

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

12

HON. SHRI R.K. AHOOJA, MEMBER(A)

O.A. NO.2354/1995

NEW DELHI, THIS 31<sup>st</sup> DAY OF March 1997

SHRI H.D. SINGH  
Assistant Director, Telecom  
O/o the G.M. Telecom District  
Ghaziabad (U.P.)

..APPLICANT

(By Advocate - Shri A.K. Bhardwaj)

VERSUS

1. UNION OF INDIA, THROUGH  
The Secretary  
Ministry of Communication  
Department of Telecommunication  
Sanchar Bhawan  
NEW DELHI
2. The Director General  
D/o Telecommunications  
NEW DELHI
3. The General Manager  
Telecom (Operational)  
Department of Telecommunication  
Lucknow
4. The Director Telecom (West)  
O/o The Director Telecom (West)  
D/o Telecom  
Laxmi Road  
Dehradun
5. The Telecom District Engineer  
D/o Telecom  
Saharanpur  
O/o the TDE (Telecom)  
U.P.

..RESPONDENTS

(By Advocate - Shri M.M. Sudan)

ORDER

The applicant is aggrieved by the adverse remarks in his ACR for the period 1.4.1991 to 31.3.1992. He alleges that these have been recorded without maintaining any memorandum of service as required under para 174(7) of the PNT Manual Volume 3 and without referring to any specific incident on the basis of which the adverse remarks were recorded and communicated. The adverse remarks communicated vide letter dated 2.9.92 read as follows:-

13

"Lacking the commitment to task. The officer normally misleads and does not act on first instructions and verbal reminders."

2. The case of the applicant is that neither any memorandum of service was maintained by the reporting officer nor was any memo issued to him nor any instructions were given to him during the course of the year citing any instance of lacking of commitment, misleading of his superiors or not acting on first instructions and verbal reminders. Obviously, therefore, according to the applicant, the adverse remarks are arbitrary and not based on an objective assessment

3. The respondents in reply state that when the remarks were communicated, the applicant had given a representation and this was duly examined by General Manager Telecom (Operation) U.P. Circle, Lucknow, and the same was disposed of by letter dated 13.6.94. Since the applicant was not satisfied, he filed a representation before Director General (Telecom), New Delhi, and later before Minister of Communications. His case was examined afresh and the decision of General Manager was upheld. The respondents also take a preliminary objection that there is no such office as General Manager Telecom, Lucknow, as the U.P. Telecom Circle which was under the administrative control of Chief General Manager Telecom, Lucknow, has been bifurcated into two, one the East U.P. Telecom Circle and the other the West U.P. Telecom Circle with their respective headquarters at Lucknow and Dehradun. It is alleged by respondent No.3 that the O.A. is infructuous for non-joinder of necessary parties. <sup>also</sup> Respondent Nos. 1, 2 and 4 in their reply state that the adverse remarks were recorded on the basis of brief

14

written reminders and verbal instructions to the officer by the reporting officer as evidenced by R-1 and R-2.

4. I have heard the ld. counsel on both sides. Shri Bhardwaj on behalf of the applicant argues that in a similar case of J.N. BHATIA VS. UOI ATJ 1990 CAT 253, where the representation had been rejected by a non-speaking order and neither the memo of service was maintained by the reporting officer nor was there any other supporting evidence to substantiate the adverse remarks, the adverse remarks were held to be void and as such expunged.

4. I have considered the matter carefully and I do not consider that the above case comes to the rescue of the applicant. The view in that order of J.N. Bhatia was that there has to be some credible basis for the adverse remarks. The adverse remarks were expunged on the ground that neither there was any memorandum of service to serve as a basis of final entry in the ACR nor was there any supporting evidence to substantiate the adverse remarks in question. In the present case, this is not so. As R-1 and R-2 annexed to the reply show, the applicant had been addressed two letters dated 27.11.91 and 30.1.92 regarding his performance. In the first letter, he was notified in the following terms:-

"Despite my at least 15 telephonic and personal reminders, the same has not been submitted to my office till date. During your personal visit at Saharanpur on 27.11.91, you have committed the submission date as 4th December, 91. This is the last chance, I am giving you and keeping a copy of this letter safe with me which will be recorded in your memo of services in case of your inability to submit the said estimate by the date committed by you."

...4/-

Dr

(15)

In the next letter, it was observed as follows:-

"It is regretted that in spite of lapse of nearly two and half years, no action has been intimated from your side in this matter.

It is therefore requested once again to ensure an early reports to the question by putting some responsible official to work on the job and looking into the matter personally. Further delay in submission of the report will be your personal responsibility."

6. These clearly show that the reporting officer had occasion to inform and alert the applicant about the deficiency in his performance. In terms of these two communications, one of which also indicates that there were other reminders, the entry regarding lack of commitment to the task in not acting on first instructions and verbal reminders is adequately borne out.

7. The instructions in para 174 of PNT Manual Volume 3 lays down that the reporting officer should inform the countersigning authorities that the memoranda of services have been maintained and consulted and the countersigning authorities may call for them and check them up. It is further provided that negligence on the part of the reporting officer in this regard should be duly noticed. Non-maintenance of memorandum of services by itself cannot be thus made a basis of expunction of adverse remarks if other collateral evidence is available to justify such remarks, though the non-maintenance of such memorandum of service is negligence on the part of the reporting officer which should be duly noticed by <sup>my</sup> ~~the~~ reporting officer in turn. In the present case, as sufficient and credible evidence is available that the shortcomings of the applicant had been

16

noticed and communicated to him during the course of the reporting period, the mere absence of memorandum of services cannot be a ground for expunction of the adverse remarks.

In the light of the above discussion and facts and circumstances of the case, the O.A. is dismissed. No costs.

*R. K. Ahuja*  
(R.K. AHUJA)  
MEMBER (A)

/avi/