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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 490 of 1995

New Delhi, this the 24th day of November, 1997

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

V.K.Saxena, S/o Shri P.C.Saxena,R/o
190/8, Indira Nagar-I, Meerut (U.P.)
Office Address: Working as Section
Officer(A), in the Office of ACFA
(Incharge) (Factory), Account Office
(Ordnance Factory),Muradnagar,Distt.
Ghaziabad, U.P.

-APPLICANT

(By Advocate - Shri M.K.Gupta)

Versus

1. Union of India,through the Secretary,
Ministry of Defence, South Block,
New Delhi - 110 011
2. The Controller General of Defence Accounts,
West Block-V, R.K.Puram, New Delhi-110 066.
3. The Controller Defence Accounts (Navy),
1,Coperage Road, Bombay -39.
4. Mr. Goverdhan Nath, Accounts Officer, Pay
Accounts Office, Project Sea Bird, West
Block-V, R.K.Puram, New Delhi.
5. Office of the ACFA(Assistant Controller
of Finance & Accounts), Accounts Office,
Ordnance Factory, Muradnagar, Distt.
Ghaziabad, U.P.

-RESPONDENTS

(By Advocate - Shri M.M.Sudan)

J U D G M E N T

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

In this Original Application the applicant
seeks expunction of adverse remarks made in his annual
confidential report of the year 1992-93 and a review DPC
for promotion to the post of AAO without considering the
said adverse remarks.

2. The remarks recorded by the reporting officer, reviewing officer and the accepting authority are extracted below -

Reporting Officer -

Does the Reporting Officer agree with all that is recorded under the Part-II by the Officer. If not, enumerate precisely the extent of disagreement with and reasons thereof.

I partially agree with the S.O.(A) as he suspects in functioning of staff. He has been unable to extract the work from them; as such he had to work under these circumstances with assistance of AAO.

General comments on the results achieved and the quality of performance and application of knowledge, delegated authority and conceptual and professional skill on the job.

Good

General Assessment.

This should contain an overall assessment of the officer's personality his good qualities and shortcomings and in particular comment on the following specific aspects relating to his functions in clear and unambiguous terms.

The SO(A) is non-submissive, argumentative and having no good relation with the staff as well as Defence Service authorities.

(a) Skill in noting and drafting	Good
(b) Promptness and accuracy in disposal of work	Good
(c) Aptitude for any particular type of work	Good
(d) Clarity and originality in thinking and expression.	Good
(e) Knowledge and thoroughness of rules and regulations.	Good
(f) Keenness and willingness to undertake more and greater	with obligation
(g) Amenability to discipline	Good
(h) Relation with fellow employees/public relations	not good
(i) Punctuality in attendance	punctual in attendance.

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If he has been reprimanded for indifferent work or for other causes. If so, brief particulars should be given. Reaction of the officer to any reprimand should also be indicated.

No

If he has done any outstanding notable work meriting commendation, brief mention should also be made.

No

Integrity

Certified.

Sd/- Signature of Reporting Officer
Designation - A.O.

REMARKS OF THE REVIEWING OFFICER

General remarks with specific comments about the general remarks given by the reporting officer and remarks about the outstanding work of the officer.

I have had occasions in talk and discuss things with so during ty. duties. May be considered as good.

Has the officer any special characteristics and / or any outstanding merits or abilities which would justify his advancement and special selection for appointment to Accounts Officer's grade out of turn? If so, please mention these characteristics briefly.

Nothing in particular was come to notice.

Sd/- signature of Reviewing Officer.
Designation - JCDA(N)

REMARKS OF THE ACCEPTING AUTHORITY

Signature of the CDA (with remarks, if any)

Accepted as adverse Sd/-
Designation - CDA(N)"

3. The remarks were communicated to the applicant on 19.7.1993 and representations against the same were rejected by the respondents vide their orders dated 28.4.94 and 23.11.1994.

4. The applicant's counsel submits that he was never served with an adverse communication by his

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superiors at any time in the past. He says that because he did not pass the initial pay bill of Shri Fernandes, he earned the special Cook nor agreed to age relaxation, he earned the wrath of respondent no.4. It is argued that respondent no.4's appraisal of the applicant's performance was neither fair nor objective. He relied in support of his case on the following decisions of the Hon'ble Supreme Court - U.P.Jal Nigam and others Vs. Prabhat Chandra Jain and others, 1996 SCC (L&S) 519; State Bank of India and others Vs. Kashinath Kher and others, 1996 SCC (L&S) 1117; and S.Ramchandra Raju Vs. State of Orissa, (1994)28 ATC 443

5. I have carefully considered the rival submissions. It appears to me that the adverse remarks are based on criteria that are not strictly related to the performance of the applicant of his allotted duties. Much is made out of the remarks made by the applicant during the course of a visit by the Joint CDA(Navy) of the Office of the CDA(Navy), Bombay when he visited the office of A.O. Project, Sea Bird, West Block-V, R.K.Puram, New Delhi. The second point that influenced the judgment of respondent no.4 i.e. the reporting officer, is an incident relating to passing of the pay and allowance of one Mr.Farnandis, Cook of DET Project, Sea Bird,Karwar. The audit found that the Cook was over-aged for the post held and he was not eligible for appointment to the said post. The matter regarding age relaxation was under consideration. The concerned authorities pleaded for provisional payment of pay and allowances to the Cook for the services already rendered by him. The applicant in exercise of his audit

functions could have viewed the case from the point of natural justice and processed the claim for provisional payment in the light of the clarifications rendered by the authorities concerned. He did not perceive in that light. According to the respondents such provisional payments were not without any precedents. The claims could have been passed subject to future recovery. It appears subsequently, the Government's sanction was obtained for age relaxation of the upper age limit of the said Cook. The respondents, therefore, held that the applicant was "obstinate" and did not pass the claim. The third instance cited is the case wherein the applicant had dealt with the bills pertaining to casual labourers in May, 1991.

6. I do not think that any of these instances should have weighed either with the reporting officer or with the reviewing officer in making the comments they have done. In the first place the applicant is an audit officer. He may be a low functionary in the audit hierarchy. His job is to express his independent opinion on a financial transaction. He found that the Cook was over-aged. He gave his opinion that it would be unwise to pass the bill. The superior officers could have over-ruled his note and could have themselves allowed provisional payment to the Cook before receiving relaxation. But at his level the applicant, audit officer objected to the payment. This should not be construed as a non-submissive and argumentative attitude. On the contrary it is the responsibility of every senior audit officer to encourage fresh perceptions and ensure that such free opinion on a

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subject comes on record. This is the surest check in a democracy against claims of expenditure. The function of audit is to view every claim of expenditure critically and to ensure that each claim is within the four corners of the rules and guidelines. It may be that later on the age relaxation was obtained and the payment was made to the Cook. None the less, the applicant should not have been punished for expressing his personal viewpoint against the claim.

7. With regard to the second point it is unfortunate that a personal remark even if it were true should have influenced the mind of the reporting officer so much that it led to an adverse entry. This incident is found in Annexure -R-4 which is extracted hereunder -

"On Dated . .Feb.93 the day J.C.D.A.Navy visited our office I heard Shri V.K.Saxena S.O.(A) saying that Madam has brought the complaint of the AO and AAO Shri Ram Baboo. This has been written without any coercion and compulsion."

The applicant had allegedly mentioned that the visiting senior officer "has brought the complaint of the AO and the AAO". There is nothing in these remarks, even if it were true, to justify an adverse entry. This could be an unintended casual remark made in a lighter view. There is nothing to show that this remark was malicious or intended deliberately to malign the reputation of anybody. Even if it were true a remark made by a member of a staff casually should not be magnified in such a manner as to be the subject matter

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of an adverse entry as a result of which he loses the promotion. An adverse entry can be made only if (a) the officer has not shown dedication or diligence in the performance of his duties; (b) he has not performed the work assigned to him in time and with proficiency; (c) In all his dealings he should behave in a manner that a public servant is expected to behave under the conduct rules. After the official has performed his job and met due targets qualitatively and quantitatively assigned to him, peripheral matters or personal behavior norms should not influence his assessment. In the entire confidential report the officer has been commended for promptness and accuracy in disposal and attitude for any type of work. He has also been commended for clarity and originality in thinking and expression; and knowledge and thoroughness of rules and regulations. It is also stated in the C.R. that he is very much amenable to discipline and he is punctual in attendance. Probably the reviewing authority found after a proper examination and discussion that the over all performance of the applicant was "good" but the accepting authority has restored the adverse remarks.

8. It is not denied by the respondents that the targets fixed for the applicant were fully achieved by him. Col.2 of the Self Appraisal report has not been controverted. With regard to relationship with the staff

and non-submissiveness the following comments were made by respondent no.4 -

"In regard to his contention about non-submissiveness & argumentativeness the following points which were main factors for his categorization as such will provide the complete awareness of the case and sequence of the event.

(a) In the inspection report of this office received from M.O. vide their letter No. INSP/ 2804/ AO(SS) dated 18.6.92 (Extract is enclosed as Annexure-III) there was a point among others regarding regularisation of provisional payment of pay & allowances to two peons of DG(P) Sea Bird S/Shri Prakash & R.S.Maurya.

(b) As the work relating to payment of pay & allowances in r/o Group-D staff & MT civilians drivers of DG(P) was being looked after by Shri V.K.Saxena SO(A). I discussed this point with SO(A). During discussion it was experienced that his approach was negative and showed reluctance/non submissiveness in processing the case in its proper perspective and argued that formal procedure for their appointment as Peon was not followed i.e. sponsoring these names from the Employment Exchange etc. Shri V.K.Saxena SO(A) was adamant that the provisional payment should either be regularised by affecting recovery from the individuals or under the order of CPA."

(emphasis supplied by me)

Was the applicant to be punished simply because he said that proper procedure was not followed in the appointment of the peon? Why should a note of dissent be equated as "argumentative and non-submissive" particularly in an audit office where proper scrutiny should precede acceptance.

9. The salient principles laid down by the

Hon'ble Supreme Court in the case of Kashinath Kher(supra) are as under -

"The object of writing the confidential report is twofold, i.e. to give an opportunity to the officer to remove deficiencies and to inculcate discipline. Secondly, it seeks to serve improvement of quality and excellence and efficiency of public service. The officer should show objectivity, impartiality and fair assessment without any prejudice whatsoever with the highest sense of responsibility alone to inculcate devotion to duty, honesty and integrity to improve excellence of the individual officer. Lest the officers get demoralised which would be deleterious to the efficacy and efficiency of public service, they should be written by a superior officer of high rank. There should be another higher officer in rank above the officer who has written confidential report to review such report."

In the case of S.Ramachandra Raju (supra) their Lordships have observed as under -

"This case would establish as a stark reality that writing confidential reports bears onerous responsibility on the reporting officer to eschew his subjectivity and personal prejudices or proclivity or predilections and to make objective assessment. He should adopt fair, objective, dispassionate and constructive comments in estimating or assessing the character, ability, integrity and responsibility displayed by the officer/employee concerned during the relevant period."

10. I do not think that on the basis of the material before me, as the applicant was not found to be remiss in the performance of his duties there can be any justification for the adverse remarks. The reporting officer was influenced more by non-essential acts of the official in making the adverse comments than by an

objective appraisal of the merits of his performance. I direct that the adverse comments made shall be expunged forthwith. I further direct that the applicant's grading shall be treated as 'good' as per the remarks of the reviewing officer. In view of this, the respondents shall reconsider the claim of the applicant for promotion by a review DPC to be convened within a period of three months from the date of receipt of a copy of this order. The application is accordingly allowed. No order as to costs.

Narasimha Rao
(N. Sahu) 24.11.97
Member(Admnv)

rkv.