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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1642/99

New Delhi this the 13th day of November, 2001.

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

Kirpal Singh,
S/o Shri Bela Singh,
R/o Quarter NO.817, Sector IV,
Rama Krishna Puram,
New Delhi-110022.

-Applicant

(By Advocate Shri B.B. Raval)

-Versus-

1. Union of India through the
Cabinet Secretary,
Government of India,
Rashtrapati Bhawan,
New Delhi.
2. The Secretary,
Research and Analysis Wing,
Cabinet Secretariat,
Government of India,
Room No.7, Bikaner House Annexe,
Shah Jehan Road,
New Delhi.
3. Shri I.K. Raina,
Under Secretary (PN),
Cabinet Secretariat,
Government of India,
Room No.7, Bikaner House Annexe,
Shah Jehan Road,
New Delhi.
4. National Commissioner for SC/ST,
through its Chairman,
Lok Nayak Bhawan,
Khan Market,
New Delhi-110003.

-Respondents

(By Advocate Shri Madhav Panikar)

O R D E R

By Mr. Shanker Raju, Member (J):

The applicant has assailed the adverse ACR communicated to him for the period 1.4.97 to 15.9.97 wherein his overall performance has been observed to be average as well as the orders passed on his representation made against the adverse remarks dated 3.6.99.

2. Briefly stated, the applicant has been promoted as Senior Field Officer (General Duty) on 12.8.86.

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In the month of April, 1997, as alleged by the learned counsel for the applicant Shri B.B. Raval, the applicant has been asked by the Under Secretary Sh. I.K. Raina (R-3) to attend to some of his personal chores and he on humanity ground attended the same. But, on his being called again to do the same on 24.4.97 he has been abused by R-3 in front of one Shri Dabas. The contention of the learned counsel for the applicant is that he has been sought explanation on 24.4.97, alleging that the applicant has refused to deliver the official mail to cover up the omission. The applicant submitted his explanation and in the meantime, by letter dated 16.6.97 he has been apprised that he has neither distributing regular official mail nor arranging delivery of operational files and was asked to carry out these jobs properly. The applicant submitted a representation to the Joint Secretary praying for his transfer to save him from the harassment of R-3, describing his misdemeanour. He was issued a further Note and explanation alleging to have refused to distribute the Dak on 28.6.97, to which he has replied contending that nobody has ordered to carry out the work and has sought about the charter of his duties. The applicant has further made a representation and by a memorandum dated 5.9.97 he has been asked to be careful in future. The representation of the applicant for charter of his duties has been replied to by a communication dated 16.10.97 wherein it is stated that the whole time of a Government servant is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority. The request of the applicant to withdraw the warning was rejected on

29

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27.11.97. Thereafter the applicant was conveyed the ACR and against which he made a representation which has been rejected.

3. The learned counsel for the applicant further stated that the representation of the applicant has not been disposed of by passing a detailed and speaking order and as his record is unblemished his performance has been down graded without issuing him any opportunity to improve upon by way of issuing memo etc. and further stated that the reasons for such down grading should be recorded in the personal file. It is also stated that R-3 to whom he has impleaded in person alleged malafides by contending that as the applicant has refused to oblige the said official by doing his personal chores the ACR has been marked as retaliation and R-3 has even abused the applicant. By placing reliance on a affidavit of one Brij Lal Singh, it is contended that the incident has been confirmed where the officer has misbehaved with the applicant and abused him. It is also stated that the ACR has not been written in accordance with the rules and on the basis of the performance of the applicant but rather mala fidely and due to bias. The applicant has been threatened with disciplinary proceedings and has been illegally issued warning. The charter of duties has not been furnished to the applicant and the decision that the services of the Government servant is at the disposal of the Government clearly shows that the action of the respondents is punitive. The representation of the applicant made against the warning has been refused without the permission of the higher authority and behind the back of the applicant. In this backdrop it is stated that the ACR has been based not

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on the performance of the applicant but on the whims and fancies and lacking objectivity, which cannot be allowed to continue which will prejudicially affect his avenues.

4. On the other hand, strongly rebutting the contentions of the applicant, the learned counsel for the respondents has produced the file regarding the reasons recorded on his representation against the adverse remarks. The learned counsel for the respondents stated that the applicant has been issued warning during 1985 for not attending duties and he has been asked to perform official duties and on his refusal he has been warned several times but despite this his performance has not improved. Though there is no charter of duties but one of the assigned duties was diary and despatch, including distribution of dak and file. As the applicant has shown indiscipline and refused to carry out the work he has been issued warning and the same has been maintained by the respondents. It is also stated that his representation for transferring him from out of the Unit was considered and he was transferred accordingly for smooth working in the Branch. As the applicant's performance has deteriorated and despite guidance and apprising of the same as the same has not been improved the respondents having evaluating his performance have rightly recorded adverse remarks in his ACR. It is also stated that his allegation that R-3 misbehaved with him has not been found to be justified. In spite of repeated opportunities by the controlling authority the applicant could not improve his performance. It is also stated that in a judicial review of the confidential reports and adverse remarks in absence of any arbitrariness the same would not be interfered with. It is also stated

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that the representing authority has clearly recorded reasons in support of his order in the personal file and the same need not be communicated.

5. I have carefully considered the rival contentions of the parties and perused the material on record, including the record produced by the learned counsel for the respondents. In my considered view the adverse remarks recorded in the ACR of the applicant and the rejection of the representation by the competent authority do not suffer from any legal infirmity. The adverse remarks have been communicated to the applicant on the basis of his performance. As the applicant has refused to perform official duties he has been apprised of the same on several occasions by issuing memos. Despite this, he continued to lack in performance and ultimately on 5.9.97 has been issued recordable warning to be careful in future or to face disciplinary proceedings. The request of the applicant against the warning has been rejected by the application of mind and by recording reasons.

6. The contention of the learned counsel for the applicant that it was not within the charter of his duties to distribute Dak etc., is not correct. The controlling authority has assigned him the job of distributing Dak, which is as a general duty is part of his assigned duty. The mere fact that no charter of duties exists and has not been furnished to the applicant would not absolve the applicant from his obligation as a Government servant in lieu of getting salary has to perform his duties. Refusal to perform duties certainly amounts to misconduct and liable to be dealt with in disciplinary proceedings.

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However, the applicant has been accorded a reasonable opportunity to improve of his performance which he failed to do. As such the respondents have rightly recorded the adverse remarks by treating the performance of the applicant as average. In view of the decision of the Apex Court in Bharat Ram Meena v. Rajasthan High Court at Jodhpurs & Ors., 1997 (3) SCC 233, there cannot be a judicial review in the matter of adverse remarks unless the same are arbitrary or without factual basis. Having applied the aforesaid decision to the facts and circumstances of the case I am of the considered view that the remarks are not arbitrary and are based on facts, which cannot be interfered.

7. As regards the issue of recording reasons is concerned, I have perused the material on record and the reasons recorded by the authority while disposing of the representation of the applicant. I find that the authority has recorded reasons to arrive at the finding that the adverse remarks should stand. As such, in view of the decision of the Apex Court in Union of India v. E.G. Nambudiri, AIR 1991 SC 1216 the reasons need not be recorded or communicated in the order, but if on judicial review the reasons recorded by the authority on the personal file are found to be justified the same would not be interfered with.

8. Having satisfied about the reasons I hold that the order passed by the authority on the representation of the applicant as valid.

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9. In the result and having regard to the reasons recorded above, having found no infirmity in the adverse remarks recorded in the ACR, the claim of the applicant is not legal and valid. The OA, therefore, fails and is accordingly dismissed. No costs.

S. Raju

(Shanker Raju)
Member (J)