

Central Administrative Tribunal
Principal Bench, New Delhi.

O.A. No. 25/94

New Delhi this the 30th Day of September, 1994.

Hon'ble Mr. B.N. Dhoundiyal, Member(A)

Sh. Lalit Bhatia IPS
S/o Sh. S.R. Bhatia,
R/o 1-E, Model Town,
Govt. Colony,
Patiala(Punjab).

Applicant

(through Sh. V.P. Sharma, advocate)

versus

1. Union of India,
through the Secretary,
Ministry of Home Affairs,
Govt. of India,
New Delhi.
2. The Chief Secretary,
State of Punjab,
Chandigarh.
3. The Director General of Police,
Punjab Govt.,
Chandigarh.

Respondents

(through Sh. N.S. Mehta, Sr. Standing Counsel)

ORDER

delivered by Hon'ble Mr. B.N. Dhoundiyal, Member(A)

In this O.A., the applicant Shri Lalit Bhatia IFS has challenged the order dated 6.8.1993 issued by the Director General of Police, Punjab intimating that a memorial to the President submitted by the applicant for expunction of the adverse remarks has been rejected by the Ministry of Home Affairs.

The applicant is an officer of All India Police Services of 1990 batch allotted to the state of Punjab. On 30.12.1983, the following adverse remarks were communicated for the period from 1.10.1982 to 31.3.1983:-

"Shri Lalit Bhatia, is intelligent and can do well, if he applied himself to the job. Unfortunately, he is obsessed with

his marital problems which are affecting his performance and normal behaviour. He cannot till then be entrusted with any important assignment."

It is also further recorded:-

"An officer of less and average capability, has hardly contributed anything worthwhile during the period under report."

He submitted a representation against this remarks to the State Government which was rejected on 12.7.1984. He preferred a memorial dated 18.12.1986 addressed to the President under Rule 25 of the All India Service (Discipline & Appeal) Rules, 1969. The decision to reject his memorial was taken by Government of India and conveyed to the Government of Punjab vide letter dated 18.8.1989 and again on the request of the applicant the information was conveyed to him through the Government of Punjab vide letter dated 3.5.1993. It is this letter which was endorsed to the applicant by the Director General of Police, Punjab vide impugned letter dated 6.8.1993.

The applicant has challenged the impugned order on the ground that during the period under report, he did not receive any communication from any officer pointing out any defect or conveying any advice to him, that there was no occasion to show that his behaviour was being affected because of any personal problem, that

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the adverse remarks were recorded after a delay of 9 months and that the applicant had not worked under the officer who had initiated the confidential report for a period of three months. It has also been argued that his memorial to the President was rejected by the Ministry of Home Affairs without indicated that the order had been issued in the name of President.

Counter-affidavits have been filed on behalf of Union of India (Respondent No.1) and the Chief Secretary & The Director General of Police (Respondents No.2 & 3). It is denied that there was any delay in intimating the adverse remarks. The confidential report for the period from 1.10.1982 to 31.3.1983 was initiated by the reporting officer on 13.5.1983 and was reviewed on 1.7.1983 and after the same has been accepted by the Chief Minister of Punjab, it was conveyed to the applicant on 26.12.1983. The applicant has worked under the officer for more than five months. In the counter filed by Union of India, the various points raised by the applicant in his memorial have been mentioned as also the reasons for rejecting the memorial. It is stated that the remarks were factual and there was no necessity to pointing out the same to the applicant. It was known that the wife of the applicant had launched divorce proceedings against him and so he was obsessed with marital problems. He was responsible for the commissioning of computer system and he did not contribute much except some written correspondence. The remarks were given by the DGP of the State and were accepted by the then Chief Minister and that there was

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nothing on record to substantiate that the reporting officer was influenced by Secretary Finance. Taking all relevant facts into account the competent authority decided to reject the memorial of the applicant and the decision was conveyed to the Government of Punjab vide letter dated 18.8.1989 and to the applicant through Government of Punjab by the Home Ministry's letter dated 3.5.1993.

The learned counsel for the applicant has relied upon a judgement of the Madras Bench of this Tribunal dated 18.3.1992 in O.A.No.230/90 (M. Karuppiah Vs. Government of India and Another) (1992(6) SLR 759) In that case the Tribunal had held that adverse remarks intimated to a Member of Indian Administrative Service after delay of 14 months from the close of reporting period vitiated such remarks. However, in that case the respondents were not able to explain the reasons for delay of 14 months. In this case, it is clear that the remarks were initiated by the reporting officer within two months of the reporting period and after review and acceptance by the Chief Minister Punjab, these were intimated to the applicant on 26.12.1983. It has already been clarified in the counter that the applicant had worked for five months under the reporting officer. We find no reason to disbelieve this statement. The learned counsel for the applicant has also relied upon the observations of the Supreme Court in the case of Gurdial Singh versus State of Punjab (1989(1) SLR 804 in which it is laid down that the authority concerned must consider the explanation by the government servant to

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decide the same in a fair and just manner. It has also been held that in case of such representation, it is not necessary that the order rejecting the representation should itself contain the reasons for such rejection. It is sufficient to authority concerned to consider the points raised in the representation before passing an order.

There is, however, considerable force in the argument of the learned counsel for the applicant that memorial submitted to the President could only be disposed of either by the President himself or the authority to whom such power was delegated acting in the name of the President. This issue has been considered by the Ernakulam Bench of this Tribunal in the case of Alphonse Louis Earayil (O.A.No. 363/90). In para-7 of the aforesaid judgement, this Tribunal had occasion to observe as under:-

"The applicant had submitted a memorial to the President. Annexure-A10 is a copy of the said memorial. This memorial was disposed of by the Ministry of Home Affairs and the information was conveyed to the applicant through the second respondent by order dated 3.5.1989 at Annexure-A3. The learned counsel for the applicant argued that the Ministry of Home Affairs had no jurisdiction to dispose of the memorial submitted to the President. The learned counsel argued that, to dispose of a

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memorial submitted to the President by a Member of the All India Service under Rule 25 of the All India Services (Discipline and Appeal) Rules is a statutory function of the President and that the Ministry of Home Affairs has no authority to take a decision on such memorial. The learned counsel for the first respondent argued that under Article 77 of the Constitution, the Ministry has got delegated powers to dispose of the memorial addressed to the President. But since the memorial was addressed to the President, the disposal thereof should have been in the name of the President. Even if under delegated powers, a subordinate authority has considered the memorial the order should have been issued in the name of the President. As such, Annexure-A3 does not disclose that the memorial was considered and disposed of by the Ministry for the President. Therefore the case of the applicant that the disposal of the memorial is not valid and proper has to be accepted."

Respectfully reiterating these observations, I hold that the order dated 18.8.1989 passed by the Ministry of Home Affairs and communicated to the applicant vide order dated 6.8.1993 is not sustainable. It is, therefore, hereby quashed and set aside. The memorial submitted by the applicant to the President

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shall be considered in an appropriate manner and a final order shall be issued in the prescribed form within a period of 4 months from the date of communication of this order.

No costs.

B.N. Dhoundiyal
(B.N. Dhoundiyal) 879154.
Member(A)

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