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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.3362/2001

New Delhi this the 13th day of August, 2002.

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

Rajender Kumar,
S/o Sh. A.N. Thakkar,
NCRB, East Block-VII,
R.K. Puram,
New Delhi-110 066

-Applicant

(By Advocate Shri V.S.R. Krishna)

-Versus-

1. Union of India through
the Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.
2. The Director,
National Crime Records Bureau, MHA,
East Block-VI, R.K. Puram,
New Delhi.
3. Sh. D.L. Ajmani,
Junior Staff Officer,
National Crime Records Bureau, MHA,
East Block-VI, R.K. Puram,
New Delhi-110 066.

-Respondents

(By Advocate Shri S.M. Arif)

O R D E R

By Mr. Shanker Raju, Member (J):

Applicant impugns respondents' order dated 31.8.2001, containing adverse remarks in his ACR for the period 1.4.98 to 31.3.99 in column 15 (c)(d)(e)(f), 16 (b) (d) (e), 18 (f) and 21 and has sought expunction of the same.

2. Applicant being aggrieved by the adverse remarks recorded and communicated to him in his ACR for the year 1998-99 approached this court in OA-2672/2000, wherein by an order dated 21.12.2000 directions have been issued to the respondents to dispose of the appeal of the applicant

against adverse remarks by passing a detailed and speaking order and thereafter liberty to the applicant to approach the court.

(10)

3. The appellate authority in compliance thereof issued OM dated 31.8.2001 where remarks in column No.16 (c) and 18 (e) have been expunged but the remaining remarks have been retained.

4. By a speaking order, the following adverse remarks have been recorded in the ACR of the applicant:

- i) Dominating nature, lacking team spirit.
- ii) Relation with colleagues senior and juniors are general strained.
- iii) Unable to organise the work and general complains against subordinates and lacks leadership qualities.
- iv) Keen to learn new things but is self centred and obstinate.
- v) Does not take interest in duties and lack initiative.
- vi) Behaves as an immature person and lacks wisdom.
- vii) Unable to take any class in any of the NCRB courses.

viii) Not a Team man. Does not get along with colleagues and seniors.

(1)

ix) His knowledge and competence gets marginalised due to his attitude.

5. Applicant who was working as a Data Processing Assistant Grade 'B' was communicated the aforesaid remarks. The learned counsel appearing for applicant Sh. V.S.R. Krishna at the outset placing reliance on a decision of the coordinate Bench in R. Prema v. Union of India (OA No.72/2000) decided on 3.11.2000 where the applicant was also working in the same capacity and was communicated identical remarks the same have been expunged, it is contended that applicant in all four is covered by the aforesaid case. He further contended that R-3, D.L. Ajmani, who was the reporting officer and was impleaded, has not chosen to file his reply, as such malafides alleged against him are deemed to be admitted and established, vitiating the adverse remarks. As the applicant has never compromised with the issue of missing inventory from the Training Branch whereas Sh. Ajmani had certified the same as physically checked and found correct. It is contended that in all fairness and to oust any real apprehension of bias Sh. Ajmani should not have been acted as a reporting officer. It is also contended that in the purchase of computer etc. applicant was also in the committee which has also flared Sh. Ajmani who was instrumental in adversely reporting against the applicant.

6. Sh. Krishna further stated that the adverse remarks recorded in the ACR are vague and not based of any concrete evidence. No memo/warning was issued prior to

recording of the ACR to provide an opportunity to the applicant as the earlier ACR which has not been written by Sh. Ajmani have been excellent. This down grading should have been apprised to the applicant with an opportunity to show cause in consonance with the decision of the Apex Court in U.P. Jal Nigam & Ors. v. Prabhat Chander Jain, 1996 (33) ATC 217.

7. It is further stated that contents of adverse remarks and its tone and tenure are to be seen which is unfounded as in one of the instances where the applicant has been adversely commented for not taking any classes in any of the NCRB courses ample evidence has been brought on record to indicate by way of time table that applicant had regularly taken classes. As such remarks are not based on factual information and material and are absolutely extraneous and vague.

8. In so far as other adverse remarks are concerned, it is contended that no specific incident or documentary evidence has been given by the reporting officer to substantiate the remarks and nothing material has been recorded in the personal file which the applicant vehemently seeks to be inspected by the court.

9. Placing reliance on a decision of the Apex Court in Sukhdeo v. Commissioner, Amaravati Division, 1996 (5) SCC 103 it is contended that before the adverse remarks are recorded it is salutary to give prior opportunity in writing to inform about the deficiencies and notice for improvement. If despite this employee does not improve then the remarks are justified. As there is nothing on

record to indicate any notice/memo/warning given to the applicant adverse remarks are liable to be expunged. Moreover, malice of R-3 is proved beyond doubt.

10. On the other hand respondents' counsel Sh. A.M. Arif by placing reliance on a decision of the Rajasthan High Court in Pawan N. Chandra v. Raj. High Court & Anr., 2002 (3) SLR 85 contended that mere apprehension or inference or malafide attitude of the reporting officer cannot be sustained without there being any malice. Further by placing reliance on a decision of the Punjab & Haryana High Court in K.L. Aggarwal v. H.S.E.B., 2002 (2) SCT 446 (P&H) it is stated that the reporting officer has subjective satisfaction and in absence of any arbitrariness, malafides or consideration of extraneous material ACR cannot be reviewed by the court, acting as an appellate authority.

11. It is furthers stated that R-3 has been defended through the official respondents and in compliance of the directions of the court sufficient reasons, tenable in law, have been recorded by the appellate authority to sustain the adverse remarks and where-ever the same were unfounded are expunged.

12. Moreover Shri Arif contended that R-3 has not personal or professional grudge against the applicant. Adverse remarks have been based on his performance and are not ill founded. Several instances have been quoted where the applicant had been verably warned by the superior officers JAD (T) and AD (T) which have been ignored by the applicant. Issuance of memo or warning was not possible due to enormous pressure of work. It is further stated

that the applicant has always avoided to take theory classes and as such he was only given practical classes. On one occasion he specifically denied his ability to take theory classes.



13. In so far as Prema's case (supra) is concerned, the same was stated to be distinguishable as adverse remarks are matter of assessment and no concrete parameters are possible and the remarks which are not capable of being substantiated by the documentary evidence but at the same time quality in question is an essential ingredient for the satisfactory discharge of his duties. These remarks are based on the personal observation of the reporting and reviewing officer. As the applicant was lacking in performance he was rightly reported upon adversely by the respondents.

14. I have carefully considered the rival contentions of the parties and perused the material on record. At the outset having regard to the decision of the Apex Court in Bharat Ram Meena v. Rajasthan High Court, 1997 (3) SCC 233 in a judicial review of adverse remarks unless the assessment is arbitrary and without any factual basis remarks cannot be interfered with.

15. Having regard to the aforesaid ruling, the contention of the applicant that he is similarly situated with Ms. Prema whose case was allowed by expunction of remarks by the Tribunal I find that the Tribunal has allowed the OA on the ground that the relevant guidelines mandate issuance of warning, memo and an opportunity to the applicant to improve his work and conduct. It is not disputed that no written warning/memo etc. have been

served upon the applicant by the reporting officer whereas on perusal of the official record as well as reply of the respondents the justification for not issuing any memo etc. is that the applicant was verbally advised and due to paucity of time and enormous pressure of work it was hard for issuing written warning and memo. In Sukhdeo's case (supra) whereas instructions required for issuance of memo to an officer reported upon with a view to bring out improvement in work and conduct. Casual approach of the reporting officer is clear from the defence they have taken. Even under pressure laid down procedure cannot be bye-passed and numerous entries can be recorded and reported upon against the Government servant. The object of communicating memos etc. is to maintain transparency as well as an opportunity to the concerned officer to get improvement in work and conduct. Oral reprimand are not sufficient compliance of the guidelines. From the perusal of the adverse remarks reported upon I find that the same are objective and vague. No supporting material has been found in the record to substantiate the remarks. Though the appellate authority has given certain instances but the same are vague. The vagueness of the remarks is apparent from the instance that under column 18 (f) adverse remarks of not taking any classes in any of the NCRB course is alleged, whereas on the other hand the record establishes that the applicant has taken practical classes as per the time table. No instances have been reported as to how the applicant is non-cooperative and lacks interest and initiative. Merely applying for outside post would not be indicative of lack of initiation.

16. Adverse remarks entered in the CR of a Government servant should be specific and based on sufficient facts and material, as this tends to deprive a Government servant his promotion and other ancillary benefits. The ACR is an important attribute in the service tenure of an employee. A casual approach to record the ACR by the reporting officer cannot be countenanced.

17. Moreover, I find that the applicant has alleged malafides against the reporting officer, in so far as applicant was a member of the purchase committee reporting adversely against R-3 and also the applicant has not acceded to his designs to issue of missing inventory as despite being impleaded as a party and duly served R-3 has not filed a reply. The allegations of malafides have not been rebutted and are established accordingly. I also find that a coordinate Bench in a similarly circumstance where almost identical remarks have been reported upon are expunged on vagueness the present case also in all four covered by that decision.

18. In the result and having regard to the reasons recorded above, OA is allowed. Impugned order dated 31.8.2001 is quashed and set aside. Respondents are directed to expunge the adverse remarks from the ACR of the applicant for the period 1.4.98 to 31.3.99 within a period of two months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

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