

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1262/2000

New Delhi, this the 31st day of July, 2002

Hon'ble Sh. Govindan S.Tampi, Member (A)

Harkishan Mohan
S/o Sh. H.S.Mohan
C-6/3, Aditi Aptts, D-Block
Janakpuri, New Delhi - 110 058
(presently serving as PS in the PMI
Geneva, Switzerland)

(By Advocate Sh. D.C.Vohra
with Sh. Kulbir Parashar)

...Applicant

V E R S U S

1. UNION OF INDIA : THROUGH
The Foreign Secretary
Govt. of India
Ministry of External Affairs
South Block, New Delhi - 110 011.
2. Permanent Mission of India to the UN
Geneva (Switzerland)
through The Permanent Representative
C/o Ministry of External Affairs
South Block, New Delhi - 110 011.
3. Mr. R.Venu (in personal capacity)
First Secretary (Political)
Permanent Mission of India
Geneva through
Ministry of External Affairs
South Block, New Delhi - 110 011.

(By Advocate Sh. Rajiv Sharma, proxy ...Respondents
for Sh. N.S.Mehta, for respondent No.1
None for respondents No.2 & 3).

O R D E R

Hon'ble Shri Govindan S.Tampi, Member (A)

Applicant in this OA challenges respondents' order No. H-23/UCR dated 31-1-2000, under which adverse entries recorded in his ACR for the period 1996-97 (December 1996 to March 1997) were expunged, but only partially, retaining some portion.

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2. Heard Dr. D.C.Vohra, 1d. counsel for the applicant and Sh. N.S.Mehta, 1d. sr. counsel through Sh. Rajiv Sharma, 1d. proxy counsel, for the respondents.

3. The applicant, a Private Secretary in the Ministry of External Affairs having joined them in October 1997, was appointed in respondent No.2's office in Geneva on 8-7-96, where he reported on 12-12-96 and was posted with respondent No.3, who was the First Secretary. As the applicant expressed his difficulties about the working conditions and required some time with his ailing wife, respondent No.3 was unhappy which led to the issuance of a note by him on 2-5-97, which was duly replied by him on the very day. Though on 8-5-1997, he was placed with another officer, Respondent No.3 wanted him on 21-5-97 to give the ACR note upto 30-4-97. On 30-7-97, he gave the note for the period 11-12-96 to 31-3-97, whereafter on 16-9-98, respondent No.3 informed him of the adverse entry in his ACR. In his representation dated 14-10-98, he explained that the remarks were based on the extraneous matters, not relatable to the reporting period. After a considerably long period, and two reminders, respondent No.3, on 31-1-2000, expunged remarks in columns 4 (a), 5,6 and 8, but retained those in columns 3,7 and 12, ~~Applicant~~ represented against the retention of the remaining remarks but to no avail. Hence this OA.

3. Grounds raised in the OA are :-

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i) adverse remarks in the ACR were malafide and were not preceded by any oral or written warning ;

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ii) note recorded on 7-5-97, against the applicant at his back had no basis at all ;

iii) warning in the note dated 8-5-97 was improper as the applicant by that time was no longer under respondent No.3 ;

iv) norms on writing ACRs were not followed ;

v) assessment should have been *confined* to the period under report ;

vi) respondent No.1 did not apply its mind while dealing with the representation and only expunged some remarks, but retained a few others which were related ;

vii) the applicant had been unfairly treated inspite of his excellent performance recorded in the past ;

In view of the above, the applicant seeks expunction of the remaining remarks in his ACR and award of costs.

4. The pleadings of the applicant are stoutly denied on behalf of the respondents. During the relevant time, the applicant was working in Geneva, a multilateral mission where his lackadaisical approach

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to work had caused inconvenience to the supervisory officers. This was clearly brought in the respondent - 3's note dated 7-5-97, which was factual and was not due to any animus towards the applicant. There was no move to harass him also, as alleged. The applicant's representation against the adverse remarks was considered carefully by the respondent No. 1 and out of seven remarks , four remarks were expunged , retaining three i.e. those indicated in columns.3,7 and 12 . It has not been possible to grant compensatory leave always. Besides officials in Foreign Service enjoy 50% of extra earned leave . While conceding that there has been some delay in the disposal of the representation the same cannot come in the way of the remarks which have been entered after consideration.

5. The applicant's complain^t that the remarks entered in his ACR were on account of malice on the part of the reporting officer, had no basis whatsoever as he had been warned orally on a few occasions and in writing once on 21.5.97. The Adverse report related to the period 11.12.96 to 31.3.97 and did not, any period thereafter. It is also to be mentioned that for PAs/PSs , the reports and review^t by the same officers. The allegation that respondent No. 1 did not apply its mind while considering the representation was improper and incorrect. The applicant's averments that he had been enjoying Outstanding performance appraisal also does not have any basis as during 1983, 86 and 1988 /89 adverse entries were made in his ACRs.

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6. The OA is also premature in that he had not waited for the disposal of his 'Memorial to the President' .

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In view of the above OA deserves to be dismissed, plead the respondents.

7. In the rejoinder the applicant counters all the points raised by the respondents and states that someone of his calibre with outstanding performance has been unfairly treated by the respondents by entering adverse entries in his report out of malice .

8. During the oral submissions Dr. D.C. Vohra reiterated all the arguments raised earlier and also referred to a number of decisions which , according to him came to his rescue. These include Union of India Vs. E Mamboodri [(1991) 3 SCC 38, M P Rajan Vs. State of MP & ORs. [191 Swamy's CL Digest 1993], P.C. Misra IAS VS. State of Assam [23 Swamy's CL Digest 1994/2], M.S. Chanderkanta Das IAS V. State of Assam [224 Swamy's CL Digest 1994/2] and C Sarkar V. Union of India & Others [164 Swamy News 10/2001 67].

9. On the other hand Sh. N S Mehta, learned Senior Govt. Standing Counsel has indicated that the remarks entered in the ACR were on correct basis and that same cannot be faulted. The applicant's performance was not ^{up} to the mark according to Reporting Officer and keeping in mind the importance of the station where the applicant was working and the nature of work was to be performed the R.O. could not be

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faulted having recorded the remarks. Sh. Mehta also indicated that while exercising judicial review the Tribunal should not substitute its judgement for that the Reporting Officer who had seen the performance of the person reported upon at close quarters. Unless and until it is found that the report was totally malafide and irrelevant, the same could not be disturbed. Shri Mehta relied upon the decision of the Supreme Court in the case of BR Meena Vs Rajasthan Govt. and Other [1997 SCC 93], He therefore prayed that OA be dismissed as being without any merit.

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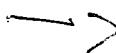
8. I have carefully considered the matter . The applicant in this case who was working as Private Secretary to Respondent No.3 during the period December 1996 to March 1997 had been adversely noted upon in Columns 3,4(a), 5 , 6,7,8 and 12 of the ACR forms which has communicated to him by order dated 16.9.1998. Following his representation the remarks against Columns 4(a), 5, 6 and 8 have been expunged retaining remarks against 3, 7 and 12 . Following are the remarks which have been retained :

3. Regularity & punctuality in attendance:

Mr. Mohan's performance in this regard was very disappointing. He was often unpunctual in coming to office and irregular in attending to his work. He was cautioned several times orally and once in writing. However, despite repeated appeals, there was little to show by way of improvement.//

7. Maintenane of engagement diary and timely submission of necessary papers for meetings, interviews, etc.:

Mr. Mohan did not maintain any engagement diary during the period under review. He tried to submit necessary papers etc. on time but did not succeed in doing so, in actual



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practice, due to an inability to cope up with the workload and an unwillingness to apply himself".

12. Has he/has been reprimanded for indifferent work or for other causes during the period under report ? If so, give brief particulars. (Kindly note that serious defects should have been brought to the notice

of the officer in writing with a copy to the Ministry. Other defects should be treated in a more lenient manner, which the reporting officer should seek to correct in the course of the period, and indicated results in this respect):

"He was reprimanded several times orally for his absence without proper leave, lack of punctuality and a general disinterest in his work. A 'show cause' Memo. was issued in writing to him and a detailed note regarding his performance was put up to the Permanent Representative and Deputy Permanent Representative. He was treated throughout in a lenient manner and repeated appeals were made calling upon him to improve the quality of his work. These efforts, however, however did not produce any results."

The report also conveys the gist of the positive observations made in the ACR for the period, which reads as below:

"Mr. Mohan is intelligent and fully understands instructions given to him. There was no reason to doubt his "trustworthiness" during the period under review. He has a good personality and is friendly towards all including his fellow employees, local Indians and other members of the public here in Geneva. The Officer was sociable and displayed tact in his work and in his dealings with colleagues. He and his family are enthusiastic participants in games, cultural activities etc. and have adapted to life abroad while preserving their Indian personality."

9. As very correctly pointed out by the learned Senior Central Government Standing Counsel, Shri Mehta, the Tribunal is neither expected nor called upon to substitute its judgement for that of the Reporting Officer Officer or Reviewing Officer, but is only

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expected to find out whether the procedure with regard to the recording or reviewing of the ACR has been correctly gone through and whether or not there is any malafide in the exercise of the functions by the Reporting Officer and or Reviewing Officer. I am therefore, confining myself only to the above.

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10. In this case the applicant is a Private Secretary and therefore his report has only one stage i.e. both the Reporting and Review functions were performed by a single person. This is as it should be as Private Secretary is attached to one single officer and his/her work can be adjudged only by the person to whom he / she reports to.

11. According to the applicant the Reporting Officer (Respondent No.3) had acted malafide , while recording adverse entries in his ACR and the respondent No. 1 had not exercised its powers properly while dealing with the representation. This allegation has no legs to stands on. Switzerland is an important diplomat station where a number of International organisations function and therefore the officials attached to the Indian Embassy have to undertake greater burden than what is usually expected of those attached to the Embassies of the other countries with less onerous duties and responsibilities. Having been a Private Secretary for quite some time and being aware of the importance of the Indian Embassy at Berne, Switzerland and the jobs to be performed by the said Embassy, it was expected that the applicant would in the normal course exhibit greater care and caution with regard to his job. The applicant apparently had not

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done and hence the adverse entries in his ACR. It is clear from the perusal of the report that the applicant had not been able to satisfy his official superior professionally, during the period of 3 1/2 months i.e. from mid - December 1996 to end of March 1997. The respondent No. 3 cannot be faulted for having assessed the performance of the applicant and recorded the same. The allegation of malafide has no basis as is clear from the gist of the positive aspect of the applicant's work given by the same officer. The malafide or inaction of the respondent No. 1 is also baseless as it is found that out of adverse entries made against seven (7) columns, those against four (4) columns have in fact been expunged and only those against three (3) columns have been retained. Evidently therefore the Reporting Officer had conducted himself properly while recording his observations and respondent no. 1, while considering the representation against adverse entry had been generous. Nothing more can be asked by the applicant.

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12. I have also gone through the points raised in the decisions relied upon by the applicant in his defence. These relate to the object of writing ACRs (State of UP Vs Jamuna Shanker Mishra), the need to confine the report on the performance during a single year only (M P Rajan Vs State of MP and others), incapacity of the Reporting Officer to function as Reviewing Officer (Miss A G Dalvi Vs UOI & others), impropriety of recording an adverse entry on the basis of a complaint which has not been fully enquired into (P.C. Mishra Vs State of Assam) and insufficient consideration of the representation against the adverse

entry (R K Mahavir Vs UOI). Unfortunately for the applicant, none of the above would come to his assistance as it is ^{seen} that the remarks have been entered in the ACR after careful consideration, they relate to the performance during the period under report, and they have been recorded by reporting officer, against whose report there is no review. In fact, the decision of the Supreme Court in the case of Bharat Ram Meena Vs Rajasthan High Court at Jodhpur and Others is more relevant in the circumstances of the case. Relevant portion reads as below:

"there is nothing on record to suggest that the assessment of the appellant's merit is in anyway arbitrary or without any factual basis. Nothing has been brought on record to justify that High Court should have, in exercise of his writ jurisdiction, intervened or quashed the adverse remarks in the ACR by the appellant."

The same is the position in respect of the applicant and therefore his case has to fail.

13. In the above view of the matter I am fully convinced that the applicant has not made out any case for my interference. OA therefore fails and is accordingly dismissed. No costs.

(GOVINDAN S. TAMPI)
MEMBER (A)

Patwal/