

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 2537 of 2002

New Delhi, this the 8th day of May, 2003

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Shri Prem Kumar Tripathi
S/o Shri Ganga Prasad Tripathi
Director Postal Services
O/o The Postmaster General
Agra Region - Agra.

-APPLICANT

(By Advocate: Shri D.P. Sharma)

Versus

1. Union of India
Through Secretary,
Ministry of Communications,
Information and Technology
Department of Posts,
Dak Bhawan Sansad Marg,
New Delhi-110 001.
2. The Member (O)
Postal Directorate,
Dak Bhawan Sansad Marg,
New Delhi.
3. Shri B.N. Som
Retired Secretary,
Ministry of Communication,
Department of Posts
through the Director General Posts,
Dak Bhawan Sansad Marg,
New Delhi.
4. SHri S.P. Ojha
Retired Principal Chief PMG
U.P. Circle
through Director General Posts,
Dak Bhawan,
Sansad Marg,
New Delhi.
5. The Deputy Director General (Vig.)
Postal Directorate,
Dak Bhawan,
New Delhi-110 001. ... Respondents

(By Advocate: Shri Mohar Singh)

ORDER

By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicant in this OA assails adverse entries recorded in the ACR for the period from 1.4.99 to 31.3.2000 and also the rejection of his representation

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against the recording of adverse remarks. All these documents are Annexures A-1, A-2, A-3 and A-4.

2. The facts in brief are that the applicant is a Group 'A' Officer of Indian Postal Service and was promoted to JA Grade as Director Postal Services on ad hoc basis from 17.5.90 and subsequently regularised w.e.f. 26.2.93. He has been working in various capacities. He also claims that he has been earning 'Very Good' reports and he has earned appreciation letters also. However, respondent No.4, the reporting authority of the applicant who had been asked to supervise the work of the applicant upto 31.7.2000 was biased against the applicant. Therefore, with mala fide intention he has made the adverse entries in the ACR of the applicant for the year 1.4.99 to 31.3.2000 and 1.4.200 to 31.7.2000 and it is he who got them reviewed from respondent No.3 on 15.1.2001 while he had been appointed as Secretary.

3. To assail these impugned orders the applicant pleaded that in accordance with the DPAR OM No.21011/1/77 dated 30.1.1978 communication of adverse entries should be made within one month of the recording and under no circumstances the adverse entries for the alleged period could have been conveyed to the applicant on 28.2.2001. Thus this delayed communication of adverse entries against applicant is not based on equity and fair play and these are not sustainable.

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4. To support his contention the counsel for the applicant has referred to a judgment in the case of State of Haryana Vs. P.C. Wadhwa and Another reported in 1987 (3) ATC 690 (SDC). Relying upon the same the counsel for the applicant submitted that under Rule 5 of the All India Service (Confidential Rolls) Rules, 1970, a confidential report assessing the performances, character, conduct and qualities of every member of service shall be written for each financial year. The rule provide that total 7 months has been laid down as the maximum period within which adverse remarks, if any, should be communicated. But in this case according to the applicant himself the remarks were communicated to the applicant on 28.2.2001.

5. As against this the learned counsel for the respondents submitted that Brochure on Preparation of Confidential Reports published by the Department of Personnel and Training of adverse remarks in the CRs of the Government servant should be communicated by the reviewing officer or by the reporting officer. This should be done as far as possible within one month of the completion of the report and the ACR gets completed only after it gets reviewed by the reporting officer.

6. But I find in this case Reviewing Officer had reviewed ACRs on 15.1.2001 and the adverse remarks were communicated to the applicant on 28.2.2001. Thus immediately within a period of 1 1/2 months so there is no inordinate delay. Hence the judgment relied upon by the applicant does not help the applicant.

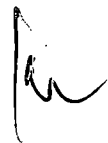
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7. The record of the ACR as produced before the court would go to show that the ACR for the period 1.4.99 to 31.3.2000 were completed by the applicant on 3.5.2000. The same was reported upon by the reporting officer on 12.7.2000 and the reviewing authority had reviewed the same on 15.1.2001, so there is no inordinate delay as claimed by the applicant.

8. As regards the ACR for the period 1.4.2000 to 31.7.2000 is concerned, the applicant has submitted his resume on 12.8.2000. The reporting authority had made a comment on 17.8.2000 and the reviewing officer had reviewed it on 15.1.2001. In my view again there is no inordinate delay. Thus the judgment relied upon by the applicant has no relevance.

9. The learned counsel for the applicant has also pointed out that in this case the ACR was reviewed by the Secretary to the Government of India and the representation made against the same was rejected by the same authority so he has not been given proper opportunity to make representation against the recording or reviewing of the adverse remarks. The counsel for the applicant also stated that he has been deprived of fair opportunity as his representation being taken up by the Secretary and since in this case reviewing authority was the Secretary then the representation should have been decided by the Minister-in-Charge.

10. However, the counsel appearing for the respondents submitted that the ACR would reveal that the reviewing authority Shri B.N. Som who signed the ACRs



though with the stamp of Secretary but his designation mentions in the ACR as the then Member (O). The learned counsel for the respondents further submitted that in this case the reviewing authority of the applicant was Member (O) and Shri Som was working as Member (O) when he should have reviewed the ACRs of the applicant but by the time the ACRs were put up before him he was promoted as Secretary but he signed the ACRs as reviewing authority as Member (O). It is also pointed out that the representation against the same had been decided by the Secretary Shri Dutta. Thus there is no violation of any procedure of reviewing or deciding the representation of the applicant.

11. To my mind also when the reviewing authority had noted down under signatures as he was then Member (O) and particularly the fact that the representation had been rejected by another person who had taken over as Secretary, so this grievance of the applicant has no merits. Neither there is violation of any rules nor there is violation of principle of natural justice.

12. The next point taken up by the applicant is that against the adverse entries made in the ACRs which are biased and mala fide so the same are not sustainable in the eyes of law. The learned counsel for the applicant has also pointed out that for a particular building taken on rent by the postal authorities the landlady had been insisting for revision of rent and FRAC had decided as to how much increase in rent is to be given as to on what date but the reporting officer has entertained in giving the building on rent from an


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earlier date and since the applicant had recorded a note to the effect that the rent cannot be increased from an earlier date and his note had been overruled by the reporting officer in his power as Principal Chief Postmaster General so the reporting Officer to that extent was also annoyed with the applicant as he was interest in crease of rent.

13. The learned counsel appearing for the respondents submitted that the Principal Chief Postmaster General was competent to take a decision as to on what rate it is to be increased. Though the recommendations of FRAC are to be taken into consideration by the then Chief Postmaster General who has got the jurisdiction and power to allow the increase in rent from ante-date also. So an official reading suggest that the Principal Chief Postmaster General has overruled the noting of the applicant but this cannot be a reason that the reporting officer would have become annoyed or biased against the applicant.

14. I have considered this aspect.

15. Had it been the only ground for recording of adverse remarks against the applicant then probably the reporting authority would have not given the reasonings for recording the adverse remarks for example the reporting authority has quoted that during the period of the applicant's complaint with regard to theft loss and fraud cases has increased. Similarly appeals left by his predecessor were only 9 in number but at the end of March it had reached upto 28 whereas per month average receipt

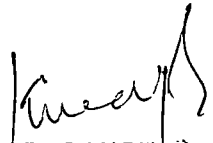


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has been only 5. The reporting authority about the knowledge and attributes of the applicant which are also adverse. There is no explanation on the part of the applicant to explain those reasons. Thus I find the ground of bias attitude of Reporting Officer is not available since the adverse entry seems to be based on facts.

16. As regards appreciation letters are concerned, the applicant claims that he had been issued appreciations letter for the good work done but I may mention that those appreciation letters were not issued in the individual name but issued for the Department itself.

17. Thus I find that there is no ground at all in the OA which may call for interference. Accordingly, the OA has no merits and the same is dismissed.


(KULDIP SINGH)
MEMBER (JUDL)

/Rajesh