

(9)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No.1345/89.

Date of decision 29.9.92

Shri Sunial Kumar Sinha ... Applicant

V/s

Union of India & Ors. ... Respondents

CORAM:

The Hon'ble Member Mr. I.P. Gupta, Member (A)

For the Applicant ... Shri B.B. Raval, Counsel

For the Respondents ... Smt. Raj Kumari Chopra, Counsel

(1) Whether Reporters of local papers may be allowed to see the Judgement ?

(2) To be referred to the Reporter or not ?

J_U_D_G_E_M_E_N_T

[Delivered by Shri I.P. Gupta, Member (A)] 7

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has requested for quashing of adverse remarks in his ACR for 1982-83.

2. In the ACR for 1982-83 in respect of the applicant, the following entries appear -

In the ACR on you for the year 1982-83 "Your appearance and bearing and power of expression have been reported as good while the state of your health, industry, and perseverance, keenness and initiative, relations with colleagues and subordinates, social conduct, ability to assess and your overall performance have been assessed as satisfactory. However, it is reported that you are indisciplined, arrogant, recalcitrant, untrustworthy and mendacious. It is also reported that you are undesirable type and currently under suspension for gross disobedience of orders of official superiors."

3. The applicant entered Intelligence Bureau as Assistant Central Intelligence Officer Grade II (ACIO-II) on August 11, 1969. Later he was promoted as ACIO-I.

4. The Learned Counsel for the applicant drew the attention of the Bench to various rewards and appreciations received by the applicant from time to time in his service career. On 16th August, 1992 the applicant wrote a letter to the Assistant Director, SIB, Itanagar where he was posted saying that when scores of names had been listed in the reward roll in ^awholehog manner, he had been omitted though he had performed the control room duty away at AD's residence almost single-handed till very late hours in the night throughout the student agitation at Itanagar (Annexure A-2). On the margin of that letter the A.D. remarked as follows :-

" No other officer could perhaps include the ACIO-I's name in the RR who was directly working with me, shoulder to shoulder.

Why loose patience ? Orders have yet to issue."

Therefore, the Learned Counsel for the applicant contended that when in 1982-83 itself the A.D. held him in high esteem, the adverse entries for 1982-83 itself would appear mis-spelt and unjustified.

5. The Learned Counsel has adduced the following

grounds for challenging the adverse entries :-

- (i) The remarks are malicious. In this connection he said that the applicant had worked with the AD 'shoulder to shoulder' and had received cash reward in recognition of his good performance in August 1982 by letter dated 11.1.1984. But in December the Assistant Director asked the applicant to falsely implicate an innocent tribal Security Assistant (SA) in an incident where the wife of that SA went to demand Rs. 4,000/- from Shri H.B. Rai, DCIO, who had borrowed that amount from her for smuggling of muskpod and was not willing to return the money. He alleges that the said DCIO (Shri Rai) was the great favourite of A.D. The applicant refused to implicate the S.A. in his inquiry report and that was the turn of the tide.
- (ii) The ACRs have been initiated by the DCIO while the applicant was directly under A.D. The applicant had not received any warning or even A.D. was not competent to write the ACR because the applicant did not work under him for the whole year.
- (iii) The adverse entries were not communicated within one month as required under MHA's instructions and covered the mention of

suspension of the applicant in April, 1983.

6. The applicant made representation against the adverse remarks but his representation was replied to by letter of 26th September 1983 where it was explained that the departmental instructions do not provide for communicating the identity of the applicant making the particular remarks. His representation dated 11.10.1983 for expungement of adverse remarks was rejected by order dated 27th December 1985. He made an appeal and this was also rejected by order dated 20.10.1986 where it was mentioned that JD(NE) has duly considered his representation, but no reason was found to off-set the remarks. The applicant made a Memorial to the President against the adverse remarks but his memorial was also rejected by order dated 30th May, 1988.

7. The Learned Counsel for the respondents raised the preliminary objection of limitation. It was pointed out that even the memorial was rejected on 30th May 1988 and the application was filed on 3rd July 1989 for quashing of adverse remarks of 1982-83 and the appeals and memorials had all been rejected by 30.5.1988.

8. The Learned Counsel for the applicant added that the rejection of the memorial dated 30.5.1988 was received by the applicant only some time towards June 1988. Though the applicant had given the papers in time, there was some delay on the part of the counsel because the papers were misplaced.

AL

13

9. We shall deal with the question of limitation first. It is some time loosely suggested that a party should never suffer for the fault of the counsel but this proposition is too broad to command general acceptance as a principle - it may be more readily applied in cases of restoration of the case dismissed for default than in respect of filing a time barred claim. One may say that one or two days delay caused by the counsel or his clerk for getting to file an application before the Tribunal may be excused but beyond that one cannot get away with the spacious plea of the counsel or his clerk's fault. In this case there is nothing on record to show that the rejection of the memorial dated 30.5.1988 was received by the applicant only towards the end of June. Even so, the case has been filed after a lapse of one year and is, therefore, barred by limitation. Nevertheless, we proceed to examine the case on merit.

10. The Learned Counsel for the respondents contended that it is a normal administrative exercise to commend and reprimand officials depending on their performance. That the applicant was commended on a few occasions is a matter of record, so is the adverse remarks recorded in his ACR for 1982-83. The counsel added that due to his gross disobedience of orders of his superior officers, the applicant was placed under suspension on 29.4.1983 and Departmental Proceedings

ML

14

for 'major penalty' were instituted against him.

On completion of proceedings he was removed from service vide order dated 12.3.1985. However, Director, Intelligence Bureau on a revision petition modified the punishment to the reduction to a lower rank of ACIO-II in December 1985.

11. The applicant joined duty at Itanagar on 17th July, 1982 and was relieved from there on 6th March, 1983. Therefore, for a major portion of the year 1982-83 the applicant worked at Itanagar and the A.D. Itanagar was fully competent to review the ACR for 1982-83. The ACR related to 1982-83 and the Report writing is to begin in April 1983. The applicant's report was finalised in June 1983 which cannot be termed late. Even if there was some delay according to the guidelines, these guidelines are directory in nature and not mandatory which observation will apply with equal force in respect of communication of adverse remarks which was done on 14.7.1983.

12. On analysis we find that the representation of the applicant against the adverse remarks, the appeal against rejection of representation and the memorial against rejection of the appeal were all considered and rejected. It has already been held in the case of Union of India versus E.G. Nambudiri [AIR 1991 SC 1216] that while rejecting a representation against adverse remarks the absence of reasons will not by itself render the order of rejection illegal. The following extracts

15

from the judgement is reproduced :-

" ... But the competent authority has no licence to act arbitrarily, he must act in a fair and just manner. He is required to consider the questions raised by the Government servant and examine the same, in the light of the comments made by the officer awarding the adverse entries and the officer countersigning the same. If the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons. In the absence of any statutory or administrative provision requiring the competent authority to record reasons or to communicate reasons, no exception can be taken to the order rejecting representation merely on the ground of absence of reasons. No order of an administrative authority communicating its decision is rendered illegal on the ground of absence of reasons *ex facie* and it is not open to the court to interfere with such orders merely on the ground of absence of any reasons. However, it does not mean that the administrative authority is at liberty to pass orders without there being any reasons for the same. In governmental functioning before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion. If the order as communicated to the Government servant rejecting the representation does not contain any reasons, the order cannot be held to be bad in law. If such an order is challenged in a court of law it is always open to the competent authority to place the reasons before the court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence aliunde before the court to justify its action."

In this case the representation, the appeal and the memorial were considered at different levels and each was rejected.

16

It is easy to allege malice but difficult to prove. The DCIO (Shri Vinod Sharma) had initiated an ACR as he had supervised the applicant's work for more than three months. It was alleged that he succumbed to the pressures of the Assistant Director. But the respondents brought out that the Assistant Director had, in fact, improved the remarks of the reporting officer on some points. The representations/Memorial were considered at different levels by senior authorities and it cannot be inferred that they were all influenced by the Assistant Director only.

13. The facts of the case show that the applicant was even proceeded against in a disciplinary case for gross disobedience of orders and was removed from service but in a revision petition the penalty was reduced to reduction. The indisciplined act was thus even a subject matter of quasi-judicial proceedings, in which he was not exonerated.

14. The ACRs for 1982-83, even according to guidelines, are to be written in April and if the suspension order was issued in April 1983, a mention of this matter, which is a fact, in the ACR for 1982-83 cannot be said to

have been done illegally or maliciously.

15. In the conspectus of the aforesaid facts, the O.A. is dismissed both on grounds of merits and limitation. There is no order as to costs.

I. P. Gupta
I.P. Gupta
Member (A)

29/9/92