2024 INSC 190

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**
**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO(S). 3959 OF 2024**
**[Arising out of SLP (Civil) No(s). 13972 of 2019]**

**THE STATE OF HARYANA …APPELLANT(S)**

**VERSUS**

**ASHOK KHEMKA & ANR. …RESPONDENT(S)**

**J U D G M E N T**

**SATISH CHANDRA SHARMA, J.**

***Introduction***[1]

1. Leave granted.

2. The present appeal preferred by the State of Haryana seeks to assail the correctness of an order dated 18.03.2019 passed by the High Court of Punjab and Haryana (the "**High Court**") in a writ petition bearing number CWP 317 of 2019 (O&M) wherein

[1] **NOTE**: For ease of reference any capitalised terms used but not defined hereinafter, shall have the meaning ascribed to such term under the All-India Services (Performance Appraisal Report) Rules, 2007.

the High Court set aside an order dated 03.12.2018 passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (the "**CAT**") and, accordingly (i) expunged the opinion of the Accepting Authority; and (ii) restored (a) the opinion of the Reviewing Authority*;* and (b) the grade awarded by the Reviewing Authority i.e., 9.92 qua Respondent No. 1's performance appraisal report under the provisions of the All India Services (Performance Appraisal Report) Rules, 2007 (the "**PAR Rules**") (the "**Impugned Order**").

***Factual Matrix***

3. On 07.06.2017, Respondent No. 1 i.e., an Indian Administrative Services ("**IAS**") Officer belonging to the batch of 1991 and presently holding the rank of Principal Secretary, Government of Haryana, submitted his self-appraisal form qua the annual performance appraisal report envisaged under the PAR Rules for the period commencing 08.04.2016 up until 31.03.2017 (the "**PAR**").

4. Thereafter on 08.06.2017, Respondent No. 1 came to be appraised by the Reporting Authority *i.e.*, the Chief Secretary, Government of Haryana and, accordingly came to be awarded, *inter alia,* an overall grade of 8.22. Subsequently on 27.06.2017, a divergent view was taken by the Reviewing Authority i.e., the Health Minister of Haryana who upgraded Respondent No. 1's

overall grade to '9.92'. On 31.12.2017, the Accepting Authority i.e., the Chief Minister of Haryana rejected the aforesaid and downgraded Respondent No. 1's overall grade to '9' in the PAR.

5. Aggrieved by the aforesaid, Respondent No. 1 made a representation under Rule 9(2) of the PAR Rules on 12.01.2018 seeking, *inter alia,* the (i) quashing of the remarks and overall grading recorded by the Accepting Authority; and (ii) restoration of remarks and overall grading awarded by the Reviewing Authority (the "**Underlying Representation**").

6. Pursuant to the Underlying Representation, additional remark(s) were submitted by (i) the Reporting Authority on 5.02.2018; and (ii) the Reviewing Authority on 12.02.2018, to the Accepting Authority for further action under Rule 9(7B) of the PAR Rules. Despite the aforesaid, no decision was taken by the Accepting Authority qua the Underlying Representation.

7. Accordingly, aggrieved by the inaction *vis-à-vis* the Underlying Representation, Respondent No. 1 preferred an application bearing number O.A. No. 60/1058/2018 before the CAT seeking deletion of the remarks and overall grades recorded by the Accepting Authority; and restoration of the overall grades and remarks awarded by the Reviewing Authority in the PAR (the "**OA**"). *Vide* an order dated 03.12.2018, the CAT dismissed the OA relying upon Rule 5(1) of the PAR Rules read with Paragraph

9.4 of Appendix -II of the 'General Guidelines for Filing-Up the PAR Form for IAS Officers Except the Level of Secretary or Additional Secretary or Equivalent to the Government of India' (the "**Guidelines**") (the "**CAT Order**"). The operative paragraph(s) of the CAT Order are reproduced as under:

> *"7. A co-joint reading of the aforementioned rule and guideline makes it clear that, they provide a window, by not having a barring clause on the Accepting Authority recording remarks beyond the prescribed time limit, and have actually set a date of 31st December of the year in which the financial year ended as the time limit for recording PAR. Thus, the limit fixed for writing the appraisal report by various authorities, in the Schedule 2, is the minimum or ideal period within which the remarks are required to be made. Further, if the PAR is not recorded by 31st December of the yar in which the financial year ended, no remarks shall be recorded thereafter. We note that the for the financial year 2016-2017, the period under report challenged by the applicant, 31.12.2017 would be the ultimate time limit for recording PAR and the outer limit of time, beyond which no remarks can be made in the appraisal report.*
>
> *8. A perusal of Annexure A-1 reflects that the appraisal report of the applicant by the Accepting Authority was written on 31.12.2017 and was written well within the limit prescribed under the relevant Rule 5(1) and guideline 9.4. Applicant appears to have overlooked the applicability of these two rules while presenting his case to the Bench for expunging the remarks and over-all grade recorded by the Accepting Authority."*

8. Subsequently, Respondent No. 1 preferred a writ petition before the High Court. *Vide* the Impugned Order, the High Court set-aside the CAT Order observing, *inter alia,* that (i) the Accepting Authority failed to appreciate the various practical constraints faced by Respondent No. 1 i.e., an upright, intelligent and honest officer, in the discharge of his duties; (ii) that the Reviewing Authority revised the Reporting Authority's overall grading qua Respondent No. 1 in a transparent, fair and reasoned manner; and (iii) that the Underlying Representation had still not been decided by the Accepting Authority. Accordingly, in view of the aforesaid the overall grades and remarks awarded by the Reviewing Authority to Respondent No. 1 in the PAR came to be resorted by the High Court.

***Submissions***

9. Mr. Mukul Rohatgi, Learned Senior Counsel appearing on behalf of the Appellant submitted before this Court that the timelines prescribed under Rule 5(1) of the PAR Rules were met by the State of Haryana in respect of Respondent No. 1's PAR. Accordingly, it was submitted that no prejudice was caused to Respondent No. 1 merely on account of a delay vis-à-vis the timelines prescribed under Schedule 2 of the Guidelines issued under the PAR Rules (the "**Schedule**"). In this regard, our attention was drawn to the performance appraisal report(s) of Respondent No.1 dated (i) 24.09.2015; (ii) 30.12.2016; and (iii)

28.12.2018 whereunder no grievance was raised by Respondent No. 1, nor any allegation of prejudice was levelled against the Appellant.

10. Further, Mr. Rohatgi drew the attention of this Court to Section V of the PAR. In this context, it was submitted that the Accepting Authority i.e., the Chief Minister of Haryana, knew the performance and achievement of all senior IAS officers serving the Government of Haryana; and accordingly revised the overall grades and remarks awarded to Respondent No. 1 in an impartial and objective manner. Additionally, Mr. Rohatgi submitted that the overall grade '9' forms a part of the 'outstanding' grade and is more than sufficient for the purposes of empanelment / promotion of Respondent No. 1. Thus, it is his submission that no prejudice could have been said to have been caused to Respondent No. 1 in the present case as he was awarded grades in consonance with a recommendation for empanelment / promotion.

11. Finally, Mr. Rohatgi contended that the Underlying Representation is pending consideration before the Accepting Authority; and that the grievance of Respondent No. 1 would be considered by the Accepting Authority as per the procedure envisaged under the PAR Rules. In the aforementioned context,

it was stressed that the High Court ought not to have interfered and set-aside the CAT Order *vide* the Impugned Order.

12. On the other hand, Mr. Shreenath A. Khemka, Learned Counsel appearing on behalf of Respondent No. 1, submitted that the timelines prescribed under the Schedule are sacrosanct. Accordingly, it was submitted that upon the expiry of the timelines enumerated under the Schedule, the Accepting Authority could not have submitted revised the remarks and / or the overall grades awarded by the Reviewing Authority.

13. Further, it was vehemently contended before us that the Accepting Authority had acted arbitrarily and without appreciating the material(s) on record, it proceeded to downgrade the overall grade awarded to Respondent No. 1 from '9.92' to '9'. In this regard, it was contended that the Accepting Authority had acted in contravention of the principles enunciated by this Court in ***Dev Dutt v. Union of India***, (2008) 8 SCC 725.

14. Lastly, Mr. Khemka submitted that prejudice has been caused to Respondent No. 1 on account of the non-decision qua the Underlying Representation under Rule 9(7B) of the PAR Rules; coupled with the fact that Respondent No. 1 is in the sunset of his service i.e., having a tenure of only 1 (one) year of service left before his superannuation. Accordingly, in the totality

of circumstances, it was submitted that the Impugned Order ought not to be set-aside.

***Analysis***

15. We have heard the counsel(s) appearing on behalf of the parties and perused the material on record. There can be no controversy qua the *factum* that the timelines prescribed under the Schedule have been contravened. In this regard it would be pertinent to reproduce the key-timeline(s) prescribed under the PAR Rules vis-à-vis the dates of actual compliance by the relevant authority(ies):

| # | PARTICULARS | CUT-OFF DATE | PRESCRIBED TIME FRAME* | ACTUAL DATE OF COMPLIANCE | ACTUAL DAYS TAKEN** |
|---|---|---|---|---|---|
| 1. | Blank PAR Form to Be Given to The Officer Reported Upon | 01.06.2017 | - | - | - |
| 2. | Filing In Section II by The Officer Reported Upon | 15.06.2017 | 15 Days | 07.07.2017 | 7 Days |
| 3. | Appraisal By Reporting Authority | 15.07.2017 | 30 Days | 08.07.2017 | 1 Days |
| 4. | Appraisal By Reviewing Authority | 15.08.2017 | 30 Days | 27.07.2017 | 19 Days |
| 5. | Appraisal By Accepting Authority | 15.09.2017 | 30 Days | 31.12.2017 | 184 Days |
| 6. | Disclosure To the Officer Reported Upon | 30.09.2017 | 15 Days | 31.12.2017 | 0 Days |
| 7. | Comments Of the Officer Reported Upon, If Any (If None, Transmission | 15.10.2017 | 15 Days | 12.01.2018 | 12 Days |

| | | | | | |
|---|---|---|---|---|---|
| | of The PAR to the DOPT) | | | | |
| 8. | Forwarding Of Comments of The Officer Reported Upon to The Reviewing and The Reporting Authority, In Case the Officer Reported Upon Makes Comments | 31.10.2017 | 15 Days | - | - |
| 9. | Comments Of Reporting Authority | 15.11.2017 | 15 Days | 05.02.2018 | 24 Days |
| 10. | Comments Of Reviewing Authority | 30.11.2017 | 15 Days | 12.02.2018 | 7 Days |
| **11.** | **Comments Of Accepting Authority/PAR to Be Finalized and Disclosed to Him** | **15.12.2017** | **15 Days** | **No Decision** | - |
| 12. | Representation to the Referral Board by the officer reported upon | 31.12.2017 | 15 Days | - | - |
| 13. | Forwarding of representation to the Referral Board along with the comments of reporting Authority/reviewing Authority and accepting Authority | 31.01.2018 | 30 Days | - | - |
| 14. | Finalization by Referral Board if the officer reported of the Accepting Authority. | 28.02.2018 | 30 Days | - | - |
| 15. | Disclosure to the officer reported upon | 15.03.2018 | 15 Days | - | - |

| | | | | | |
|---|---|---|---|---|---|
| 16. | End of entire PAR process | 31.03.2018 | 15 Days | - | - |

*Approximated on a 30-days-to-a-month basis
**Actual day(s) taken from compliance of the previous stage.

16. Upon a perusal of the aforesaid, undoubtedly, and admittedly the Accepting Authority populated its remarks and awarded an overall grade on 31.12.2017 i.e., after a delay of 184 (one hundred eighty-four) days. Accordingly, we must now consider the effect of a contravention of the timelines prescribed under the Schedule in view of Rule 5(1) of the PAR Rules. For ease of reference Rule 5(1) of the PAR Rules is reproduced as under:

> *"Rule 5(1): Performance Appraisal Reports: - (1) A performance appraisal report assessing the performance, character, conduct and qualities of every member of the Service shall be written for each financial year or as may be specified by the Government in the Schedule 2.*
> *Provided that performance appraisal report may not be written in such cases as may be specified by the Central Government, by general or special order.*
> *Provided further that if a PAR relating to a financial year is not recorded by the 31st December of the year in which the financial year ended, no remarks shall be recorded thereafter. And the officer may be assessed on the basis of the overall record and self-assessment for the year, if he has submitted his self-assessment on time."*

17. At this juncture, it would be apposite to refer to a decision of this Court in ***Bhavnagar University v. Palitana Sugar Mill (P) Ltd.***, (2003) 2 SCC 111 wherein this Court whilst weighing the consideration(s) qua the mandatory nature of timelines prescribed upon a public functionary observed as under:

> *"42. 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 equally well settled that when consequence for inaction on the part of the statutory authorities within such specified time is expressly provided, it must be held to be imperative."*

18. Furthermore, this Court in ***May George v. Tahsildar***, (2010) 13 SCC 98 devised a test qua the mandatory nature of an obligation emanating from a provision of law. In this regard, this Court observed as under:

> *"25. The law on this issue can be summarised to the effect that in order to declare a provision mandatory, the test to be applied is as to whether non-compliance with the provision could render the entire proceedings invalid or not. Whether the provision is mandatory or directory, depends upon the intent of the legislature and not upon the language for which the intent is clothed. The issue is to be examined having regard to the context, subject-matter and object of the statutory provisions in question. The Court may find out as to what would be the consequence which would flow from construing it in one way or the other and as to whether the statute provides for a contingency of the non-compliance with the provisions and as to whether the*

*non-compliance is visited by small penalty or serious consequence would flow therefrom and as to whether a particular interpretation would defeat or frustrate the legislation and if the provision is mandatory, the act done in breach thereof will be invalid."*

19. In this context we must now consider the implication and / or outcome (if any) of a contravention of the timeline(s) prescribed under the Schedule. A perusal of the PAR Rules would reveal that a contravention of the said timelines, neither render the underlying PAR invalid, nor would be met with any identified immediate consequence. The aforesaid interpretation is also supported by the empirical data i.e., previous performance appraisal report(s) of Respondent No. 1 which were admittedly beyond the timelines prescribed under the Schedule, however within the period prescribed under Rule 5(1) of the PAR Rules. Furthermore, even though the High Court *vide* the Impugned Order, set-aside the CAT Order, the High Court observed that the timelines prescribed under the Schedule were not water-tight and in fact, were flexible.

20. Thus, we find ourselves unable to accept the contention raised by Mr. Khemka i.e., that the Accepting Authority was either precluded from populating its comment(s) after the cut- off date as more particularly identified at Serial Number 5 in Table 1 above; or that upon the expiry of the cut-off date, the Reviewing

Authority's comments would be deemed to have been adopted by the Accepting Authority.

21. Admittedly, the Accepting Authority has met the timelines prescribed under Rule 5(1) of the PAR Rules and accordingly, in view of the compliance with mandatory timelines prescribed under the PAR Rules we find no reason to expunge the remarks and overall grades awarded to Respondent No. 1 by the Accepting Authority on the PAR on account of a contravention of the timelines prescribed under the Schedule.

22. Now we turn our attention to the fulcrum of the dispute before this Court i.e., whether the High Court ought to have interfered with the CAT Order in exercise of its jurisdiction under Article 226 of the Constitution of India?

23. At the outset we would like to deal with Respondent No. 1's reliance on ***Dev Dutt (Supra)*****.** The said case underscored the importance of, *inter alia,* communicating entries of evaluation to the candidate, irrespective of whether such evaluation was adverse in the eyes of the assessing entity i.e., the Court stressed the fact that in matters of selection and promotion, a comparative lens must be adopted whereunder the adverse nature of an evaluation must be contingent not only on whether such evaluation would have an adverse impact on the candidate but

also whether it would affect the candidates' chances of promotion to the next category.

24. In this context, although it was submitted by Mr. Khemka that prejudice has been caused to Respondent No. 1, we find ourselves unable to accept the said contention on account of the fact that Respondent No. 1 was awarded an overall grade '9' which undisputedly forms a part of the 'outstanding' grade i.e., the highest category awarded to an IAS officer. Accordingly, in our opinion there can be no qualm that the said overall grade is more than sufficient for the purposes of empanelment / promotion vis-à-vis Respondent No. 1. Thus, the reliance placed on ***Dev Dutt (Supra)*** by Respondent No. 1 is misplaced in the present factual matrix.

25. Now, turning to the issue framed in Paragraph 22 of this Judgement above, we find ourselves grappling with a foundational principle of our constitution i.e., that the judiciary must exercise restraint and avoid unnecessary intervention qua administrative decision(s) of the executive involving specialised expertise in the absence of any *mala-fide* and / or prejudice. In this regard it would be appropriate to refer to our decision in ***Caretel Infotech Ltd. v. Hindustan Petroleum Corpn. Ltd.,*** *(2019) 14 SCC 81* whereunder this Court observed as under:

> *"38….It has been cautioned that Constitutional Courts are expected to exercise restraint in interfering with the administrative decision and ought not to substitute their view for that of the administrative authority. Mere disagreement with the decision-making process would not suffice."*

26. Similarly, this Court in ***State of Jharkhand v. Linde India Ltd.***, (2022) 107 GSTR 381 whilst delineating the scope of interference of the High Court exercising jurisdiction under Article 226 of the Constitution of India vis-à-vis a finding of fact by experts observed as under:

> *"7. As per the settled position of law, the High Court in exercise of powers under article 226 of the Constitution of India is not sitting as an appellate court against the findings recorded on appreciation of facts and the evidence on record. The High Court ought to have appreciated that there was a detailed inspection report by a six members committee who after detailed enquiry and inspection and considering the process of manufacture of steel specifically came to the conclusion that the work of oxygen is only of a "refining agent" and its main function is to reduce the carbon content as per the requirement. The said findings accepted by the assessing officer and confirmed up to the Joint Commissioner-revisional authority were not required to be interfered with by the High Court in exercise of powers under article 226 of the Constitution. The High Court lacks the expertise on deciding the disputed questions and more particularly the technical aspect which could have been left to the committee consisting of experts."*

27. The overall grading and assessment of an IAS officer requires an in-depth understanding of various facets of an administrative functionary such as personality traits, tangible and quantifiable professional parameters which may include *inter alia* the competency and ability to execute projects; adaptability; problem-solving and decision-making skills; planning and implementation capabilities; and the skill to formulate and evaluate strategy. The aforesaid indicative parameters are typically then analysed by adopting a specialised evaluation matrix and thereafter, synthesised by a competent authority to award an overall grade to the candidate at the end of the appraisal / evaluation. Accordingly, in our considered view, the process of evaluation of an IAS officer, more so a senior IAS officer entails a depth of expertise, rigorous and robust understanding of the evaluation matrix coupled with nuanced understanding of the proficiency required to be at the forefront of the bureaucracy. This administrative oversight ought to have been left to the executive on account of it possessing the requisite expertise and mandate for the said task.

28. Accordingly, it is our opinion that the High Court entered into a specialised domain i.e., evaluating the competency of an IAS officer by way of contrasting and comparing the remarks and overall grades awarded to Respondent No. 1 by (i) the Reporting Authority; (ii) the Reviewing Authority; and (iii) the Accepting

Authority, without the requisite domain expertise and administrative experience to conduct such an evaluation. The High Court ought not to have ventured into the said domain particularly when the Accepting Authority is yet to pronounce its decision qua the Underlying Representation.

***Conclusion***

29. Given this backdrop, we are of the opinion that the learned Division Bench of the High Court erred in law. Accordingly, we set aside the judgement of the Division Bench of the High Court. Additionally, as we have been informed that the Accepting Authority is yet to take a decision on the Underlying Representation, we direct the Accepting Authority to take a decision on the Underlying Representation under Rule 9(7B) of the PAR Rules within a period of 60 (sixty) days from the date of pronouncement of this Judgement. Thereafter, Respondent No. 1 is granted liberty to take recourse to remedies as may be available under law.

30. Before parting we must place on record our appreciation for Mr. Shreenath A. Khemka, Learned Counsel appearing on behalf of Respondent No. 1, for the spirited and able assistance rendered to the Court.

31. With the aforesaid observations, the appeal is allowed. Pending application(s), if any, stand disposed of. No order as to cost(s).

**…….J.**
**[VIKRAM NATH]**

**…….J.**
**[SATISH CHANDRA SHARMA]**

NEW DELHI
MARCH 11, 2024