

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.No.2287/94

New Delhi this the 22nd day of December, 1995.

Hon'ble Sh. B.K. Singh, Member(A)

Sh. Bhupinder Nath,
Assistant,
Quarter No.374,
Chitla Gate, Chawri Bazar,
Delhi.

Applicant

(through Sh. A.K. Bhardwaj, advocate)

versus

1. Union of India
through the Director General
Border Security Force,
DG, BSF, Block-10
CGO Complex, Lodhi Road,
New Delhi-3.

2. The Asstt. Director(Staff),
Directorate General of Border
Security Force,
Block No.10, CGO Complex,
Lodhi Road, New Delhi-3.

3. Sr. Admn. Officer (Staff)
Directorate General of Border
Security Force,
Block No.10,
CGO Complex,
Lodhi Road,
New Delhi-3.

Respondents

(through Sh. Vijay Kr. Mehta, advocate)

ORDER

delivered by Hon'ble Sh. B.K. Singh, Member(A)

This O.A.No.2287/94 is directed against
orders No.28017/24/92-Staff/BSF/1004-5 dt. 9.12.93,
28017/24/92-Staff/BSF/402-03 dt. 3.6.93 and
28017/24/92-Staff/BSF/162-63 dt. 10.03.93.

The applicant was communicated the following
adverse remarks:-

"Is not prompt in disposal of work.
Not punctual in attendance. His relation
with fellow employees, public relation is not
good. Time to time he was informed and

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advised accordingly about his work and conduct. If he can leave consumption of alcoholic drinks, he can produce better results."

Aggrieved by the rejection of his representation this O.A. was filed on 16.11.94 seeking the following reliefs:-

(a) quash the Order Nos.
28017/24/92-Staff/BSF/004-5 dt. 9.1.93,
28017/24/92-Staff/BSF-402-03 dt.
3.6.93, 28017/24/92-Staff/BSF-162-63
dt. 10.03.1993 & Memorandum
No. 28017/24/92-Staff/BSF/500-01 dt.
17.06.1992.

(b) mandate the respondents to expunge the adverse remarks from the ACR of the applicant for the year 1991-1992, communicated to him vide Memorandum dt. 17.06.1992.

On notice the respondents filed their reply contesting the application and grant of reliefs prayed for.

Heard the learned counsel for the parties.

The learned counsel for the applicant stated that these remarks have been recorded by the superior officers at the behest of Shri Suresh Kumar who bore an illwill towards the applicant and who poisoned all the superior officers against the applicant. He further argued that principles of natural justice were not

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observed in the sense that these deficiencies were not pointed out to him during the period for which these remarks were recorded. He relied on the various judgements of the Hon'ble Tribunal in the matter of L. Jayaseelan Vs. U.O.I. & Ors. (1991(2) ATJ 309 (PB), C.K. Gajanan Vs. U.O.I. & Ors. (1991(15) ATC 586(Hyderabad) and V. Sreekumar Vs. U.O.I. & Anr. (1990(14) ATC 123(Earnakulam Bench). In the instant case he argued that the respondents rejected his representation and appeal without recording any reason and without applying their mind at all and this is not in consonance with the provisions laid down by the Hon'ble Tribunal in the aforesaid judgements. The learned counsel appearing on behalf of the respondents vehemently argued that the submissions made by the learned counsel for the applicant are not borne out by facts. He drew the attention of the Tribunal to the various annexures filed by him in this regard. Annexure R-VI enclosed with the counter-affidavit at page 22 is a memo dated 3.9.91 wherein it has been categorically stated that the applicant remained absent from duty from 19.8.91 to 23.8.91 and also on 29.8.91 without sanction of leave or without any permission and he did not submit any leave application or any explanation for this unauthorised absence. It was further pointed out that he had been on unauthorised leave even prior to this. In this memo he was directed to be careful in office attendance and also to submit leave application in time and also to take permission before leaving his seat. It was mentioned that he was found having left his seat without taking prior permission from J.A.D. concerned. It was clearly stated in this memo that stern disciplinary action will

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be taken and an adverse entry will be made in the service book/ACR and he was directed to submit his application for regularising his absence by grant of leave on the aforesaid dates. Annexure R-VII also again refers to his absence from duty from 3.9.91 to 11.9.91 without leave and without permission for which he did not submit any explanation or leave application. This is the third time that he was found on unauthorised leave in that relevant period of 1991. He was again cautioned to be careful in office attendance and not to absent from duty without grant of leave or leaving his seat without the permission of the competent authority and he was again warned that a stern disciplinary action will be taken and a note will also be made in his service record/ACR. He was further directed to submit his leave application for the period he was absent on duty without grant of any leave. Annexure R-VIII is a memo in which the various points raised by him in his explanation were examined and it was mentioned that there was non-disposal of the correspondence lying on his table for practically three months and his hospitalisation was only for six days in August and nine days in September. It is further mentioned in that memo that he did not clear the various items of work allotted to him. The volume of work was not such that he could not have disposed of during the period he attended the office. It is mentioned that he did not clear the dak and did not perform the work assigned to him. In para-3 of the memo it has been clearly stated that he instead of working has been going round the table of his colleagues and creating hindrance in their smooth working too. The J.A.D. has categorically stated that the load of work is

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proportionately distributed amongst the various dealing hands. It is further mentioned that he had been taking leave without prior permission when the Department had been liberal in granting leave whenever approached. It was further mentioned that he was found absent inspite of repeated reminders given to him. The explanation given by him was found to be untenable. The applicant wanted a change in his job chart which also was stated to be under consideration. Annexure R-IX refers to the backlog of work, non-disposal of the dak and the pending work with him. The non-disposal has been described due to his absence from his duty and due to his late arrival in the office. It was found that even important letters did not receive the attention of the applicant and inspite of repeated advice given he refused to improve himself. It is a lengthy letter which points out the various deficiencies seen in the work and conduct of the applicant. Annexure R-X is again another memo issued to him pointing out the various deficiencies in his work and conduct.

In the light of over-whelming evidence produced by the learned counsel for the respondents in their counter-affidavit and the various annexures enclosed with it, the rebuttal in the rejoinder is either not there or is not strong enough to rebut the various deficiencies noticed and pointed out by the J.A.D. in his work and conduct. The law on the subject has been laid down by the Hon'ble Supreme Court in case of Union of India Vs. E.G. Nambudiri (AIR 1991 SC 1216). The ratio of that judgement is that reasons for rejecting representation against adverse remarks need not be

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recorded or communicated but if such a decision is challenged before a Court of law for judicial review, the reasons can be placed before the Court. In the instant case by various annexures beginning from Annexure R-VI to Annexure R-X, the respondents have already proved by producing overwhelming evidence to substantiate the remarks recorded by the reporting/reviewing/accepting authority. There is not an iota of evidence to rebut the various deficiencies noticed and brought to the notice of the applicant repeatedly in writing. Rejoinder also, as stated above, is silent on the various annexures enclosed with the counter-affidavit. The remarks are based on the personal assessment of the reporting officer and the reviewing officer. One portion of the remark has been added by the reviewing officer regarding the impact of alcholic drinks which impinges on performance of public duty during office hours and it is a suggestive remark from the reviewing officer fully endorsed by the accepting officer that he would produce better results if he gave up the consumption of alcholic drinks. No evidence has been shown that he does not take alcholic drinks during office hours. Drinks may or may not be bad perse but if it impinges on the performance of public duty, it is certainly bad and if there is a misbehaviour or indiscrete action under the influence of alcholic drinks, it amounts to misconduct and a person exposes himself to disciplinary action.

In the facts and circumstances of the case, the application fails and is dismissed, leaving the parties to bear their own costs.

(B.K. Singh)
Member(A)

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