

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 778 of 1997 decided on 16.4.1998.

Name of Applicant : Sh/Smt. V. P. Jain

By Advocate : Sh/Smt. B. S. Jain

(A)

Versus

Name of respondent/s Union of India & Others

By Advocate : Shri S. M. Arif

Corum:

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

1. To be referred to the reporter - Yes/No

2. Whether to be circulated to the other Benches of the Tribunal - Yes/No

N. Sahu
(N. Sahu)
Member (Adminv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 778 of 1997

New Delhi, this the 16th day of April, 1998

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

(5)

Sh. V.P.Jain, aged about 54 years,
S/o Sh. Ram Sarup Dass, R/o 1333,
Sector XII, R.K.Puram, New Delhi,
working as Assistant Engineer,
Doordarshan, Siri Fort, New Delhi. - APPLICANT

(By Advocate Shri B. S.Jain)

Versus

1. Union of India through Secretary, Ministry of I & B, Shastri Bhawan, New Delhi.
2. Director General, Doordarshan, Mandi House, New Delhi.
3. Sh. Ram Singh, Superintending Engineer, CPC, Doordarshan, Asiad Village Complex, Siri Fort, New Delhi.
4. Shri O.P.Charya, Station Engineer now retired, R/o B-131, Amar Colony, Lajpat Nagar, New Delhi. - RESPONDENTS

(By Advocate Shri S.M.Arif)

O R D E R

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

The applicant in this Original Application is aggrieved because of the adverse remarks made in his Annual Confidential Report (in short 'ACR') for the financial year 1994-95 by respondent no.3, who recorded as the Reviewing Officer as under -

"In one of the session in Parliament he was sent for LPT maintenance work and Technical Director duty but his work was not up to the high standard required for TV set up in Parliament hence he was withdrawn. At the Centre also as Technical Director is just good and sometimes the normal problems of shift which TD should attend were referred to me for advice."

(b)

He prays for striking down those adverse remarks and also seeks a direction for convening a review DPC to reconsider his case for promotion. Other reliefs prayed for are consequential.

2. The grounds taken by the applicant against the adverse remarks refer to the delay of 10 months in communicating these adverse remarks on 19.4.1996 whereas they were already written up before June, 1995. Under the instructions of the Ministry of Personnel, these should have been communicated within one month of their recording. It is stated that ACR is not a fault finding mechanism but has to be understood as a method of correcting and improving the performance of a Government servant. It is only after the Government servant does not correct himself after advice, admonition or warning that an adverse report should be written. The claim of the applicant is that he was never served any letter of warning or advice pointing out his deficiency and these adverse remarks are contrary to the instructions on the subject. The applicant states that the entire report should have been communicated under the existing instructions. It is contended that the representation of the applicant has been dispensed of by a non-speaking order.

3. This is a case where the Reporting Officer had assessed the applicant's performance as "Very Good". The said Reporting Officer, respondent no.4, filed a counter affidavit independently reiterating his conviction about his grading as "Very Good". He

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stated that he did not find it necessary to revise this opinion in spite of a suggestion by respondent no.3. The applicant attributes mala fide intention to the Reviewing Officer, respondent no.3.

4. After notice, the respondents submit that the delay in communicating the report was entirely due to administrative reasons and that by itself would not render the report invalid. The representation of the applicant was carefully considered and the competent authority was satisfied that there was no justification for interfering with the adverse remarks. The Reviewing Officer recorded the impugned remarks on the basis of his observation during the financial year 1994-95. The applicant was entrusted with the task of Technical Director in Parliament for one session only but due to his poor performance he was not again sent for such duty. It is stated that although the applicant was never communicated in writing for improving his work, he was advised and warned many times in the weekly review meetings. Although the applicant claims that his performance before this year has uniformly been rated as "Very Good" that would not debar the respondents from making an independent assessment of the performance in this financial year under review. In an affidavit respondent no.3 again reiterated that the applicant was advised to improve his technical knowledge and performance and verbal warnings were given in weekly meetings with the officers of the rank of Assistant Engineer and above in the chamber

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of the Superintending Engineer. He was counselled orally several times before for improving his technical performance.

5. The learned counsel for the applicant cited the following decisions - M. Karupppiah Vs. Govt. of India, 1992(6)SLR 759, M. P. Rajan Vs. State of M. P., 1993(2)ATJ 434; Union of India Vs. M. L. Kapoor, AIR 1974 SC 87; and Keshava Datta Vs. Director, I.T.R.C., (1993) 25 ATC 125.

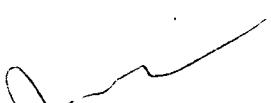
6. I have also perused the file wherein the representation of the applicant has been processed. Respondent no.3 in reply to these representations has summed up his impressions of the ability of the applicant in a letter to the Director General dated 29.8.1996; a paragraph out of that letter is extracted hereunder -

"Regarding his explanation in Para 3, it is to intimate that I have recorded my remarks as Reviewing office after due monitoring of his performance and efforts made for improvement by intimating the measures in weekly meetings. He was put on duty in Parliament for maintenance and upkeep of LPTs. He was not confident enough to handle the GCEL make LPTs, and when asked he had told me that he had not worked GCEL make LPTs. I had advised him to study the difference between the BEL and GCEL make LPTs and make himself confident of handling the GCEL make LPTs installed at Parliament. But I could not see the confidence in him required for place like TV set-up in Parliament and thereafter for subsequent Parliament sessions he was not sent for duties in Parliament. Hence the remarks of reporting officer that he has got very good knowledge of LPTs is on higher grading side. His performance as TD is also just good, as at time he was not able to handle the staff and sought my advise/intervention on phone at late hours which I felt that other AEs as

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Technical Director could have handled the situations themselves. Whatever further he has written regarding his colleagues is totally false. Some of the AEs irrespective of gender are really of very high calibre in maintenance work and instead of raising his own standard he has called his colleagues sycophants. These other Assistant Engineers have brought good name to their centre by keeping the equipment upto high efficiency performance standards and Shri Jain should have high respect for them rather calling sycophants."

The above analysis of the Reviewing Officer clearly proves that the adverse remarks were not made with a bias or in a vindictive manner or in a casual manner. The Reviewing Officer has also shown intimate familiarity and monitoring of the performance of the applicant. It is not necessary, as the Hon'ble Supreme Court held in the case of Union of India Vs. E.G.Nambudiri, 1991 SCC(L&S) 813. to convey to the applicant the reasons for rejecting the representation. The file shows proper application of mind of the competent authority. The competent authority the Chief Engineer while observing that the remarks do not appear to be adverse also held that there is no justification to expunge them. The Reviewing Officer being a superior officer is expected to make an independent assessment of the performance of the official reported upon. I am unable to hold that the Reviewing Officer's remarks were made on considerations which were not objective. On the contrary those remarks show restraint and maturity.



7. The other objections about the delayed communication and non-communication of the good points in the ACR are true but they do not vitiate the adverse remarks themselves. As the representation was properly considered by the competent authority and as I do not see any manifest personal prejudice or bias I do not consider it a fit case for judicial interference.

8. In the result, the Original Application is dismissed. No costs.

N. Sahu 16.4.98
(N. Sahu)
Member (Admnv)

rkv.