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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.598/2001

New Delhi, this the 13th day of January, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)
Hon'ble Shri V. Srikantan, Member(A)

H.L. Yadav
A-229, Prashant Vihar
Delh-110085

.. Applicant

(Shri J.S.Bakshi, Advocate)

versus

Government of NCT of Delhi, through

1. Chief Secretary
Delhi Sachivalaya Players Building
ITO, New Delhi
2. Secretary (Services)
Delhi Sachivalaya Players Building
ITO, New Delhi
3. A.S. Khullar
Addl. Director of Transport
5/9, Under Hill Road, Delhi

.. Respondents

(Smt. Avnish Ahlawat, Advocate through proxy council
Shri Mohit Madan)

ORDER

Shri V.Srikantan, Member(A)

The applicant was informed vide memo dated 21.11.97 that the following adverse entries had been recorded in his annual confidential report for the year 1996-97:

1. Against Col.No.20- He has been delaying submission of files, investigation of cases and filling of vacancies and submission of names to the employers.
2. Against Col.No.22- Integrity of the officer is not certified due to his alleged involvement in a criminal case sending fake and bogus submission to the employer and gave suggestion to the undersigned that an officer of the Directorate under investigation should be left with financial liability.

Applicant submitted an appeal against the aforesaid adverse remarks to the Chief Secretary vide appeal dated 30.12.97 followed by a reminder on 4.5.98. The appeal of

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the applicant was rejected vide order dated 8.12.2000. Applicant filed OA No.598/2001 against the retention of the adverse remarks before this Tribunal. By its order dated 7.2.2002, this Tribunal quashed the order dated 8.12.2000 and the competent authority was directed to pass a detailed, speaking and reasoned order in accordance with the rules and instructions upon applicant's representation against the adverse entries for the year 1996-97 within two months from the date of receipt of a copy of that order. Thereafter, order dated 5.7.2002 was passed by the respondents to the following effect:

"Therefore, the competent authority has come to the conclusion that two adverse remarks one relating to delay in files etc. and other about alleged involvement of Sh. Yadav in a criminal case should be expunged. The rest of the adverse remarks regarding giving suggestion to Sh. Khullar that an officer of the Directorate under investigation should be let off with financial liability, will stand".

2. Aggrieved by the retention of a portion of adverse remarks against column No.22(b), applicant has ~~filed this~~ ^{revised} OA, seeking quashing of the adverse remarks communicated by earlier order dated 11.12.97 and modified by order dated 5.7.2002 and to direct respondents to forthwith promote the applicant from DASS to DANICS w.e.f. 4.9.2000 with all consequential benefits.
3. Heard Shri J.S.Bakshi, learned counsel for applicant and Shri Mohit Madan, learned proxy counsel for respondents and perused the records.
4. The first contention of the applicant is that Shri A.S. Khullar, Respondent No.3 (R-3, for short) was not the reviewing authority in respect of applicant and hence

he could not have recorded the adverse entries in the ACR of the applicant for the year 1996-97. This argument had also been taken by the applicant in his representation made to the respondents and respondents in their reply have clearly stated and confirmed that R-3 was the reviewing authority in respect of applicant and has rightly recorded the adverse entries in the ACR of 1996-97.

5. The second contention of the applicant is that the recorded adverse entries have come in the way of his promotion from DASS to DANICS and the adverse remarks were unwarranted, illegal and arbitrary.

6. During arguments, learned counsel for applicant vehemently stated that the incident referred to in the adverse entries made against column 22(b) had never taken place and further if such an incident had taken place, as maintained by R-3, same could have only been after 31.3.1997 and as such could not have been the basis for making adverse entries in the ACR of the applicant for the year 1996-97. In this context, he has referred to the counter filed on behalf of R-3. This contention was contested by the learned counsel for the respondents.

7. In view of the fact that applicant has challenged the validity of adverse remarks recorded on the basis of the counter filed by R-3, it is worthwhile to reproduce the relevant portion of R-3's counter, which is as under:

"4. That the deponent was posted as Joint Director (Employment) in the Directorate of Employment during the period August, 1996 to January, 1998 and worked as Head of Office of Employment, Govt. of NCT of Delhi. The applicant worked with the undersigned initially for some period as Asstt. Employment Officer (Vigilance) at the Headquarter of

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Directorate of Employment. In that capacity, the applicant used to submit the file relating to Vigilance cases/complaints to the undersigned.

It is further respectfully submitted that in one of the serious cases of gross irregularities of sponsoring names of candidates for the post of Majdoor in the Central Vehicle Depot and other Defence Establishment by one Shri R.K. Meena, the then Asstt. Employment Officer, Kirbi Place Exchange, on the basis of reference received, the case was investigated by the then Sub-Regional Employment Officer, Special Employment Exchange for Ex-Service man, Kirbi Place, Delhi Cantt. During the course of investigation he pointed out that Shri Meena had sponsored names of certain candidates who were not even validly registered with the Employment Exchange further names of some candidates have been sponsored by Shri Meena whose registration had expired and who did not get their registration renewed. Similarly, names of some candidates have been sponsored by assigning them assumed seniority, which was not according to the procedure as given in the Employment Exchange Manual issued by Directorate General of Employment. This file was dealt by the applicant as Asstt. Employment Officer (Vigilance) posted at the Headquarters of the Directorate of Employment. The case was *prima facie* clear that Shri Meena had committed gross irregularities in sponsoring names of ineligible candidates and even candidates, which were not registered. While processing this case the applicant suggested to the undersigned orally one day in the evening around 6 PM in the office of the undersigned in the Directorate of Employment, 2 Battery Lane, Delhi that Shri Meena may be let off by imposing some financial liability. The undersigned was shocked by such an oral suggestion from a subordinate officer working with the undersigned as in the service career of 26 years (21 years in the Government and 5 years as lecturer in the college) no one had ever dared to make such suggestion. By the word the financial liability what he suggested was that the irregularity committed should be compounded by accepting some illegal gratification. Because otherwise any penalty, if at all to be imposed upon Shri Meena, could be imposed only by the disciplinary authority after holding the departmental enquiry which enquiry is going on. The undersigned asked the applicant that he never expected this type of behaviour from him because the undersigned trusted him and that's why the applicant has been in the Vigilance Branch. By conducting himself in this manner unbecoming of a responsible and honest government servant undersigned's confidence in him was shattered.

5. That the applicant was transferred immediately (emphasis is ours) from the Vigilance Branch at the HQ of the Department and posted as Asstt. Employment Officer, Sub-regional Employment Exchange, Darya Ganj.

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8. It is the contention of the learned counsel for the applicant that as the applicant was transferred from the Vigilance Branch at the HQ of the Department and posted as Asstt. Employment Officer, Sub-regional Employment Exchange, Darya Ganj vide order dated 12.5.97, the incident referred to by R-3 could only have taken place just before that date as R-3 has himself stated that applicant was transferred "immediately" after the above incident. Accordingly, to ascertain the full facts of the case, respondents were directed to produce the file relating to the transfer of the applicant to sub-regional Employment Exchange, Darya Ganj and respondents have produced the relevant file.

9. On going through this file, at 71/N of the noting portion, it is seen that R-3 has recorded a note therein in which it has been suggested that applicant will look after the work of Zonal Employment Exchange, Curzon Road till 31.8.97. This note is dated 21.4.97. It is apparent from this note that as on 21.4.97, the incident based on which the above adverse entries were recorded had not taken place. Subsequently there is another note at page 72-73/N in which it has been stated that 'as desired following posting and transfer of AEOs are hereby made'. In this note the applicant was proposed to be transferred from "HQ to Darya Ganj against a vacant post" and it was approved by R-3 on 12.5.1997 and orders were issued and thereafter R-3 has recorded that "orders have been issued accordingly" and submitted the file to the Director stating that "may kindly see for approval please". It is clear from this note that the incident on the basis of which the adverse remarks have been recorded in the ACR of applicant for the year 1996-97 could only

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have taken place between 21.4.97 and 12.5.97 and if this is the position, the same could not have been made a ground for making the adverse entry in the ACR of applicant for the year 1996-97.

10. It is the contention of the applicant that because of the adverse entries, he has been denied promotion to the post of DANICS in the grade of Rs.6500-10500 w.e.f. 4.9.2000 while several incumbents junior to him have been promoted. Applicant had made representation dated 13.9.2000 against the action for not promoting him alongwith his immediate junior Shri Yogi Raj, followed by a reminder dated 22.11.2000. It is also the contention of applicant that in respect of complaint case No.12/95 no charge memo or charge-sheet has been issued to him till date and accordingly there is no bar to the applicant being promoted to the post of DANICS w.e.f. 4.9.2000 with all consequential benefits. In this connection he has relied upon the judgement of Supreme Court in case of VOI vs. K.V.Janakiraman [1991(2) SCALE SC 423]. Counsel for respondents, on the other hand, has stated that in respect of complaint case No.12/95, charge-sheet has been issued to the applicant and this being so, applicant in terms of the same judgement referred to by the applicant (supra) cannot be promoted to DANICS. His contention is that the report submitted by the investigating authority under Section 173 of the Code of Criminal Procedure, 1973 is the charge sheet.

11. We do not think it necessary for the Tribunal to go into the controversy as to whether a charge memo ^{1/ghd} in complaint case No.12/95 has been filed before the Criminal court or not. The applicant has sought relief

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for a direction to the respondents to forthwith promote him from DASS to DANICS w.e.f. 4.9.2000 with all consequential benefits. It would be beyond the power of this Tribunal to give such a direction as the applicant has only a right to be considered for promotion.

12. Accordingly, the present OA is disposed of as under:

(a) Adverse remarks recorded against Col.22(b) and communicated to applicant vide order dated 11.12.97 and modified by order dated 5.7.2002 are quashed;

(b) ^{Accordingly,} ~~Thereafter~~ respondents are directed to consider the case of applicant for being promoted from DASS to DANICS as per extant rules and instructions on the subject. This exercise should be completed within a period of three months from the date of receipt of a copy of this order.

No costs.

V. Srikantan
(V. Srikantan)
Member(A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

/gtv/

20.5.2003

9.

MA 1116/2003 in
OA 598/2001

Present Shri J.S.Bakshi, learned counsel for the applicant.

After making certain submissions, Shri J.S.Bakshi,
learned counsel seeks permission to withdraw MA 1116/2003.

2. Accordingly, MA 1116/2003 is dismissed as withdrawn

with liberty.

(V.K.Majotra)
Member (A)

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(Smt.Lakshmi Swaminathan)
Vice Chairman (J)