Tribunal pertaining to O.A. No.595/2012 dated 24.08.2016 confirming the proceedings of the 3rd respondent in No.02302/GM/APAR/2011 dated 15.07.2011 and the proceedings of the 2nd respondent in No.098/ACR/RA/A/M dated 02.04.2012 and quash both the orders.

2. According to the petitioner, he initially joined service as Assistant Medical Officer under the 2nd respondent on 30.07.2001. Thereafter, he



W.P.No.4386 of 2017

WEB COPY

was promoted as Senior Medical Officer and subsequently as Principal Medical Officer. He is currently discharging his duties under the 3rd respondent. During the relevant year 2010-11, his reporting officer i.e., the Chief Medical Officer, in his Annual Performance Appraisal Report, recorded the grade as 'very good'. But the accepting officer downgraded performance of the petitioner from 'very good' to 'good' by making some adverse remarks. Already there was a dispute between one Dr. M.S. Prasad and the petitioner and thereafter a false complaint was given as against him through a Lab Technician. Thereafter, the petitioner was transferred to Odissa and the same was challenged by the petitioner through O.A. No.322 of 2012 and the same was allowed in favour of the petitioner. Therefore, in order to wreck vengeance, the accepting authority / 3rd respondent has downgraded the benchmark of 'very good' as 'good'.

2.1. Before passing the adverse remarks, the accepting authority has not given opportunity to the petitioner. Thereafter, the petitioner filed a representation before the 2nd respondent to expunge the adverse remarks through application dated 18.08.2011. On 02.04.2012, the 2nd respondent has rejected his representation, thereby the petitioner filed O.A. 595 of



W.P.No.4386 of 2017

WEB COPY

2012 challenging the said proceedings of the 2nd and 3rd respondents. A reply statement was filed by the department completely giving a wrong picture as to what had actually transpired. Thereafter, the petitioner filed a rejoinder by pointing out the mistakes committed by the respondents in the reply statement. But the petition was dismissed without considering the averments in the petition as well as in the reply statement. Hence this Writ petition has been filed by the petitioner.

3. No counter was filed by the respondents.

4. The learned counsel appearing for the petitioner would contend that the petitioner used to follow the rules strictly and expect the same from others. The same did not go down well with others. Thereby, there was misunderstanding between the petitioner and others. While so, during the year 2010-11, in the Annual Performance Appraisal Report, his reporting officer recorded as 'very good'. But the accepting authority has recorded his performance as 'good'. Without any valid reasons, the accepting authority has recorded his performance and downgraded the grade from 'very good' to 'good'. Thereby, he sent representation to the 2nd

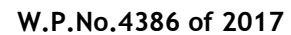


W.P.No.4386 of 2017

respondent on 18.08.2011 and the same was rejected on 02.04.2012.

WEB COPY

4.1. The rejections orders are bad and suffers from total non-application of mind. The learned Administrative Tribunal failed to taken note of the background of the case and completely lost sight of the facts narrated by him in the original application as well as in the rejoinder. The Tribunal ought to have seen that there was no justifiable grounds for the 2nd respondent to deviate from the pen picture projected by the reporting officer and the Tribunal has not given any finding to that effect. The learned Tribunal in the order extracted what was written by the 3rd respondent in the APAR and came to a conclusion as if he was correct in differing with the remarks of the reporting officer and failed to see that no materials were produced before the Tribunal to substantiate the remarks made by the 3rd respondent. The Tribunal failed to take note of the order passed in O.A. No.322 of 2012 dated 23.04.2012 wherein the order of transfer was set-aside on the ground of malafide and the 3rd respondent was impleaded in his personal capacity. The said finding of the Tribunal was accepted by the Board and they have not preferred any appeal against that order. Therefore the petitioner was victimised now would have been



5. The learned counsel appearing for the respondents would contend that the petitioner was working as Senior Medical Officer in the 2nd respondent's hospital. The below benchmark grading for the period of 2004-05 and 2005-06 was issued vide 1st respondent letter dated 06.05.2010, since the applicant was on study leave, it could not be handed to him. Therefore, the applicant was again communicated through letter dated 02.04.2012. The petitioner being Government servant has to follow the rules and regulations in letter and spirit. The observation of CMO incharge that he is too rigid in following rules and requires to be flexible was made in a positive sense. Working in a flexible manner does not necessarily entail breach of any rules. The remarks of the accepting authority and grading is based on his personal observation and facts as Head of the Department.

<https://www.mhc.tn.gov.in/judis>



W.P.No.4386 of 2017

WEB COPY

accepting authority to spoil the career of the petitioner. The reporting authority's remarks and assessment are based on her personal knowledge and reports received from the doctors working in the hospital about the petitioner and his work. However, the accepting authority as the Head of the Department has to consider many other aspects and facts while assessing the over all performance of the petitioner. Since there was a complaint of sexual harassment against the petitioner by one lady employee working as Lab Technician, the same was inquired by the Committee constituted and found that, it was not a case of sexual harassment and it can only be considered as that as 'harassment at work place'. The matter being very sensitive issue and to avoid further confrontation or complication, the petitioner was shifted to Factory Health Clinic in the same hospital. The accepting authority based on his personal knowledge and information as Head of Department and information of APAR of the petitioner, has made his observations. The petitioner has a tendency to blow any petty issue out of proportion. A catena of court cases, RTI applications and other representations submitted by him is a tell-tale of his belligerent, intransigent and inflexible approach. The petitioner has not had an unblemished track record and he earned below



W.P.No.4386 of 2017

WEB COPY

benchmark grading in his ACRs for the year 2004-05 and 2005-06 with adverse remarks. The accepting authority in the ACR for the year 2006-07 has remarked that “Although the Officer is professionally competent, he has to develop Officer like qualities for better functioning”. The said adverse remarks was also communicated to the petitioner vide O.F. Board Letter dated 03.01.2007.

5.2. The accepting authority has made an endorsement in the APAR for the year 2010-11 based on the professional competence, personal traits and other parameters. It is not mandatory to the accepting authority to always accept or agree with the remarks of the reporting officer. The accepting authority can always agree or disagree or partially agree with the remarks of the reporting officer. Therefore, the learned Tribunal after taking into consideration all these aspects, has correctly dismissed the application and hence the present Writ petition is liable to be dismissed.

6. Heard both sides and perused the entire materials available on record.



W.P.No.4386 of 2017

WEB COPY

7. According to the petitioner, the reporting authority at the time of recording the petitioner's APAR for the year 2010-2011, graded as 'very good', but the accepting authority due to personal vengeance degraded his benchmark from 'very good' to 'good'. Before passing such adverse remarks, opportunity was not given to the petitioner. Therefore, he sent representation dated 18.08.2011 and the same was rejected. As against the rejection order, he filed the impugned O.A. and the same was also dismissed. Hence this Writ petition.

8. According to the respondents, the reporting authority has recorded the petitioner's APAR as 'very good', but the accepting authority after analysing the records of the petitioner, recorded the petitioner's APAR as 'good' and the accepting authority, being the Head of the Department, after analysing all the records, has passed the above said order. The representation of the petitioner was duly considered by the respondents and the same was rejected and thereby, the present impugned O.A. was filed and the same was suitably replied by the respondents and the Tribunal also correctly dismissed the O.A.



W.P.No.4386 of 2017

WEB COPY

9. The main contention of the petitioner is that before recording adverse remarks, the petitioner was not given any opportunity. In this context, the petitioner has produced the format of APAR. The numerical grading has been divided into following three sections:

Section A: Assessment of work output (weightage to this Section would be 40%.

Section B: Assessment of personal attributes (weightage to this Section would be 30%).

Section C: Assessment of functional competency (weightage to this Section would be 30%).

All the three sections have further been divided into sub-sections. Therefore, these parameters and weightage to them have been devised by the Government. Frank objective and candid endorsements against these parameters by the higher authorities cannot amount character assassination. Rather it would be grave dis-service to the organization and to the officer reported upon if they are not endorsed properly. Further on careful perusal of the above said endorsements of the reporting authority, it reveals that after making positive remarks, there is an endorsement with regard to his



W.P.No.4386 of 2017

weakness that he is too rigid in following the rules, requires to be flexible.

WEB COPY

Further the accepting authority also made endorsement that *“since I do not fully agree with the self appraisal by the Officer reported upon at 2(A), I cannot bring myself to agreeing with the remarks of the Reporting Authority which is over-pitched and does not bring forth the areas of lesser strength of the Officer reported upon”*.

The above said observation, passed by the authority, is within his purview, based on his knowledge about the officer as well as records. It is not necessary to hear the petitioner before passing those remarks. Even any adverse remarks recorded by the reporting authority or accepting authority, the same have to be communicated to the petitioner according to the rules and the question of hearing the petitioner before passing the orders is not permissible and thereby the contention of the petitioner is not acceptable one.

10. The learned counsel appearing for the petitioner has relied upon a judgement of Hon'ble Supreme Court in ***Sukhdeo vs. Commissioner Amravati Division, Amravati and another reported in (1996) 5 Supreme***



W.P.No.4386 of 2017

WEB COPY

Court Cases 103. On careful perusal of the above said judgment, it is seen that it will not be applicable to the present facts of the case, because it is related to compulsory retirement and the Hon'ble Supreme Court also held that *“the controlling officer while writing confidential and character roll report, should be a superior officer higher above the cadres of the officer whose confidential reports are written”*. But in the case on hand, the reporting and accepting officers are not below the rank of the petitioner. Thereby, the said case law will not be applicable to the present facts of the case.

11. Further already there was a complaint against the petitioner by a lady employee worked in Laboratory and the same was also enquired by the Committee and the Committee also observed that it is not a sexual harassment and it is only harassment at work place and further in his previous ACRs in 2006-2007 also, the some adverse remarks made and the same was also communicated to him through letter dated 03.01.2007. Therefore, the accepting authority has endorsed his views and the remarks made by him are within his jurisdiction. It is not necessary to the accepting authority to accept the views of the reporting officer as it is and



W.P.No.4386 of 2017

WEB COPY

the accepting authority has to assess and record the ACR independently and if the accepting authority is not accepting the views of the reporting authority, he has to give adequate reasons for that. In the case on hand also, the accepting authority had given reasons. Therefore, there is no any violation of rules by the accepting authority. In the representation dated 18.08.2011, the petitioner has levelled so many allegations. The accepting authority also has given sufficient reasons by stating that *“The Officer has displayed a belligerent, intransigent and inflexible approach. While he is good at written communication, his oral communication and interaction with his subordinates and some of his superiors leaves a lot of scope for improvement. The Officer has failed to maintain smooth working relationship at his work place. He indulges in unnecessary and inordinately long and prolonged correspondence and is of litigational mind. He seems to be devoting much of his time in futile personal pursuit which has vitiated the smooth working atmosphere in Hospital and affected the overall quality of output / service. The problem is one of poor attitudes”*.

Therefore, the above said endorsement is based on his personal



W.P.No.4386 of 2017

WEB COPY

knowledge being an administrative head of the Factory and Hospital, he after taking into consideration of the relevant aspects, he assessed the performance of the petitioner. The learned Central Administrative Tribunal categorically discussed in all aspects and correctly dismissed the application, thereby there is no warrant to interfere with the order of the Tribunal.

12. Therefore, as discussed above, this Court is of the view that the Tribunal has passed a reasoned order and no any infirmity or perverse found in the order of the Tribunal.

13. In view of the above said discussions, this Court is of the opinion that this Writ petition has no merits and deserves to be dismissed.

14. IN THE RESULT, this Writ Petition is dismissed. No costs. Connected miscellaneous petition, if any, is closed.

(D.K.K.J) & (P.D.B.J)
15.02.2024

mjs
Internet : Yes
Index: Yes/No
Neutral Citation: Yes/No



W.P.No.4386 of 2017

WEB COPY

- To
1. The Central Administrative Tribunal,
Chennai Bench – represented by its Registrar,
City Civil Court Building,
High Court Complex, Chennai.
 2. The Union of India,
represented by Director General,
Ordinance Factories,
S.K. Bose Road, Kolkatta – 1.
 3. The General Manager,
Heavy Vehicles Factory, HVF, Avadi, Chennai.



WEB COPY



W.P.No.4386 of 2017

D.KRISHNAKUMAR, J.,
and
P.DHANABAL,J

(mjs)

Pre-delivery judgment in
W.P.No.4386 of 2017

15.02.2024