

Central Administrative Tribunal, Principal Bench

Original Application No. 1686 of 1998

◇ New Delhi, this the 13th day of August, 1999

Hon'ble Mr.N.Sahu, Member (Admnv)

Shri P.K. Saha, Chief
Director(S), Department of
Family Welfare, Ministry of
Health & Family Welfare, Nirman
Bhawan, New Delhi-110001.Applicant

(By Advocate - Shri R.K.Shukla)

Versus

Union of India, through

The Secretary, Department of
Statistics, Ministry of Planning
& Programme Implementation,
Sardar Patel Bhawan, Sansad
Marg, New Delhi.Respondent

(By Advocate: Shri R.P.Agarwal)

O R D E R (ORAL)

By Mr.N.Sahu, Member (Admnv) -

Heard Shri R.K.Shukla, learned counsel for
the applicant and Shri R.P.Agarwal, learned counsel
for the respondents. Shri Shukla has submitted
written arguments also.

2. The applicant is aggrieved by the adverse
remarks in his ACR for the financial year 1995-96
dated 23.4.97. He impugns this ACR on the ground that
his representation has not been considered properly
and all the points raised by him were not examined.
Learned counsel for the applicant submitted that there
was no basis for the adverse remarks. He also stated
that the remarks were written by the Reviewing Officer
after his retirement. His ACR was not reviewed
because the Minister of State left his office long
before the C.R. was written. He also raised the

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point that the representation was not disposed of within the prescribed time. The communication regarding the disposal of the representation was sent after more than one year from the date of submission, namely on 4.6.98. The DPC for the post of Higher Administrative Grade was constituted on 17.6.98. He stated that this was done deliberately so that the applicant could not appeal against the order to the higher authority. In his written arguments, he emphasised on the fact that the benefit of two tier system of reporting was not extended to the applicant because the reviewing officer had himself written the C.R. It is next submitted that the applicant submitted his representation on 16.5.97. The said representation was partially disposed of on 4.6.98. Only three adverse remarks were expunged and that too after a period of one year. The representation should have been disposed of within a period of 90 days as per Govt. orders dated 30.1.78. The letter addressed to the Secretary to the Govt. of India, Department of Statistics dated 11.6.98 is stated to be a memorial/appeal for complete expunction of adverse remarks. It is stated that the reporting officer never gave any written warning or communicated his displeasure on any occasion pointing out the deficiencies in the work of the applicant. It is therefore urged that the adverse remarks are not based on real facts and are biased. The applicant was never given guidance or feedback by any superior officer. He belongs to S.C. category and therefore there is all the more responsibility on the reporting officer for proper guidance for improving his performance. It

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is further stated that the Secretary, Deptt. of Statistics who wrote on his work lacked technical knowledge in the field of statistics, system analysis and large scale data processing.

(16)

3. After notice, the respondents filed the counter. Shri R.P. Aggarwal, learned counsel for the respondents submitted that the applicant himself sent the C.R. form for the year 1995-96 on 17.3.97 although he was sent the format for filling it up in August, 1996. The adverse remarks were communicated on 22.4.97. The delay in submitting the form properly filled up, lay entirely with the applicant. Shri Aggarwal submits that the reporting was objective and it was a reflection of the deficiencies in the performance of the applicant. With regard to written warnings, Shri Aggarwal submitted that the applicant worked on a post equivalent to Joint Secretary and there is no necessity to issue written warnings at such a high level. In fact, the review of the work undertaken with reference to the targets set are themselves indications of the slippages in his performance. After expunction of certain adverse remarks, it is noticed the following remarks stood:

"A. NATURE & QUALITY OF WORK"

1. Please comment on part II as filled out by the officer and specially state whether you agree with the answers relating to targets and objectives, achievements and shortfalls. Also specify constraints, if any, in achieving the objectives.

The achievements are exaggerated in the sense the targets had to be revised again and again.

2. Quality of Output:-

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Please comment on the officer's quality of performance having regard to standard of work and programme objectives and constraints, if any. In particular, please comment on the officer's attention to detail and figure sense.

(7)

Quality was below par. Several times it was noted that errors were not corrected and same defective (trial) tables were generated. Even on software, he could not effect any modernization to speed up work by replacing old and slow software.

3. Knowledge of sphere of work:-

(a) Please comment specifically on each of these:

level of knowledge of functions, related instructions and their application.

Performance during the year deteriorated from the previous year in this regard.

4. Decision-making ability:-

Please comment on his/her ability to decisions and to weigh pros and cons of alternatives.

Can take decisions but without proper weighing pros and cons.

5. Inter-personal relations and team work:-

Please comment on the quality of relationship with superiors, colleagues and subordinates on his/her capacity to work as a member of a team and to promote team spirit and optimise the output of the team.

Poor. He was not able to lead a team. He was not able to motivate his officer. He was not able to inspire confidence in superiors.

C.3 General assessment:-

Please give an overall assessment of the officer with reference to his/her strength and shortcoming and also by drawing attention to the qualities if any not covered by the entries above.

His performance during this year deteriorated to be colourless and mediocre. The sense of 'pride in work' was missing. He was tending to be needlessly aggressive towards everyone. The work of replacement of magnetic tapes by CD-ROM was badly handled. The image of the comp. centre received a bashing.

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4. Grading:-

(Outstanding/Very Good/Good/Average/Below Average (An officer should not be graded outstanding unless exceptional qualities and performance have been noticed: grounds for giving such a grading should be clearly broughtout)

(18)

Average.

Had to be formally warned for committing financial irregularity."

The above remarks had been retained after the disposal of the representation.

4. Learned counsel for the applicant cited the decision of M.Sasidharan vs. Sri A.P.Sudir, Deputy Collector of Central Excise (Audit) Cochin and others. 1988 (6) ATC 385. He drew my attention to the decision that unless the countersigning officer has any personal knowledge of reported employee's unsatisfactory work and conduct, adverse remarks should not be made by him. He next cited the decision of the Supreme Court in State of M.P. & ors. vs. Vishnu Dutta (vs) Dubey and ors., 1994(27) ATC 578. He drew my attention to the fact that the service record of the applicant was examined earlier and the impugned ACR for the year 1995-96 was not objective. In the reported case, it was found that the service record of Vishnu Dutt had been examined from 1959 to 1983 and that he had received 45 awards. Shri Shukla tries to persuade the court to go through the earlier CRs and in view of this, he submits that the adverse entries in the present C.R. may be directed to be expunged.

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5. It is noticed from the above remarks which were sustained that the Secretary who wrote the ACR as reporting officer was very familiar with the work of the applicant. In the ACR of 1995-96, against column 2, he stated that several errors were not corrected as a result of which defective tables were generated. It is noticed that these remarks were as a result of the ~~lack~~ familiarity with the work of the applicant. Similarly the impression given by the reporting officer was that he compared the performance of the applicant of previous years with the current year. He found slippages and deterioration in his performance. The comparison is with reference to objective guidelines and objective standards. Therefore it is not proper to say that the reporting officer was not familiar with the applicant's performance.

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6. With regard to warnings, I would entirely endorse the argument of Shri Aggarwal that senior officers who are of the level of Joint Secretary and above, need no spoon feeding. They are treated as Heads of the Departments. They participate in the policy formulation. They are the back-bone of the Administration at their level. The treatment to be meted out to them has certainly to be different from the treatment to be meted out to ministerial or supervisory Section Officers in the Secretariat. I am satisfied that the Secretary, Department of Statistics had kept before him the performance of the applicant on every aspect of his work and noted the poor quality, the lack of quantitative achievement as well as lack of quality in leadership expected of a senior

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officer of his level. One fails to understand what type of warning needs to be given. A Secretary cannot write to the Joint Secretary once in a month or two months or three months that he failed to inspire confidence in his juniors. These are impressions gathered in the course of time over the performance that is to be seen. That apart, the interaction between a Jt. Secretary level officer and the Secretary is constant. Therefore in the meetings, conferences, conversations and notings, the impression that the Secretary gathers, is not one without familiarity, without basis and without substance.

7. The fact that the Secretary, Deptt. of Statistics had written adverse remarks in as many as 7 columns shows what according to his assessment the failures of the applicant were. Normally at the level of Secretary writing the ACR of Joint Secretary, extreme care is undertaken because the Joint Secretary of today is the Secretary of tomorrow and the Secretary of today was a Joint Secretary of yesterday. At any rate, I am satisfied that the disposal of the representation was objective because three important adverse remarks have been expunged. The applicant states that it was a partial expunction and therefore prays for expunction of the other remarks. I don't think the applicant has properly understood. There cannot be partial expunction. It is a case of complete disposal of representation. I am unable to take the letter against the partial expunction of adverse remarks as a memorial. I am not satisfied that either of the cases cited by the applicant is

Paras 19 & 20

applicable. The first case is inapplicable because the reporting officer is fully familiar with the work of the officer reported upon. The second case is inapplicable because it is not materially comparable with the facts of the present case. With regard to earlier ACRs, it is no doubt true that the ACRs for the years 1992 and 1993 were 'very good'. The ACRs for the subsequent years were not exactly sparkling. Some of the remarks were not very encouraging. In fact some of the remarks, for instance for the year 1994-95 was just 'good' and 'average'. This is not a case of applicant's suddenly falling from the height as in the case of Vishnu Dutt cited above.

8. In view of the above discussion, I do not find any merit in this O.A. and it is accordingly dismissed. No costs.

Harasimha Sahu
(N. Sahu)
Member (Admnv)

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