

GAHC010031192018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/993/2018

NIRANJAN DEY

PIS NO. 117219, S/OLT. NARESH CHANDRA DEY, RETIRED AS ASSISTANT
CENTRAL INTELLIGENCE OFFICER, GRADE-III (GENERAL), QTR. NO. 165-
B, NEW COLONY, P.O. LUMDING, DIST. NAGAON, ASSAM- 782447.

VERSUS

1: THE UNION OF INDIA AND 3 ORS. REP. BY THE SECRETARY TO THE
GOVT. OF INDIA, MINISTRY OF HOME AFFAIRS, NEW DELHI-110001.

2: THE DIRECTOR, 1 B HEAD QUARTER NEW DELHI PIN -01

3: THE ASSISTANT DIRECTOR C/-4, 1 B HEADQUARTERS NEW DELHI-01.

4: THE ASSISTANT DIRECTOR/E
SUBSIDIARY INTELLIGENCE BUREAU GUWAHATI-07

For the Petitioner(s) : Mr. S. Choudhury, Advocate.
Ms. R. Medhi, Advocate.

For the Respondent(s) : Mr. R.K.D. Choudhury, Deputy Solicitor General of India,
for respondent Nos.1 to 4.

- B E F O R E -
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 06-02-2024
(Vijay Bishnoi, CJ)

By this petition, the petitioner has assailed the order dated 14.02.2017
passed by the Central Administrative Tribunal, Guwahati Bench, Guwahati

(hereinafter to be referred as "Tribunal") in O.A. No.94/2017, whereby the Original Application filed by the petitioner against the Memorandum dated 20.12.2013 passed by the respondent Department has been dismissed.

The petitioner was working as Assistant Central Intelligence Officer Grade-II/General under the respondent Department. He was superannuated on 28.02.2008, however, approached the Tribunal in the year 2012 with a prayer to upgrade the adverse entries made in the service record of the petitioner pertaining to the years 2001-02 and 2005-06.

The Original Application filed by the petitioner before the Tribunal came to be disposed of with liberty to move appropriate representation before the respondent authorities for upgradation of aforementioned adverse entries. The representation filed by the petitioner was ultimately dismissed by the respondent Department vide Memorandum dated 20.12.2013, which came to be challenged by the petitioner before the Tribunal. The Tribunal has dismissed the Original Application filed by the petitioner vide impugned order while making certain observations, which are reproduced here with:-

"11. From the examination of material available on the ACR for the period 2001-02, the following can still be gleaned.

i) Sh. Niranjana Dy frequently remained on leave during the period in question including long periods of Earned Leave, Half Pay Leave and Extraordinary leave (leave without pay). The total period of his absence from duty on account of frequent Earned Leaves come to 194 including leave without pay for 83 days.

ii) The following remarks were recorded under specific heads:

2(b) Achievements in raising sources/contacts: None

2(c) Ability to access and evaluate information: Fair

2(d) Capacity for special task: May not be capable for special task

2(e) Capacity for any other intelligence assignment: Nothing

5(a) Overall grading: Average

12. In mentioning the above, the competent authority has held that the overall grading 'Average' given to the applicant for the period 2001-02, by and large is consistent with the observations recorded by the Reporting Authority against individual heads in the ACR Proforma. Further, in the impugned memorandum dated 20.12.2013, it has been indicated as under:

'It is also noteworthy that the then Reviewing Authority, Sh. P.T. Bose, AD also did not interfere with the remarks of the Reporting Authority and retained the overall grading of 'Average'. The Countersigning Authority also retained the same grading.

The representationist has not been able to show any 'Outstanding' contribution or work done by him which can establish that he was under-assessed for the period in question. The settled position in administrative law is that the record speaks for itself and the remarks recorded in the normal course of business must be regarded as a fair and actual assessment of an officer's capacity unless there is some record to the contrary is presented before the Competent Authority. In this case, Sh. Dey has failed to discharge the obligation.

In his representation, Sh. Niranjana Dey has selectively quoted some portions of the comments recorded by the Reporting Authority against the specific heads in order to show that he was a very good or outstanding officer and to establish that there is a discrepancy between his overall grading and the comments recorded against individual heads. However, as already shown above, this is not the case when the comments are examined in entirety. As such, the representation filed by Sh. Niranjana Dey Advocate. as far as it pertains to the period 2001-02 is rejected because the representationist has not been able to advance cogent and specific grounds in support of his claim.'

13. From the above, we are of the considered view that the authorities concerned have considered the representation and in fact decided the matter objectively and in a quasi-judicial manner on the basis of materials placed on record. The contention of the applicant that for the period of leave which was treated as dies non should not have weighed the authorities to record overall grading 'average' does not lead us to draw a conclusion that the same was the only basis which prompted the authorities for rating the applicant 'average' for the period 2001-02. In our opinion, there were other remarks which impelled the authorities to rate him 'average'. Judged from this angle, we are not inclined to interfere with this rating 'average' nor do we feel it proper to substitute our own view in place of the views expressed by the authorities competent in that behalf.

14. As regards the ACR for the period 2005-06, in the light of consideration as has been made in respect of ACR for the period 2001-02, the competent authority, after going through the records, has held that that 'Average' grading for the period 2005-06 may stand.

15. *We have thoroughly examined the matter and we have also gone through the copies of ACR for the period 2005-06, as produced by the applicant in the O.A. The remarks given against various columns, as would be evident, are combination of pro et contra. This being the position, we do not find any flaw or lacuna in the matter of rating the applicant 'average' for the period 2005-06.*

16. *Before coming to closure, we would like to note that we have gone through the various decisions, cited by the applicant in the written notes of submission 'to strengthen his contentions. However, in the instant case, applicant having been given an opportunity to represent against the adverse remarks in his ACRS as per the direction of this Tribunal and in turn his representation having been rejected by the competent authority objectively and in a quasi-judicial manner with reference to the materials on record, in our considered view, those decisions are of no help to him inasmuch as, the facts of the case in hand are in distinction from the facts narrated therein.*

17. *Having discussed as above, we answer the point in issue that interference with the Memorandum dated 20.12.2013 (Annexure-XVI) is unwarranted and therefore, the same is legally tenable."*

Having heard the learned counsel for the parties at length and after carefully scrutinizing the material available on record, we do not find any case for taking a different view as taken by the Tribunal. Hence, there is no merit in this writ petition and the same is, therefore, dismissed.

JUDGE

CHIEF JUSTICE