

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 854 /1998

New Delhi this the 6th day of April, 2004.

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

Shri Mohinder Singh Parasher
Sub Inspector (Min.) No. D/449
R/o H.No. 1119 Timar Pur, Delhi.

-Applicant

(By Advocate: Shri Arun Bhardwaj)

-Versus-

1. Union of India
Through Lt. Governor of Delhi
Through Commissioner of Police, Delhi
PHQ, I.P. Estate, New Delhi-110002.
2. Addl. Commissioner of Police
Northern Range
Delhi.
3. Dy. Commissioner of Police
Central Distt.
Delhi.
4. DCP, HQ-I
PHQ, I.P. Estate
New Delhi-110002.

-Respondents

(By Advocate: Mrs. Rashmi Chopra)

O R D E R (Oral)

By Mr. Shanker Raju, Member (J):

Heard the parties. This OA was dismissed by an order dated 15.3.99. In Writ Petition No.764/99 by an order dated 18.3.2002 passed by the Delhi High Court, matter was remitted back to this Tribunal for consideration.

2. Impugned herein is the conveyed ACR of applicant for the period 5.10.1995 to 31.3.1996. It is contended by Shri Arun Bhardwaj, learned counsel of applicant that in order to sustain a valid report, the reporting officer should have judged the performance of applicant at least for 90 days. By referring to Delhi Administration letter dated 7.3.1988, it is contended that

(2)

Earned Leave and Commuted Leave on medical certificate are to be deducted from counting the period of three months.

3. According to applicant as he was deputed to the Parliament Cell by an order dated 20.11.1995. He was under the control of ACP (HQ) (C). It is stated that reviewing officer of applicant had admittedly left before 10.1.1996. In this backdrop, it is stated that applicant had never worked for three months under the control and supervision of ACP Mr. Ravi Sehgal, a public grievance Cell. As such, the reported ACR by him is a nullity in law.

4. It is further contended by resorting to Government of India DOPT OM No. 21011/8/85-Estt.A dated 23.9.1995 that in case where there is no reporting officer or having the requisite experience of three months or more during the period of report, the way out is to get the report written by the reviewing officer and the review is to be undertaken by the next higher authority.

5. Learned counsel for respondents Mrs. Rasimu Chopra by referring to an order passed on 16.3.1996 for DCP, Central District contends that Shri Ravi Sehgal was also looking after the work of ACP(HQ) and he was competent to write the ACR of applicant as he has worked under him for three months.

6. On careful consideration of the rival contentions once the fact is alleged the burden to prove the same is on the person who alleges it. From perusal of letter dated 16.3.1996, it transpires that ACP Ravi Sehgal was discharging the functions of ACP(HQ) on that date. From

(9b)

(3)

this, no evidence has come forth to establish that for the period 5.10.95 to 10.1.96 Shri Ravi Sehgal was the controlling officer of applicant under whom he has worked for three months. In this view of the matter as Shri Ravi Sehgal was not the controlling authority of applicant for a period of three months, he is disqualified to be a reporting officer. Now the question arises as to what would be the way out? DOPT OM referred to stipulates that in such an event the reviewing officer shall be asked to write the ACR as reporting officer and his next higher officer was to act as reviewing officer. In this view of the matter as it is established that respondents have failed to point out that ACP Ravi Sehgal has seen the working of applicant or controlled him for three months, ACR written by him cannot be sustained.

7. Accordingly, OA is partly allowed. The ACR conveyed to applicant is expunged and order on representation are quashed and set aside. The matter is remitted back to the respondents to act in accordance with DOPT OM of 1985 referred to above and re-write the ACR of applicant and get it reviewed by the competent authority available at present in the concerned district. This shall be done within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju

(Shanker Raju)
Member (J)

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