

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 674/2001

New Delhi, this the 5th day of October, 2001

HON'BLE SH. KULDIP SINGH, MEMBER (J)

In the matter of:

Raghubuir Singh
S/o Sh. Ishwar Singh
Sub. Inspector/AC-III
Central Bureau of Investigation
Under DSP (Control Room)
Block No. 3, 4th Floor
C.G.O. Complex, Lodhi Road
New Delhi.

..... Applicant

(By Advocate: Sh. G.D. Bhandari)

Versus

Union of India, through

1. The Secretary
M/o DOPT
Deptt. of Personnel, Training
North Block
New Delhi.
2. The Director General
Central Bureau of Investigation
Block No. 3, 4th Floor
CGO Complex, Lodhi Road
New Delhi.
3. The Joint Director
Central Bureau of Investigation
Acharya J.C. Bose Road
Calcutta - 20.
4. Sh. Rakesh Asthana
Dy. Inspector General of Police
Central Bureau of Investigation, AHD
Ranchi.
5. Sh. V.S.K. Kaumudi, IPS
AIG, Welfare
Hyderabad (A.P.)

..... Respondent

(By Advocate: Sh. A.K. Bhardwaj)

ORDER

By Sh. Kuldip Singh, Member (J)

Applicant has filed this OA seeking the relief of quashing and setting aside of memorandum vide which the

h

applicant had been communicated adverse entries which is alleged to have been served on the applicant on 5.5.2000 vide Annexure A-1. He has also challenged the rejection of his representation dated 24.1.2001 which was rejected vide orders Annexure A-3. He has further prayed for expunging of the adverse remarks and treat the applicant as no adverse entry had been made in his ACRs and he should also be given all consequential benefits.

2. Facts as alleged by the applicant are that applicant was appointed as a Police Constable under the respondents and thereafter he raised to the rank of Sub-Inspector. The applicant further states that through out his service he was working as trained driver and have been performing the duties as a driver and he had never been found wanting at any stage of time in discharging of his official duties and for most part of his service he had been working at Headquarter office at New Delhi and even on his transfers to outstations like Ranchi, Patna his services have been utilised only as a Driver. So he could never acquire expertise in the field of interrogation and investigation. Vide impugned memo Annexure A-1 the applicant has been communicated adverse remarks for the period March 1997 to November 1997 when he was working at Dhanbad. His ACRs are stated to have been written by Sh. V.S.Kaumudi, the then S.P./C.B.I., AHD, Patna. But the applicant alleges that the said officer has no occasion in supervising the working or job performance of the applicant for a minimum period of 90 days as stipulated in rules and policy with regard to writing of Confidential Reports. The applicant alleges that he has worked under him only for a period for less than 90 days which does not meet the

km

requirement of rules authorising said Sh. Kaumudi to write his ACRs.

3. Besides that it is further alleged that the remarks given to him are couched in general terms and are quite vague and cannot be termed as adverse entries. It is further stated that no warning etc. has even been issued to the applicant which may justify in recording of adverse entries. The applicant has also never been pointed out any shortcoming during his duties. The applicant further prayed that the period commented upon is March 1997 to November 1997 during which period the applicant was sick even his appraisal form was supplied to him somewhere in November 1999 and adverse entries have been recorded much late that also calls for quashing of the adverse remarks. Remarks had been passed in a routine manner and the same are liable to be dismissed.

4. Respondents contested the OA. They have filed their counter affidavit. Respondents submitted that the adverse remarks in the Confidential Report of the applicant for the period in question have been recorded by the Reporting Officer on the basis of his experience about the working and conduct of the applicant. And the representation made against these remarks by the applicant was considered carefully at the level of Additional Director, CBI, Calcutta and has been rejected on merits. As regards the assessment of performance of the applicant for less than 90 days by Sh. V.S. Kaumudi, the then S.P. is concerned it is submitted that Sh. Kaumudi was competent to initiate the ACRs for the period March 1997 to November 1997 as the applicant joined AHD Patna on 31.3.97 and was relieved from the said Branch on 12.11.97 and during the

km

.4.

said period he worked and remained posted under the said S.P. namely, Sh. V.S.Kaumudi. It is further submitted that the remarks given by the concerned office was given on his judgment and particularly his long absence from duty during the above period on pretext or the other. It is also submitted that the applicant was transferred to Patna on 31.1.97 but he reported very late i.e. 31.3.97 and he again applied for leave from 5.5.97 to 23.5.97 on the ground of his wifes illness but thereafter he remained absent till 10.11.97. His leave was sanctioned only upto 23.5.97 but he overstayed from the office.

5. It is further submitted that the reporting office had repeatedly asked the applicant to join duty but applicant remained absent which shows that he did not want to join his duty and remain on leave.

6. As regards his work is concerned it is submitted that applicant was provided necessary training by the CBI. The adverse entries have been properly reviewed and the representation against the same had also been rejected by the competent authority, hence the OA should be dismissed.

7. I have heard the learned counsel for the parites and gone through the records.

8. Learned counsel for the applicant submitted that the respondents have filed an additional affidavit. According to the said additional affidavit it is submitted that respondents themselves admit that the physical presence of the applicant at CBI AHD Patna Bench under the reporting office is less than

ku

144

.5.

90 days, if the sanctioned leave period is deducted from the posting period of the applicant. The respondents have filed this affidavit after obtaining a clarification from Department of Personnel & Training with regard to the counting of period for initiation of ACR which is also annexed alongwith the additional affidavit. Learned counsel for the applicant submitted that if the period of leave is to be deducted and then total number of days comes to less than 90 days than the officer could not have initiated the ACR and thus the initiation of the ACR by Sh. Kaumudi for this period itself is bad and no adverse remarks should have been recorded. In reply learned counsel for the respondents submitted that though the applicant had worked for less than 90 days with the Reporting Officer but he remained in his Branch from 31.3.97 to 12.11.97 and from 23.5.97 onwards the applicant was unauthorisedly absent. So, for the purpose of writing of confidential reports the applicant remained attached with the Reporting Officer thus the Reporting Officer is thus competent to write ACRs of the applicant. As regards the other pleas of the applicant that he had been working as a driver and had never been associated with investigations and interrogations the counsel for the respondents submitted that applicant was given appropriate training at the CBI and cannot take the plea that he has not been given any training for investigation and interrogation. Respondents also submitted that even in the year 1998 the applicant remained absent and departmental action was initiated against the applicant for which he had been penalised also. So the observation of the reporting officer with regard to his penalty was justified and similarly respondents' counsel justify the remarks given by the Reporting Officer.

km

(13) (18)

9. I have considered the rival contentions of the parties and material on record.

10. The filing of the additional affidavit and particularly statement made in the additional affidavit in para 5 shows that if the department deducts the sanctioned leave period from 7.5.97 to 23.5.97 and the applicant's overstay period from 24.5.97 to 9.11.97 for the period of his posting in Patna, i.e., from 31.3.97 to 12.11.97 then the physical presence of the applicant with AHD Patna Branch was less than 90 days. The department has sought clarification from the Department of Personnel & Training. Though the Department of Personnel & Training has advised that the leave period during which the officer reported upon remains on Earned Leave/Commuted Leave, should be deducted for calculating the required period of 3 months for writing of ACR, as such leave period is not deemed fit for calculating the required period of 3 months for writing of ACR. Though the Department of Personnel & Training advise is silent about the period of overstay by the applicant but the question arises whether the period of overstay by the applicant is to be calculated for the purpose of calculating the minimum period of 90 days of job performance under the reporting officer or not.

11. Since in this case the facts are peculiar because the applicant reported for duty on CBI AHD Patna only on 31.3.97 and he remained attached to that Branch till 12.11.97 and the leave period plus the overstayed period if excluded then his job performance comes to less than 90 days. Working of 90 days is the minimum requirement only then a reporting officer can report about the conduct of the reported officer. Though

km

.8.

the OA. The adverse remark given to the applicant for the impugned period should be deleted from his service and it should be treated as if no remarks had been given for the said period.

12. OA is accordingly disposed of.



(KULDIP SINGH)
Member (J)

'sd'