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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1072/1998

New Delhi, this 28th day of March, 2001

Hon'ble Shri M.P. Singh, Member(A)

B.P. Shukla

WZ-J/12, New Mahavir Nagar
Gali No.7, New Delhi-110018

.. Applicant

(By Shri B.B. Raval, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Agriculture
New Delhi
2. Chief Soil Survey Officer
All India Soil & Land Use Survey
New Delhi
3. S.N. Das
Chief Soil Survey Officer
AIS&LUS, New Delhi

.. Respondents

(By Shri R.P. Aggarwal, Advocate)

ORDER

Applicant was communicated the following adverse entries from his ACR for the period 1995-96 vide Memorandum dated 29.10.96:

- i) He has not taken charge of Establishment inspite of orders issued by the Soil Survey Officer, DRC
- ii) Indisciplined as he has not obeyed the SSO's order
- iii) He has been reprimanded for indifferent work

Applicant made a representation on 14.3.97 requesting to expunge the said adverse remarks but the same was not acceded to by the respondents, through a letter dated 31.3.97. He made another representation on 29.4.97 which was also rejected by respondents' communication dated 26.5.97. He is thus before this Tribunal for quashing of



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all these communications and seeking directions to the respondents to promote him in his turn by not taking into account these adverse remarks.

4. Heard the learned counsel for the parties and perused the records.

5. The grounds advanced by the applicant in respect of the reliefs sought for are that the communication of adverse remarks was time-barred inasmuch they should have been communicated by 7.6.96 instead of 24.10.96 and that the said adverse remarks are vindictive in nature.

6. Respondents in their counter on the other hand denied the above averments and submitted that the applicant had not furnished Part-II proforma of the ACR duly filled in time and a memo dated 12.6.96 was issued to him to submit the same within a week but the applicant has never furnished the same before the stipulated time. Therefore the question of communicating the adverse remarks on 7.6.96 does not arise. Though there is no whisper either in the OA or in the reply as to when did the applicant finally submit Part-II proforma of the ACR duly filled, while the communicating the adverse remarks by Memo dated 24.10.96 he was asked to make representation within six weeks from the date of receipt of that memo. Applicant vide his letter dated 6.12.96 requested to extend the time limit by four weeks, which period expired on 2.1.97. Therefore, the request made by the applicant for further extension of time vide letters dated 6.1.97 and 6.2.97 was not justified. But in order to bring transparency in



the matter, his belated/time barred representations were considered carefully and the request for expunging the remarks has been negated by letter dated 31.3.97.

7. Respondents also opposed the OA on the ground of limitation. Cause of action arose to the applicant on 31.3.97 when his request for expunction of the adverse remarks was not acceded to but the applicant chose to file the present OA on 26.5.98, i.e. after a lapse of more than 13 months. The learned counsel for the applicant stated that the applicant submitted an appeal against the order of 31.3.97 which was rejected on 26.5.97. In view of this, OA is not barred by limitation. However, the learned counsel for the respondents submitted that under the rules, there is no provision of appeal once the representation against the adverse remarks is rejected by the competent authority. In this regard he referred to instructions issued by the Government of India.

8. I find from DP&AR's OM No.21011/1/77-Ests. dated 30.1.78 that only one representation against adverse remarks (including reference to warning or communication of displeasure of the government or reprimand which are recorded in the confidential report of the government servant) should be allowed within one month of their communication. While communicating the adverse remarks to the government servant concerned, the time-limit should be brought to his notice. Thus it is clear that there is no provision of appeal in such cases. Therefore, the letter submitted by the applicant on 29.4.97 can be treated as a representation and not an



appeal. Hence, representation made by him again on 29.4.97 was ultimately turned down on 26.5.97. The repeated representations would not extend the period of limitation as has been laid down by the apex court in the case of S.S.Rathore V. State of MP AIR 1990 SC 10. Also a careful perusal of the records placed before me reveal that the applicant does not have any valid proof to show that the adverse remarks were of vindictive in nature.

9. In view of this position, I am not inclined to interfere with the action taken by the respondents by the impugned orders. In the result, the OA is dismissed bereft of any merit. In so far as applicant's plea for promotion is concerned, the same shall be considered by the respondents in his turn as per rules on the subject. There shall be no order as to costs.


(M.P. Singh)
Member(A)

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