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Central Administrative Tribunal, Principal Bench

Original Application No.72 of 2000

New Delhi, this the 3rd day of November, 2000

Hon'ble Mr.V.K.Majotra, Member (Admnv)

R.Prema, D/o S.V.Ramu, R/o Q.No.303,
J-Block, Sarojini Nagar, New Delhi. - Applicant

(By Advocate Shri S.K.Gupta)

Versus

1. Union of India, Through Secretary, Ministry of Home Affairs, North Block, New Delhi.
2. Director, National Crime Records Bureau, Ministry of Home Affairs, East Block-VII, R.K.Puram, New Delhi-110066.
3. Asstt.Director (Admn.), National Crime Records Bureau, Ministry of Home Affairs, East Block-VII, R.K.Puram, New Delhi-110066. - Respondents

(By Advocate Shri S.M.Arif)

O R D E R

The applicant has challenged memo dated 20.9.1999 (Annexure-A-1) containing adverse remarks in Annual Confidential Report (for short 'ACR') of the applicant for the period 1.4.1998 to 31.3.1999 and order dated 22.12.1999 (Annexure-A-2) whereby his representation against the adverse remarks was rejected.

2. The applicant has averred that no warning or memo was issued to him before recording the adverse remarks in the aforesaid ACR. It is further alleged that his representation has been rejected vide memo dated 22.12.1999 without any application of mind and without giving any reasons. According to the applicant the adverse remarks are vague and are not based on any evidence. As regards entry that the applicant is not able to take any class in any of the NCRB courses, she has submitted that she was not given any opportunity to take the classes or to teach anybody and also that she

was never allowed to undergo any training programme. The applicant has sought quashing of Annexures-A-1 & A-2.

3. The respondents in their counter have stated that the applicant was informed about the adverse entries vide order dated 20.9.1999. Her representation dated 18.10.1999 was carefully considered after obtaining comments from the reporting officer and rejected thereafter. The respondents have enclosed with their counter comments of the Reporting Officer dated 26.11.1999 (Annexure-R-3) on applicant's representation. The Reporting Officer has stated in Annexure-R-3 that his assessment on the applicant was based on his observations as Reporting Officer in an unbiased manner. However, due to pressure of work he could not find time for issuing any memorandum to her. According to the respondents oral directions of the superiors are more than enough and it is not necessary to communicate any formal memo on each and every occasion when the work and conduct of an employee is found to be unsatisfactory. The applicant has filed a rejoinder as well.

4. I have heard the learned counsel of both sides on 12.10.2000 and perused the material available in the file. On 12.10.2000 the learned counsel of the respondents was directed to produce the relevant ACR record and personal file of the applicant by 17.10.2000. However, the respondents have failed to produce the same till today i.e. 3.11.2000, when the final order has been passed.

5. The learned counsel of the applicant has contended that whereas instructions on procedure require

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issuance of memoranda regarding short comings of the employee, the reporting officer did not issue any memorandum and recorded a large number of adverse entries in the applicant's ACR for the period 1.4.1998 to 31.3.1999. According to the learned counsel this is indicative of the biased mind of the Reporting Officer. He has also drawn attention to Annexure-R-2 dated 22.12.1999 whereby applicant's representation against adverse remarks has been rejected having been found devoid of merit. The learned counsel of the applicant has alleged that the applicant's representation has been rejected without any application of mind. He has further stated that the Reporting Officer has not followed the procedure and principles for writing reports such as "the memorandum of services, which is invariably required to be consulted at the time of writing ACR" has not been consulted.

6. The learned counsel of the applicant has relied on the case of U.P.Jal Nigam and others Vs. Prabhat Chandra Jain & others, (1996) 33 ATC 217 wherein it was held that down-grading of gradation in the ACR is compulsorily communicable. Reason for such a change must be recorded in the personal file and the employee must be informed of the change in the form of advice.

7. The learned counsel of the respondents stated that the applicant has not made any appeal against rejection of her representation against adverse ACR. According to him the respondents have followed the ratio in the case of Prabhat Chandra Jain (supra) and communicated the adverse entries to the applicant. The learned counsel of the respondents reiterated respondents' stand that it is not necessary to issue

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formal memos before recording adverse entries.

8. The Hon'ble Supreme Court in the case of Prabhat Chandra Jain (supra) has held that all that is required by the authority recording confidentials is to record reasons for down grading on the personal file of the official concerned and inform him of the change in the form of advice. In the present case whereas a large number of adverse entries on various aspects of the working and personality of the officer reported upon have been made, the respondents have not produced the relevant personal file of the applicant and other relevant records, despite specific direction in this behalf, from where it could be ascertained whether any reasons had been recorded by the Reporting Officer before recording adverse entries against the applicant in the ACR for the period 1.4.1998 to 31.3.1999. I have no hesitation in drawing an adverse inference that the Reporting Officer had not recorded any reasons in the personal file of the applicant regarding adverse entries in the said ACR.

9. Whereas instructions require for issuing formal memorandum to the officer reported upon with a view to bring about improvement in the work and conduct, the Reporting Officer has admitted in Annexure-R-3 dated 26.11.1999 "[D]ue to enormous pressure of work in the Training Branch, it is hard to find time for such matters (issuing of memos etc.)". These remarks are indicative of a casual approach of the Reporting Officer. Even if he is under pressure of work he cannot by-pass the procedure and make numerous adverse entries in the ACRs of the officer reported upon. He can resort

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to recording such a large number of adverse entries in the ACR only after he has followed the prescribed procedure of issuing memorandum etc. so that the officer concerned gets an opportunity of bringing about improvement in his work and conduct. It is stated that he had mentioned these things to the applicant orally only. Oral reprimands are not considered enough for making kind of adverse entries he has made in the present case. A perusal of Annexure-R-3 which are comments of the Reporting Officer on the representation of the applicant also indicates that the Reporting Officer has made various adverse remarks on the basis of the earlier remarks and without any supporting evidence. Such adverse remarks which do not have any leg to stand on cannot be allowed to sustain. I am also in agreement with the learned counsel of the applicant that Annexure-R-2 dated 22.12.1999 rejecting the representation of the applicant is without application of mind and is a non-speaking order.

10. In view of the discussion made above the OA succeeds and the impugned orders dated 20.9.1999 (Annexure-A-1) and 22.12.1999 (Annexure-A-2) are quashed. Consequently, the respondents are directed to obliterate the adverse remarks in the applicant's ACR for the period 1.4.1998 to 31.3.1999 within a period of one month from the receipt of a copy of this order. No costs.

V.K. Majotra
(V.K. Majotra)
Member (Admnv)