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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 1926/89.

Date of decision. 19.8.94.

HON'BLE SHRI S.R. ADIGE, MEMBER (A)

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J)

Shri P.C. Jain,
s/o Shri Ghambirmal Jain,
Resident of No. 207,
Santoshi Apartments,
Novgardh Road,
BHAYENDER (EAST)
Dist. Thana,
Maharashtra-401 105.

.. Applicant

(By Advocate Shri S.C. Luthra)

versus:

1. Union of India
through Secretary,
Ministry of Textiles,
Udyog Bhawan,
New Delhi-110 011.
2. Textile Commissioner,
New C.G.O. Building,
New Marine Lines,
Bombay-400 020.
3. Shri K.S. Desikan,
Director,
(Central Processing Section),
New C.G.O. Building,
New Marine Lines,
Bombay-400 020.

(By Advocate Shri Madhav Panicker)

O_R_D_E_R

[Hon'ble Smt. Lakshmi Swaminathan, Member (J)]

In this application, the applicant has prayed
for quashing the adverse remarks recorded in his con-
fidential reports for the years 1986 and 1987 and
communicated by orders dated 23.6.1988 and 8.3.1989

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respectively (Annexures A-1 and A-2).

2. The applicant was appointed as Deputy Director (Chemical Processing) on 21.1.1986 and was on probation for two years. Subsequently, his probation period was extended for a further period of one year during the period of probation. The applicant had been issued the aforesaid memoranda conveying to him the adverse remarks in his confidential reports which Respondents have submitted were communicated to the applicant so that he should come to know of his shortcomings ^{and} to improve himself. The applicant made a representation against the memorandum dated 23.6.1988 on 15th July, 1988 and the same was considered and disposed of by memo. dated 2nd March, 1989. The applicant made representation against the second memorandum on 28.4.1989 which, according to the applicant, was rejected along with his representation against the subsequent termination order dated 7th April, 1989 vide letter dated 10th July, 1989 (Annexure A-10).

3. The main grounds taken by the applicant are that (i) the adverse remarks recorded by Respondent No.3 were mala fide as the latter wanted to get rid of him;

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(14) /B

(ii) ^Bthat the very purpose of communicating the adverse remarks in the confidential reports was defeated since they were conveyed after 18 months and 14 months respectively and were, therefore, in violation of the rules and because no reasons in rejecting his representation against the adverse remarks were given; and (iii) that no guidance/reprimand or warning were issued to him to improve his work.

4. The Respondents have denied the above allegations except the fact that the communication of the adverse remarks to the applicant were delayed but have submitted ^{Bilhat} that _Kby itself will not take away the effect of the remarks communicated.

5. We have seen the records in this case and also the original ACR files and other personal records of the applicant for the period from 1986 to 1989. As held by Supreme Court in Royappa v. State of Tamil Nadu [1974(1)SLR 497] the burden of establishing mala fide lies heavily on the person who alleged this. We are not satisfied with the allegations made by the applicant against Respondent No.3, who was the immediate superior to the applicant, that ^Bhe wanted the applicant out of job or had acted in a mala fide

manner as these have not been borne out by the facts of the case. The Respondents have also stated that his representations against the adverse remarks have been duly considered at the higher level and by the Textile Commissioner and then rejected. The Respondents have also given an opportunity to the applicant to work with more than one officer so that the report of his work can be obtained from not only Respondent No. 3 but his work was assessed by another senior officer, namely, Dr. T.V.K. Srivastava. The report of respondent No. 3 was also reviewed by the Reviewing Officer. In the circumstances, therefore, we do not think that the allegation of mala fide levelled against Respondent No. 3 as the basis of the adverse remarks in applicant's confidential reports are substantiated. In the communication issued to the applicant extending his probation period beyond two years, it was indicated that in case the applicant did not improve himself, Government was bound to take action as deemed fit as per relevant rules.

6. The applicant has filed another O.A. No.1836/89 in which he had also filed the office memoranda

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dated 21st July, 1987 and 2nd May, 1988. These memoranda dealt with the Annual Assessment Reports for the first and second years of probation of the applicant i.e. 1986 and 1987. It is seen from these memoranda that the applicant was informed by memo. dated 31st July, 1987 that his performance during the first year of his appointment was not found satisfactory. He had been assessed in almost all spheres, ^{as well} except the following, where special remarks had been given that he partially meets ^{with} requirement of this job, we find that details of the assessment where he had just met with the requirement of job as well as the assessment where he had not met the requirement of the job under the various columns of the ACRs were communicated to him for the aforesaid two years of his probation period. From a perusal of the notes on File Nos. 10(12)/88-Vig. I and II, the competent authority had considered the representation of the applicant against the communication of the adverse remarks recorded in the assessment report for the first year and it was decided to extend his period of probation for one more year and his performance was watched. Though the Annexures A-2 and A-3 communicating the adverse remarks to the applicant have been admittedly delayed by the Respondents in their reply, they have submitted that this delay by itself does not take away the effect of the adverse

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remarks communicated. The applicant had been given reasonable opportunity to make representation against the adverse remarks which had also been duly considered by the competent authority. It is also relevant to note that even after the communication of the adverse remarks to the applicant by memo. dated 21st July, 1987 for the first year of probation, his ACR for the subsequent year also did not show improvement which necessitated a further communication in this regard in 1988. While we do not approve of the delay made in communicating the adverse remarks to the applicant, it is, however, clear that the Respondents had communicated the first year's adverse remarks in 1987 ^{itself} which, in the circumstances of the case, gave him sufficient time to improve his work. We are also satisfied that in the facts and circumstances of the case, the Respondents have substantially complied with the instructions regarding recording of ACRs and had given sufficient opportunity to the applicant to make representation against the adverse remarks. We, therefore, do not find that this is a fit case calling for any interference by this Tribunal at this stage, or quash Annexures A-1 and A-2 orders dated 23.6.1988 and 8.3.89 respectively. We also do not find any substance in the other grounds taken by the applicant.

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7. In the facts and circumstances of the case, we do not think that any interference is called for and the application is dismissed. There will be no orders as to costs.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (J)

S.R. Adige
(S.R. Adige)
Member (A)