

Central Administrative Tribunal
Principal Bench

O.A.No.2452/97

Hon'ble Shri R.K.Ahooja, Member(A)

(3)

New Delhi, this the 30 day of October, 1998

Mrs. Raj Kashyap
w/o Shri Chander Mohan
r/o Sector II
Type II, Qr. No.411
Sadiq Nagar
New Delhi.
working as Assistant
G.S.Branch, ADG/Sys
Miso PSG/QMS, Ministry of Defence
West Block-III, R.K.Puram
New Delhi.

... Applicant

(By Shri C.B.Pillai, Advocate)

Vs.

Union of India through

1. The Secretary
to the Govt. of India,
Ministry of Defence
South Block
New Delhi.
2. The Joint Secretary (Trg.) and
C.A.O. C-II Hurtments, DHQ PO
Ministry of Defence
New Delhi.
3. The Joint Director
Joint Directorate
MD (MIS)
Air Hqrs., R.K.Puram, West Block VI
New Delhi.

... Respondents

(By Shri Trilochan Rout, Sr. Administrative Officer
(Legal), Departmental Representative on behalf of M/o of
Defence)

O R D E R

The applicant who is working as Assistant,
G.S.Branch, Ministry of Defence seeks to expunge the
adverse remarks appearing in her Annual Confidential
Reports for the year 1991-91 as well as for the period
1.4.1992 to 7.10.1992. The case of the applicant is that
the officer who reviewed her report for the year 1991-92
had not seen her work even for a single day. In regard
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to the ACR for the period 1.4.92 to 7.10.1992 she had worked under the initiating and reviewing officers only for a period of 77 days and therefore they could not write the said ACR as not having supervised her work for the minimum period of 90 days.

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2. The respondents state that the applicant was promoted as an Assistant in the Air Headquarters w.e.f. 9.1.1990.. She earned adverse remarks in her ACRs for the years 1991-92 and 1992-93. These remarks were duly communicated to her. Her representation against the adverse remarks for the year 1991-92 were rejected by Air HQ's note dated 3.5.1993. The applicant thereafter did not prefer, as per the Government instructions, any appeal to the President of India. The representation against the adverse remarks for the period 1.4.1992 to 7.10.1992 were also rejected vide Air Headquarter's note dated 11.2.1994. In this case also, no appeal had been preferred by the applicant to the President of India. After a lapse of more than three and half years since the rejection of her first representation, the applicant made another representation to the Director of Air Headquarters on 20.9.1996. In reply to this representation, she was informed that there was a provision in the Rules, only for one representation against the adverse entries whereafter the applicant could prefer an appeal addressed to the President of India within six months from the date of rejection of the representation by the competent authority. She was informed that if the applicant submits an appeal to the President of India, the same will be examined as per Rules. Thereafter, the applicant made an appeal to the President on 13.1.1997 in reply to which she was informed

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that the said appeal was time barred. The respondents therefore take a preliminary objection that the OA is barred by limitation. On merits they deny the allegation of the applicant that her reports were written by unauthorised officers.

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3. I have heard the counsel for the applicant and the Shri Trilochan Rout, Departmental Representative on behalf of the respondents. Shri C.B.Pillai, learned counsel for the applicant argued that the letter of General Staff Branch dated 30.10.1996, Annexure A.XII itself provided that the applicant could submit an appeal to the President of India at that stage. The relevant paragraph of the said letter is reproduced:

"In the circumstances if Smt. Raj Kashyap, UDC submits an appeal to the President of India at this stage the same will be examined as per rules on the subject in the office of CAO."

4. The learned counsel argued that if the applicant was already time barred from making an appeal to the President of India, then there would not have been any occasion for making such an appeal in the aforesaid communication. He submitted that the applicant was thus misled into thinking that she was within time and her appeal to the President could still be considered.

5. I am in agreement with learned counsel that the insertion of the paragraph of the said letter was unwarranted. Nevertheless, it cannot be said that this conveyed any undertaking that the representation of the applicant would be treated as within time since a safeguard was taken to mention that the appeal would be examined as per Rules. Consequently this paragraph in the communication dated 30.10.1996 did not extend

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limitation not provided by statutory rules consequently the rejection of her appeal on the basis that it is time barred under the Rules cannot be faulted nor does the filing of an appeal to the President beyond the statutory period extends the limitation for approaching this Tribunal for relief. I therefore find that preliminary objection of the respondents that the OA is time barred is well founded.

6. On merits also there is a little to support to the case of the applicant. The main plank of applicant's case is that the ACRs were recorded by unauthorised officers. Departmental Representative was therefore directed to produce a written statement recording the names of the Reporting and Reviewing Officers for the period in question. Thereafter, a letter from Group Captain J.B.S.Boparai, Directorate of MIS (Admin), Air Headquarters, dated 30.9.1998 was produced which has been taken on record. This shows that during the period 7.3.1990 to 4.4.1992 and 11.8.1991 to 18.10.1993 her Reporting Officer were Sqn. Ldr. N.S.Khaira and Flt. Lt. B.Srivastav respectively. This also shows that during the period of 28.3.90 to Dec. 91 and 11.12.1991 to May, 1992 her Reviewing Officers were Wg. Cdr. A. Surma and Wg. Cdr. S.N.Anasari respectively.

7. The main grievance of the applicant is that Wg. Cdr. S.N.Anasari could not be her reviewing officer. It is clear that Wg. Cdr. Ansari was the reviewing officer from 11.12.1991 to May, 1992 and therefore he was in a position, having supervised her work for more than 90 days for recording his remarks in the ACR. The perusal of the ACR dossier of the applicant however shows an

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anomaly in that there are two ACRs one for the period 1.4.1991 to 31.3.1992 and another for the period 9.1.1990 to 8.1.1992 written by two different set of officers. In the former case the reporting officer was Flt. Lt. B.Srivastava and reviewing officer Wg. Cdr. S.N.Anassi while in the latter report, Sqr. Ldr. N.S.Khaira is the reporting officer and Wg. Ldr. A. Surma is the reviewing authority. The letter dated 30.9.1998 also shows that Wg. Cdr. Surma was the reviewing officer upto December, 1991. The proper course therefore would be that the respondents treat the ACR sought to be impugned, as ACR only for the period December, 1991 to March, 1992. In so far as the report for the period March 1992 to October, 1992 is concerned there is no confusion as to the reporting and reviewing officers. Therefore, nothing further needs to be said on that point.

8. In the result the OA is dismissed due to limitation as well as on merit subject to the observation that the impugned ACR for April, 1991 to March, 1992 should be treated as pertaining only to the period Dec. 1991 to March, 1992.

There shall be no order as to costs.

R.K. Ahuja
(R.K. Ahuja)

Member(A)

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