

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./TxA. No.818 of 1995 Decided on: 16.6.96

Shri J.P. GuptaApplicant(s)

(By Shri Applicant in person Advocate)

Versus

U.O.I. & OthersRespondent(s)

(By Shri N.S. Mehta Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI

1. Whether to be referred to the Reporter or not?
2. Whether to be circulated to the other Benches of the Tribunal?

(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE Tribunal, PRINCIPAL BENCH

9

O.A. No. 818 of 1995

New Delhi this the 16th day of April, 1996

HON'BLE MR. K. MUTHUKUMAR, MEMBER(A)

Shri J.P. Gupta
R/o 343, Pocket 5,
Sector 2, Rohini,
Delhi.

..Applicant

Applicant in person.

Versus

1. Union of India
through the Secretary,
Ministry of Defence,
Government of India,
South Block,
New Delhi-110 011.
2. The JS (Trg) and CAT (Smt. Mala Srivastava)
• Ministry of Defence,
Government of India,
C-II Hutments,
DHQ P.O. New Delhi-110 011.
3. Maj. A.P.S. Sidhu
the then DDEME (Armt)
C/o The Chief of the Army Staff,
COAS's Sectt. South Block,
DHQ PO New Delhi-110 011.
4. Col. V.G. Ghorpade
the then Dir. EME (Armt),
C/o The Chief of the Army Staff,
COAS's Sectt. South Block,
DHQ PO New Delhi-110 011. ..Respondents

By Advocate Shri N.S. Mehta

ORDER

Hon'ble Mr. K. Muthukumar

This application is directed against the impugned letter of 7th October, 1993 in which certain adverse remarks in the Annual Confidential Report (ACR) for 1992-93 were communicated to the applicant. The applicant assails the aforesaid

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9

communication of those remarks on several grounds, the chief ground being that the respondent No.3 had a malice against the applicant. It was only on account of this malice that these adverse remarks were recorded in the ACR of 1992-93 and prior to this, the applicant had earned 28 ACRs on the basis of his very good performance of his official duties. The applicant also alleges that the respondents during his tenure as an officer in the supervisory capacity, played the role of defect finding authority and in stead of giving him help and guidance often found fault with him and used the applicant in the work of opening and closing the doors without any assistance from Class-IV employees and when the applicant objected to this, this was taken by the respondent No.3 with illwill. On another occasion when he had remained absent due to some unavoidable reasons on accounts of relation's death, the respondent No.3 had not recommended his application after keeping the application for almost 2 months, and forwarded the same to the Administative Officer. Later on he was granted leave as due for that particular day. Respondent No.3 had also issued notes to the applicant for late attendance and disregarded the policy of the Department in disposing of the Memorial to the President of India. The applicant also alleges that without taking into account the explanation and replies to the notes whenever he has received such notes, the respondents had given these adverse entries in order to spoil his career. His representation against the adverse remarks, dated

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10

1.11.1993 was rejected by respondent No.4 who was the superior to the counter-signing authority. His Memorial to the President was also got rejected without giving any specific reasons. In these circumstances, the applicant has approached this Tribunal with a prayer to have these adverse remarks expunged.

2. The respondents in reply submitted that the applicant's attitude to work was not upto the desired level and in the interest of the organisation and in the interest of the applicant's career, he was apprised of his shortcomings and, therefore, an impartial appraisal of his performance was made through his ACR for the year 1992-93 and the shortcomings were communicated to him. The respondents have denied that there had been any mala fide action against the applicant in the matter of recording and communication of adverse remarks which was made after proper appraisal. The respondents have further submitted that respondent had issued a note on 15.2.1993 to the applicant pointing out that he had been attending office late during January and February, 1993 and he was advised to show improvement and to be more punctual. On 14.12.1992 respondent No.3 pointed out certain shortcomings in maintenance of files according to the laid down procedure. He was advised to show greater care in the maintenance of the files and was also directed vide para 4 of the note that he should complete all the files of the concerned sub-section as per the observations made therein by 18.12.92. His specific shortcomings were highlighted by respondent No.3 by

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11

his note dated 2.3.1993. The applicant vide his application dated 3rd March, 1993 had denied receipt of notes dated 14.12.1992 and 15.2.1993. He, however, did not mention anything about the shortcomings pointed out in respect of the file mentioned in para 3(b) of the note dated 2.3.1993. It is only in these circumstances that the adverse remarks were recorded in the ACR. The respondents have denied that the respondent No.3 has spoiled the ACR of the applicant not of malice, as alleged by him. The competent authority while rejecting the representation of the applicant, duly expunged the remarks of the reporting officer on the integrity of the applicant and, therefore, it cannot be said that the representation was treated very casually. The respondents maintain that the adverse remarks were made during the reporting period and there was nothing to suggest that the adverse remarks were inspired by malice, just because good ACRs were obtained during the previous years. The respondents maintain that the application is misconceived.

3. In regard to the leave application for 16.12.1992, the respondents have stated that the respondent No.3 did not recommend his leave application perhaps due to his erratic attendance in the past. However, the matter was reviewed by the competent authority, who subsequently regularised this absence by granting him leave for 16.12.92. In regard to the contention of the applicant that the respondent No.3 had initiated the ACRs although he was only a Reviewing Officer, it is submitted on behalf of the respondents, that there was

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12

procedural error in this regard and when it came to light, it was treated as null and void and fresh ACRS were thereafter initiated by the competent officer and reviewed by respondent No.3. In regard to the communication of the applicant that his Memorial to the President was got rejected without assigning any reasons, the respondents have averred that the competent authority had examined the Presidential appeal by the applicant based on the records and facts available in the official records and have denied the allegation of the applicants in this regard.

4. I have heard the applicant in person and also the learned counsel for the respondents and have perused the records.

5. The following remarks in the ACR of 1992-93 were communicated to the applicant.

"(a) I assess the individual to be reasonably competent with more than adequate knowledge of office procedure.

(b) Indifferent. The individual has on a number of occasions been absent/has come late. He has been counselled on a number of occasions to be more punctual. EME Armt. notes No.B/90003/EME Armt4 dated 01 December, 1992, 18th Dec. 1992, 15 Feb. 1993, 24 Feb. 1993 and B/90026/EME Armt4 dated 4th December, 1992 and 8th December, 1992 are relevant in this regard.

(c) The individual has been counselled on a number of occasions both on his quality of his work and his punctuality. In addition to references given above, EME Armt. notes No.B/90001/EME Armt4 dated 14 Dec. 1992, B/90003/C/Armt4 dated 23 Dec. 1992, B/90003/EME Armt4/i dated 15th Feb. 1993 B/90003/EME Armt4 dated 02 Mar. 1993 and 10th Mar. 1993 are also relevant".

6. As regards comments under (b) it is pointed out that the individual has been absent on a number of occasions and has come late and has counselled on a number of occasions to be more punctual. There is a reference to the notes dated 1.12.92, 18.12.92,

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13

15.2.93 24.2.93, 4.12.92 and 8.12.92. It is contended by the applicant that out of the several notes regarding his late comings and absence, he had received only two notes dated 15.2.93 and 24.2.93, to which he had already submitted his reply. He admits that he has been counselled only once regarding punctuality vide note dated 15.2.93 and the same was replied on 23.2.93. The respondents have annexed copies of the notes dated 4.12.92 signed by one Major K.K. Marwah and the note is addressed to the CAO (Admn) and in this note it is alleged that the applicant did not perform opening duty today again on 4.12.92. Similarly in the other note dated 24.2.93 also it has been alleged that the applicant did not perform opening duties from 1.12.92 to 15.12.92. It is further alleged that he did not perform duties on 1.12.92 and on subsequent days. The same respondent has again given another note dated 15.2.93 wherein the note has been addressed to the applicant and has been observed that the applicant has been late in attending the office on a number of occasions during January and February, 1993. The applicant has stated that he had received this note and had replied to the above note by his letter dated 23.2.93. The applicant, however, has not annexed the copy of the said reply. He also acknowledges the receipt of notes dated 14.12.92, 15.2.93 and 10.03.93 and submits that he has replied to all these notes but has, however, not annexed copies of these replies. Be that as it may, the fact that the applicant had been counselled for improving his

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14

punctuality and attendance, has been mentioned by the applicant although he says that he has sent a reply by his note dated 23.2.93. In the absence of the copy of the said reply, it is not clear what reply has been made by him against such a note. Taking an overall view of this matter, it seems that the applicant had been counselled regarding his late attendances which has not been specifically denied by the applicant. In view of this, there is no ground to interfere with the remarks made in the ACR against 'b'.

(c) As regard 'C' for indifferent work the necessary column 12 in the ACR reads as follows:-

"Has the officer been reprimanded for indifferent work or for other other causes during the period under report? If so, give particulars".

Although the reporting officer has said "no" in reply to the above the Reviewing Officer viz. respondent No.3 has disagreed with the following remarks. Yes the individual has been counselled on a number of occasions etc. etc., as given above.

7. I have carefully perused the ACR of the applicant and in particular the ACR of the year 1992-93. There is nothing to indicate that there is any reprimand administered to the applicant in regard to indifferent work. The office notes dated 14.12.92, 15.2.93 and 2.3.93 shows that they are notes on performance counselling in respect of the applicant and can in no way be considered as reprimands. The other note dated 23.12.92 does not also contain any reprimand. In view of this, the answer of the Reviewing Authority against column 12

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15

as "Yes", cannot be sustained.

8. As regards the allegation of the applicant that there was a mala fide action on the part of Major A.P.S. Sidhu, who is named by the applicant as respondent No.3 in this application, it is seen that the respondent No.3 has not submitted any separate reply. The fact that an application for leave for single day on 16.12.1992 was not recommended by the respondent No.3 even after keeping the application for sometime and it was subsequently regularised by the competent authority does not by itself establish that the adverse remarks were motivated by malice.

9. Taking an overall view of the matter, I am inclined to partly allow the application only to the extent of expunging the word "Yes" against col.12 in the ACR as recorded by the Reviewing Officer. Accordingly, the above word "Yes" against column 12 of the remarks of the Reviewing Officer is expunged and the remaining comments are factual and are not in the nature of 'adverse remarks'. In the circumstances, there shall be no order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)

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