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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1127 of 1995

New Delhi, this the 2nd day of February, 1998

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

Shri O.P.Arora, Retired Section
Officer, Indian Council of Agricultural
Research, Krishi Bhawan, r/o Gurmandi,
Delhi-110007

-APPLICANT

(By Advocate Shri B.S. Mainee)

Versus

Union of India Through

1. The Secretary, Ministry of
Agriculture, Krishi Bhawan, New
Delhi.

2. The Director General, Indian
Council of Agricultural Research,
Krishi Bhawan, New Delhi.

-RESPONDENTS

(By Advocate Shri B.S.Chahar)

O R D E R (O R A L)

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

The applicant in this Original Application prays for a direction to consider his case for crossing efficiency bar without taking note of the adverse remarks on integrity appended in the ACR for the year 1988-89. He stated that the note of the Director General, respondent no.2 on the basis of which the adverse remarks on integrity were recorded was arbitrary. He submitted that the applicant was an LDC on 21.1.1957 and eventually got promotion as Section Officer during the relevant period and he never had any occasion to come in contact with respondent no.2. The record of the applicant was unblemished prior to 1988-89 and the sudden communication of an adverse report on integrity was

unmerited and based purely on suspicion. He mentioned that he was not conveyed any advice or warning before the recording of such an adverse entry. Having maintained a consistently bright record he should have been allowed to cross the efficiency bar and the action of the respondents disentitling him for a period of two years from crossing the efficiency bar is an arbitrary act.

2. After notice the respondents submit that the Director General being the Head of the Department his opinion about the work and conduct of his employees should be respected. It is denied that the CR entry was on extraneous grounds. It is also stated that the applicant being a Section Officer he used to come in contact with the Director General. It is asserted that before conveying any remark on integrity there was no need to give a warning or advice. The respondents at para 4.27 of the counter agree that the remarks on integrity should be based on a confidential diary in which the incidents which created suspicion about the integrity of the subordinate from time to time should be maintained and at the time of recording the annual confidential report this diary should be consulted and the material noted therein should be utilised. It is further submitted that the DPC in its meeting held on 28.2.1994 recommended crossing of efficiency bar to the applicant in principle and the competent authority allowed him to cross the efficiency bar from 28.2.1994.

3. As it was agreed by both the counsel that the confidential diary maintained for recording events eventually led to the adverse entry is the basis, I have directed by an order dated 15.10.1997 to produce the said record containing the material basis for the Director General in sending the note on integrity. The matter was adjourned to 3.11.1997 as part heard and subsequently to 12.12.1997. It was further adjourned to 16.1.1998 and finally to 29.1.1998. I have given six chances to the respondents to produce the diary but the same has not been produced so far. The matter has already been treated as part heard and it will not be appropriate for this Court to wait any further. I would, therefore, dispose of this O.A. on the basis of the pleadings on record.

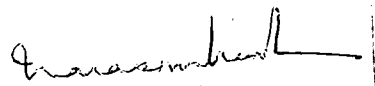
4. The learned counsel for the applicant has strenuously urged that the adverse note about the doubtful integrity is an arbitrary act without any material. He stated that this has arisen out of a personal bias or grudge nurtured by respondent no.2 in that the applicant's daughter's name figured in the O.A. filed by 12 candidates for a grievance of non-selection in the Stenographer's grade. He cited a decision of CAT Lucknow Bench in the case of Rai Singh Vs. Union of India and others 1993(2) ATJ 76. That was a case where the Secretary as the accepting authority had recorded his comments without actually seeing the work of the applicant. The applicant was not given any memo nor called upon to explain for any short comings in his work. It was held that

such remarks suffer from a legal infirmity. The next decision relied upon by him is in the case of **Sukhdeo Vs. Commissioner, Amravati Division, 1996(2)SLJ 3**. The Hon'ble Supreme Court held that the controlling officer has not used due diligence in making the adverse remarks. The adverse remarks should be made by giving sufficient prior opportunity in writing by informing the official about the deficiencies noticed. The Hon'ble Supreme Court quashed the remarks on the ground that it amounted to illegality. The next decision cited by the learned counsel is in the case of **State of U.P. Vs. Yamuna Shanker Misra & Anr, 1997(1)SCSLJ 555**. The Hon'ble Supreme Court held that the object of writing character rolls is to give an opportunity to a public servant to improve himself and, therefore, confidential reports should be written "objectively, fairly and dispassionately in a constructive manner". In the next case cited **S. Ramachandra Raju Vs. State of Orissa, 1994(3) SLJ 95** it has been held that reporting officers should make an objective assessment of the officer concerned.

5. It is submitted by the learned counsel Shri Mainee that there is no objectivity involved in communicating an adverse remark on integrity without any basis or material. Such basis or material has not been shown to the Court in spite of sufficient opportunities granted in this regard.

6. I have carefully considered the submissions. As mentioned above I have given several opportunities to the respondents to produce the confidential diary in which instances creating suspicion about the integrity of a subordinate should be noted. It is also enjoined that efforts should be made to check up the veracity, with reference to investigations. I noticed that the Director General is the highest executive of the organisation and the applicant is very junior in the hierarchy being a Section Officer. Even if the notings were confidential it could have been shown to the Court. In a recent case the Hon'ble Supreme Court has held that it is not necessary for the reporting officer to substantiate his remarks about integrity with respect to events or facts but the opinion should be based on an honest judgment. In order to arrive at such a honest judgment the departmental procedure enjoins a faithful recording of contemporary events in a confidential diary on the basis of which the adverse entry is going to be made. As this confidential diary has not been produced before me in spite of several opportunities I have no other alternative but to hold that the entry so communicated cannot be held to be based on any material. I hereby direct that the said entry shall be quashed and the DPC ^{Ordn. Review DPC} which was held subsequently to consider the applicant for crossing the efficiency bar immediately after 1989-90 shall again reconsider him within a period of 8 weeks from the date of receipt of a copy of this order and shall communicate the decision about the crossing of

the efficiency bar and if the DPC communicates a favourable decision all consequential benefits including monetary benefits shall be given to the applicant within a period of four weeks thereafter. The O.A. is accordingly allowed. No costs.


(N. Sahu)
Member (Admnv)

rkv.