

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

C. L. No. 1160, 1939

DATE OF DECISION : 24.04.92

Shri R.K. Gupta

...Applicant

Vs.

Union of India & two others

...Respondents

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Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

.. Shri Balraj Bhawan

For the Respondents

...Shri P.P. Khurana

1. Whether Reporters of local papers may be allowed *yes* to see the Judgement?

2. To be referred to the Reporter or not *yes*

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

The applicant has assailed the adverse remarks given by Reviewing Authority [↓] to him/vide order dt.4.7.1938 for the year 1935 and the order rejecting the representation against the adverse remarks dt.27.1.1939. He also challenged the adverse remarks dt.9.3.1938 for the year 1936 and the representation against the same rejected by the Memo dt.27.3.1939.

2. The applicant claimed the following reliefs:-

(a) That a direction be issued to the respondents that the vacancy for the ADG (Engineering) dt.30.6.36 should not be filled up pending disposal of this

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Original application or alternatively the applicant may kindly be directed to be given ad hoc promotion pending disposal of the application

(b) Direction cancelling and setting aside the rejection of the representation by the order dt.27.1.1989 (Annexure A5) and order dt.27.3.1989 (Annexure A3).

(c) Order and direction to the respondents for expunging the revised remarks dt.4.7.1988 (Annexure A4) and adverse remarks dt.9.3.1988 (Annexure A6).

3. The applicant has earlier filed OA 322/36. This OA was against the adverse remarks for the years 1984 and 1985. Shri P.R.Laty, who was the then Director General, DGT, had recorded very serious adverse remarks. He was also the Reviewing Officer of his own remarks. The applicant was due to be promoted to the post of Deputy Director General (Engineering), which fell vacant on 30.6.1986 and at that time the applicant was the only officer eligible as per the existing rules. OA 322/36 was disposed of by the order dt.23.5.1987, which is reproduced below : -

"After the review of the C.Rs. for the year 1984 and 1985 are completed as directed above, the Departmental Promotion Committee prescribed for the post of Deputy

Director General (Engg.), if necessary, after necessary amendment, in the light of the charges in the organisational set up of the concerned Department of the Government of India shall consider the case of the petitioner for promotion to the post of Deputy Director General (Engg.) which fell vacant on 30.6.1986. If the petitioner was the only eligible person as per the rules qualifying for the post, his case alone shall be considered by the Departmental Promotion Committee without relaxing the prescribed qualifications in the case of the other incumbents who did not qualify for such consideration on the day when the post fell vacant."

After this, the applicant was suspended on 26.5.1987 and was issued chargesheet for major penalty proceedings on 6.11.1987.

The applicant has since been exonerated in the departmental enquiry.

4. The adverse remarks for the year 1985 have been expunged by the Hon'ble Minister. The applicant in this OA has again come for the redress of his grievances that the DPC should not be held until the representations against the adverse remarks are disposed of. The applicant apprehended the danger of the post of DDG (Engg.) being filled up ignoring the claim of the applicant, who was the only eligible officer. It is further stated by the applicant that adverse remark of 1986 have come into existence subsequent to 30.6.1986 when the post of DDG (Engg.) fell vacant and the same post has to be filled up in accordance with the directions of the Tribunal dt. 28.5.1987 in OA 322/1986. It is stated that the then Director, Sh. Latey harboured malice against the applicant, and to impede promotion initiated departmental proceedings without any just and reasonable ground. The review of the adverse remarks of 1985 has not been done objectively without considering the plea raised in the representation. Similarly there was no justification or sufficient basis for awarding remarks for the year 1986.

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5. The respondents contested the application. It is admitted by the respondents that the adverse remarks for the year 1984 were expunged, but the representation against the adverse remarks for the year 1985 was not accepted by the competent authority after careful consideration. There was also adverse remark in the ACR of the applicant for the year 1986 and Shri Latey, the then Director General who was writing the ACR of the applicant for the year 1986 did not harbour any prejudice or malice against the applicant. Further It is stated that the DPC which met on 27.4.1989 considered the adverse remarks only upto 1985 of the applicant. The applicant was the only candidate to be considered and his ACRs upto 1985 were seen and evaluated by the DPC. The second DPC was convened in compliance with the order dt.3.5.1988 and only those persons who were eligible on 1.7.1987 were considered for the post of DDG (Engg.). The DPC adopted the sealed cover procedure as there was a disciplinary case against the applicant which could be opened only after its conclusion and the vacancy has been filled up only on officiating basis pending the opening of the DPC recommendations as considered on 27.4.1989 the name of the applicant alone. Thus according to the respondents, the applicant is not entitled to any relief.

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6. I have heard the learned counsel for both the parties and have gone through the record of the case. Simply the case is for the expunging of the adverse remarks for the years 1985 and 1986. From the record, it appears that Shri Latey who was Director General (Technical Development) was a party in CA 322/86. In fact the remarks for the years 1984 and 1985 were both given by Shri Latey, DG (TD). Remarks of 1984 were expunged after review by the competent authority, but the remarks for the year 1985 which were given by Shri Latey were not expunged. The order dt. 27.1.1989 (Annexure A5) only states about the rejection of the representation against the remarks of the year 1985 by the competent authority. The remarks were also reviewed afresh by the competent Reviewing authority other than the Reporting authority and the Reviewing authority as commented in para-2 of the said communication dt. 4.7.1988 as follows :-

"However, the report also shows that he has over stated his resume, so it is not fully agreed to. In so far as 'Industry & Conscientiousness' is concerned, he has likes and dislikes about the kind of work he should be given. As regards promptness in disposal of work, he tends to delay cases. In so far as 'Readiness to assume responsibility' is concerned, he shows reluctance to do work which does not bring him in contact with industry directly. His relationship with colleagues is not easy. It has also been stated that he has gone through an uneasy period arising out of his being posted to general technical co-ordination divisions. As regards whether he has been reprimanded for indifferent work or for other causes, he was verbally informed to improve his attitude and approach. As regards integrity, complaints were received as he caused delays in the work of fuel allocation which work had been given to him."

A perusal of the above remarks would show that it is not supported by any factual state of affairs Un-written or documentary. In a situation where the applicant has earlier assailed the adverse remarks for the period under review, the competent Reviewing Authority should have given a meaningful consideration to the various assessments made about the performance of the applicant during the period under review. Specific instances were required to be seen in support of the adverse remarks in an objective manner. All the comments given by the Reviewing Authority are of general nature. Even to the extent that the integrity of the applicant has also been touched, but it is nowhere stated that his integrity is not certified. Only because there was some delay in fuel allocation and a complaint was received in that regard, so the integrity part has also been touched. He was also reported to have been verbally told to improve his attitude and approach, but specific instances have not been stated. Further, it is reported that the applicant has shown reluctance to readiness to assume responsibility, but this fact too is not supported by any warning or action or advice or report against the applicant. Thus para-2 by itself does not make out what the Reviewing Officer actually meant, whether he supported the casual remarks of the Reporting Officer or he in any manner

objectively considered them and passed them to remain on record against the applicant. Thus, the order rejecting the representation of the applicant dt. 27.1.1989 cannot be sustained. The contention of the respondents in this regard is that the ACRs. of an officer are written on his personal performance and the decision of the competent authority on the representation of the applicant was communicated to the applicant after detailed examination by the competent authority. This reply in the counter various departmental instructions issued by DOP&T of does not meet the requirement of law. The respondents at least, when the matter has come before the Tribunal, should have supported the entries which speaks adversely of the applicant by something cogent so that a reasonable person may be moved to consider the applicant on the same assessment taking into account the performance of the applicant for that year. When there is no data available on record nor the respondents supplemented the rejection of the representation on this basis also of the year 1985 by documents, so such an order cannot be sustained in the eyes of law. The emphasis is given on the remarks of the year 1985 all the more because the DPC which met on 27.4.1989, only considered the ACR of the applicant upto the year 1985. In the meantime since there was some departmental proceedings drawn against the applicant

(in which the applicant has been subsequently exonerated), so the recommendations of the DPC were kept in a sealed cover. Thus there is no justification for the adverse remarks of 1935 to remain on record and the adverse entries given are to be expunged.

7. There is another facet of the whole matter. The adverse remarks of 1934 which have already been expunged on the basis of the representation of the applicant dt.14.3.1935 by the order dt.26.10.1933 are almost of the same type as has been given to the applicant in the year 1935. The applicant has been commented adversely in the year 1934 that he is argumentative in temperament and has been unwilling to take on diverse responsibilities. Further it was reported that he evades responsibilities and not easy in relationship with colleagues. Further it was ^{also} reported that he was verbally reprimanded. The adverse remarks given in the year 1935 are almost the same regarding unwillingness to take on diverse responsibilities; regarding evading responsibilities and not easy in relationship with his colleagues and that he was verbally reprimanded. In the year 1935 only, it is further stated that he had overstated his resume of performance for the year under review and has been delaying the process of decision at his

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end. This remark was communicated on 4.7.1983 and the representation has been dismissed by the order dt.27.1.1989. Thus it is evident that the remarks for the year 1985 are not based on objective consideration of the performance of the applicant. In the case of L.Jayaseelan vs. Union of India & Ors. (CA 899/87) decided by the Principal Bench on 3.1.1991, there was under consideration the report of the Reviewing Officer and it was found in that case that Reviewing Officer despite provisions of column-II requiring reasons to be indicated briefly did not record reason for adverse remarks nor cited the material on which the said remarks were founded. It was held that even executive actions of the Government are subject to review if they violate any law, rule or executive instructions or are violative of the executive directions issued in that regard. Thus in the present case, the ACR of 1985 is not substantiated by any document or substance or fact and cannot be allowed to remain against the applicant.

3. Regarding the adverse remarks for the year 1986, this too appears to be given in a mechanical manner. This remark has been given to the applicant on 9.3.1988 and almost it is the repetition of the adverse remarks given to the applicant in the years 1984 and 1985 because what is adversely commented

against the applicant is only that he has over estimated his resume of performance, his argumentative approach and relations with the colleagues, his inter personal relations and his team work is poor. As regards his relation with public is concerned, there are many complaints against him. Further it has also been commented that wherever he was posted, lot of complaints have been received and he is bringing discredit to the organisation and his grading is below average. The applicant has made a vivid representation against the same, but that has been rejected by a very succinct order dt.27.3.1939 (Annexure A3). The respondents have not supplemented these adverse remarks by any fact in the counter. When the applicant was not working upto the mark since 1934, even then it was not considered proper to give him a memo regarding the shortcomings evident from his personal or professional life. The case of the applicant is that when he has come to the Tribunal, there was every attempt by the respondents to defeat his promotion to the next post of Deputy Director General (Engineering) for which there was a vacancy existing on 30.6.1936 and he was the only eligible candidate to be considered by APC as per extant rules prevailing at that time. Since the applicant was not being considered, he has earlier filed CA 322/36. In that CA, the applicant

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challenged the adverse remarks given to him for the years 1984 and 1985. In that C.A., there was a specific direction to the respondents, "If the petitioner was the only eligible person as per the rules qualifying for the post, his case alone shall be considered by the Departmental Promotion Committee without relaxing the prescribed qualifications in the case of other incumbents, who did not qualify for such consideration on the day when the post fell vacant." This C.A. was decided on 23.5.1987. The applicant was suspended sometimes in May, 1987 and was issued a chargesheet for major penalty proceedings on 6.11.1987. Thus the direction issued in C.A 322/86 for all purposes was shelved because the applicant came under the shadow of an enquiry. The Enquiry Officer in that case submitted his report in May, 1989 and the applicant was exonerated of all the charges. The DPO which met for consideration of the vacancy, therefore, kept the matter of the applicant in a sealed cover. The DPC also considered the adverse remarks for the year 1985. It is also on record that the norms of eligibility for appointment to the post of Deputy Director General (Engineering) were also got changed. It only speaks nothing, but an attempt to corner the applicant in every manner and to

keep him out of run for promotion to the post of Deputy Director General (Engineering). The respondents in their counter did not at all explain any of these facts.

9. In AP 332/38 in OA 322/36, again a clarification was given on the petition filed by Union of India and it was reiterated that only those persons should be considered and appointed who fulfil the prescribed qualifications on the date when this post fell vacant, i.e., on 30.6.1986.

10. Taking all these antecedents into consideration and the manner in which the adverse remarks have been given lightly without being substantiated by documents or facts on record, the remark of 1986 also should suffer the same fate as the adverse remarks of 1985 being not based on proper appreciation of the working of the applicant and shows a pre-judicial and predecided attitude against the applicant for the reasons not far to seek. The applicant had already filed OA 322/36, the applicant has already faced the enquiry in which he was also suspended sometimes in May, 1987 and still the applicant has not been served with any Memo directing him to improve in a particular manner in the particular sphere of personal or professional life.

11. In view of the above facts, the reviewed adverse remarks given to the applicant for the years 1985 and 1986 dt. 4.7.1988 and 9.3.1988 respectively and the orders dt. 27.1.1989 (Annexure A5) and 27.3.1989 (Annexure A8) are quashed and set aside.

12. The promotion to the post of Deputy Director General (Engineering) was subject to the outcome of the present Application No. 1160/1989 and since the application is being allowed, the respondents are directed to consider the case of the applicant again by constituting a review DPC for the vacancy which occurred on 30.6.1986 where the applicant was the only person to be considered as per the Extant Rules and in case the applicant is found fit for promotion and the Review DPC shall ^{not consider the adverse remarks of 1986 and 1988, he should} ⁵ ^{adjudged for} be given promotion w.e.f. the date and shall be entitled to all the consequential benefits of arrears of pay etc. till the date of his retirement and revised terminal benefits on the basis of last pay drawn on the post of Deputy Director General (Engineering) in case he has been promoted. In the circumstances, the parties to bear their own costs.

J. P. Sharma

(J. P. SHARMA) 22.4.92
MEMBER (J)