

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.895/2002

New Delhi this the 6th day of March, 2003.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

(12)

Smt. Suman Joshi,
Personal Assistant,
W/o Sh. Mohinder Joshi,
R/o Q.No.236/VII,
R.K. Puram,
New Delhi.

-Applicant

(By Advocate Shri R.N. Saxena)

-Versus-

Union of India, through
Joint Director,
Department of Information Technology,
Electronic Niketan, 6-CGO Complex,
New Delhi.

-Respondent

(By Advocate Shri R.N. Singh, proxy for Sh. R.V. Sinha,
Advocate)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

Through this OA applicant has sought expunction of the following adverse remarks communicated to her in her ACR for the period 1.4.2000 to 31.3.2001:

1. Regularity & Punctuality	Punctual, but not regular."
in attendance.	
2. Intelligence, keenness &	Intelligent but not very keen to
Industry.	take initiative or come forward
	for any responsibility.
3. General assistance in	No initiative on her own in this
ensuring that matters	regard."
requiring attention	
are not lost sight of..	

2. Applicant on qualifying departmental examination was appointed as Personal Assistant to the Director. In the past she has never been communicated adverse remarks. She was also assigned the work of clearing reports on Customs & Excise, Exim Policy, Industry

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Policy etc. which she has successfully completed with excellence.

3. In the year from 1.4.2000 to 31.3.2001 on account of serious illness of his son applicant has taken short leave with due permission of officer under mitigating circumstances. Despite leave she has completed the project reports and other work assigned to her. By the impugned letter dated 9.8.2001 she has been communicated adverse remarks where she has been shown irregular, not keen to take initiative against which a representation has been preferred, which was rejected by an order dated 29.1.2001, giving rise to the present OA.

4. Learned counsel for applicant Sh. R.N. Saxena contended that whereas the performance of applicant during the reported period was excellent and has never been communicated any memo, displeasure or advisory note and was not advised to improve upon her working. Unfounded remarks lacking objectivity have been entered in his ACR by the reporting officer whereas the fact is that on completion of assigned work reporting officer had earned good reputation. It is stated that applicant's ACR had been delayed without any basis and the representation has been rejected without recording reasons. Neither any reasons have been assigned either to record adverse entry in support of adverse entry nor in the representation maintaining the remarks. This, according to learned counsel is in violation of the decision of the Chandigarh Bench of this Tribunal in R.D. Gupta v. Union of India, 1990 (1) ATLT 316.

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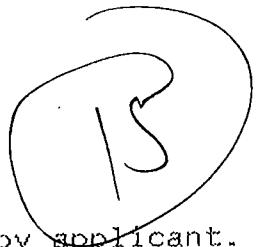
5. Shri R.N. Singh, learned counsel appearing for respondents vehemently opposed the contentions of applicant and stated that OA is not maintainable as not in the proper format and applicant has not come with clean hands and has made false averments as well as suppressed the material information to the extent that whereas it is contended that she had worked under Director, R.C. Sachdeva for five years which is not correct as she has worked only for three years from 1998 to 2001.

6. Another statement of applicant that the reporting officer without any basis delayed writing of ACR is unfounded as applicant herself submitted self appraisal form only on 19.7.2001 after about a gap of three months which delayed writing of her ACR.

7. It is also stated by Sh. Singh that applicant in her OA stated that she has not been awarded any warning etc. whereas on 5.7.99 a memo has been served as also on 328.5.99.

8. Shri Singh on merits contended that the remarks are justified from the performance of applicant as she has lacked initiative and was irregular on account of frequent absence and also the fact that she has been warned verbally several times by the reporting officer during the reporting period.

9. In the rejoinder the fact of communication of advisory memo has been denied by applicant and it is stated that initial of applicant figured therein are fictitious and for this the matter has been taken up with CFL and



thereafter appropriate action would be taken by applicant. Moreover, it is stated that during the reported period applicant has never been apprised of her unsatisfactory performance through any advisory memo, note, warning or displeasure. Such remarks are unfounded, baseless without reasons. Moreover, representation has been rejected without recording reasons which shows non-application of mind.

10. I have carefully considered the rival contentions of the parties and perused the material on record. In so far as preliminary objections are concerned, I find that application is in the proper format and the fact that Union of India has been impleaded through Joint Director will not make the OA non-existent in law. The necessary party Joint Director is impleaded and a reply to this effect has been filed by the deponent. Moreover, merely because applicant had stated that she has worked under Director for five years and had not disclosed the fact of written warning etc. will not amount to any suppression as no warning etc. has been issued in writing to applicant during the reported period in the year 2000-2001 and in so far as earlier warnings issued do not come within the reported period and from the perusal of the signature of applicant in the OA as well as figuring in those memos the same appears to be manipulated. This lends support from the fact that on perusal of the ACR form during the year 19990-2000 in the relevant column of any reprimand issued to applicant reporting officer had not mentioned about these memos and warnings which clearly show that no such warning etc. have been issued to her during that period.

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11. In the matter of adverse remarks although the Tribunal has limited jurisdiction in a judicial review and is precluded from acting as an appellate authority but yet the judicial review cannot shut eyes on the vagueness of remarks lacking objectivity. Before I proceed to examine the facts and circumstances of the present case the following observations have been made by the Apex Court in S. Ramchandra Raju v. State of Orissa, 1994 (3) SLJ SC 95:

"The facts are eloquent. From 1973-74 the appellant started with a commendation of his performance to be "satisfactory" to "fair" in the year 1990-91. Would it be comprehensible that in the year 1987-88 whether he would suddenly drop down and become an average or below average teacher? When he was a responsible teacher and he had cordial relations with the students' community, and was taking pains to impart lessons to the students, would it be believable that he avoids to take classes and drops down "if not watched"? When anterior to or subsequent to 1987-88 he was a man of ability and of integrity, the same would become below average only for the academic year 1987-88 without discernible reasons. It would speak volumes on the objectivity of assessment by the reporting officer i.e. the Principal. This conduct is much to be desired. This case would establish as a stark reality that writing confidential reports bears onerous responsibility on the reporting officer to eschew his subjectivity and personal prejudices or proclivity or predilections and to make objective assessment. It is needless to emphasize that the career prospect of a subordinate officer/employee largely depends upon the work and character assessment by the reporting officer. The latter should adopt fair, objective, dispassionate and constructive comments in estimating or assessing the character, ability, integrity and responsibility displayed by the concerned officer/employee during the relevant

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period for the above objectives if not strictly adhered to in making an honest assessment, the prospect and career of the subordinate officer being put to great jeopardy. The reporting officer is bound to loose his credibility in the eyes of his subordinates and fail to command respect and work from them. The constitutional and statutory safeguards given to the government employees largely became responsible to display callousness and disregard of the discharge of their duties and make it impossible to superior or controlling officer to extract legitimate work from them. The writing of the confidentials is contributing to make the subordinates work atleast to some extent. Therefore, writing the confidential reports objectively and constructively and communication thereof at the earliest would pave way for amends by erring subordinate officer or to improve the efficiency in service. At the same time, the subordinate-employee/officer should dedicate to do hard work and duty, assiduity in the discharge of the duty, honesty with integrity in performance thereof which alone would earn his usefulness in retention of his service. Both would contribute to improve excellence in service".

12. The Division Bench of Delhi High Court in Dinesh Kumar Shandilya Vs. UOI (2002 (2) ATJ 126) after gone in to the guidelines in writing of ACR, it is held that recording of ACR must be done in fair and equitable matter to ensure that career of the employee is not jeopardised. Remarks should be borne on the facts and the reviewing and reporting officer are required to be acquainted with the work of the officer reported upon atleast three months during the period covered by the ACR. Objectivity should be maintained in writing confidential reports. Chandigarh Bench of this Tribunal in Fateh Singh Vs. Chandigarh Administration (2002 (3) ATJ 425) held as follows :-

"The gamut of the decisions referred to above is that the purpose of writing the Annual Confidential Reports and making entries in the character roll is to give an opportunity to a public servant in improve excellence. If the adverse remarks are not communicated with all expedition, the very purpose for which they were made is frustrated. It is the duty of the reporting officer to adopt a constructive approach by informing the concerned employee of his shortcomings and pass to him all the material which may go against him so that the employee may beforehand place his point of view and in any case may have enough time and opportunity to improve.

13. Apex Court in P.K. Shastri v. State of M.P. (1999) 7 SCC 239 observed as follows:

However, we consider that despite the handicaps mentioned above, it would have been more prudent and appropriate for him to have made a proper application to the High Court for extension of time to enable him to comply with the directions of the High Court. Be that as it may, we think that the CRs of an officer are basically the performance appraisal of the said officer and go to constitute vital service record in relation to his career advancement. Any adverse remark in the CRs could mar the entire career of that officer. Therefore, it is necessary that in the event of a remark being called for in the confidential records, the authority directing such remark must first come to the conclusion that the fact situation is such that it is imperative to make such remarks to set right the wrong committed by the officer concerned. A decision in this regard must be taken objectively after careful consideration of all the materials which are before the authority directing the remarks being entered in the CRs. In the instant case, the High Court has rested its opinion in regard to the efficiency of the officer based on the fact situation of a single case and that too with reference to the capacity of the officer concerned to control the proceedings of the Court. There was no material before the High Court that this was the case with the Sessions Judge concerned in other cases also nor does the lacuna pointed out by the High Court appear to be such as would undermine the administration of justice".

14. If one has regard to the ratio laid down by the Apex Court while recording ACR the stress is upon fair, objective and constructive assessment in all fields and statutory safeguards to be followed by reporting officer. A remark should be intelligible and adverse entry must precede an opportunity. The deficiencies are to be pointed out in order to facilitate objective assessment through necessary advise, guidance and assistance to correct the falls. If upon an opportunity of improvement no improvement is forthcoming the situation is different. If the material is not put to the concerned employee and shortcomings are not highlighted and he is denied an opportunity particularly when ACR has effect over the promotional avenues. As such ACR is not sustainable.

15. In so far as plea that verbal warnings have been issued the same is not a sufficient compliance of the guidelines, on perusal of the record, i.e., character rolls of applicant pertaining to her ACR for the period 1.4.2000 to 31.3.2001 though applicant has been graded as "Good" his irregularity and lack of initiative are the bases of adverse remarks. In so far as verbal warnings are concerned, in column 12 where the officer is to write whether the officer is reprimanded for indifferent work and to assign brief particulars the comment is no. This clearly shows that nowhere during this reported period any reprimand has been issued to applicant. Had there been verbal warnings to applicant to improve upon as projected in the reply there would have been a mention of the same in the ACR. Moreover, no reasons have been recorded or instances highlighted either in the ACR or in the reply as well as record produced that in what manner applicant has lacked initiative and was not regular the same lacks

objectivity. Apex Court in E.K. Shastri's case (supra) was of the considered view that as ACR constitutes vital service record in relation to career advancement before recording any adverse remarks one must first come to the conclusion that the fact situation is such that it is imperative to make such remarks to set right the wrong committed by the officer concerned and the decision in this regard must be taken objectively after careful consideration of all the materials. No such instances have been reported how applicant was in any manner lacked initiative or irregular. The fact that she was on short leave cannot constitute an adverse remark as the same has been availed of with prior permission of competent authority in mitigating circumstances on account of severe illness of her son. From the perusal of remarks reported upon reporting officer the same, by no stretch of imagination, are fair or equitable and are not borne on the facts. There has not been any assessment of the ability and responsibilities of applicant and this assessment cannot be an honest one which has put the career prospects of applicant in great jeopardy. As no verbal warning etc. has been established in absence of any credible material no inference can be drawn which substantiates the adverse remarks.

16. I have carefully perused the ACRs of the past and also preceding the adverse remarks and find that applicant's performance has always remained above board and she has never been communicated any adverse remarks. In such a situation aforesaid remarks which lacks objectivity and are not founded on any facts cannot be sustained.

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17. Technical objections raised by respondents are liable to be rejected as when the substantial justice is involved the same is to prevail.

18. In the result and for the foregoing reasons I am of the considered view on the strength of the decisions of the Apex Court that the adverse remarks are not legally sustainable. Accordingly the OA is allowed. Impugned remarks as well as the order affirming the same are quashed and set aside. Respondents are directed to expunge the aforesaid remarks from the ACR of applicant pertaining to the period 1.3.2000 to 31.3.2001. In the peculiar facts and circumstances of the present case where applicant has been dragged unnecessarily before this court a cost of Rs.5,000/- is imposed upon respondents to be payable to applicant within a period of two months from the date of receipt of a copy of this order.

S. Raju

(Shanker Raju)
Member (J)

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