

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH:
NEW DELHI.

REGN NO. 182/89

Date of Decision:- 13.7.89.

Shri Vidya Prakash

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Applicant

Vs.

Union of India & Ors.

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Respondents.

CORAM:- Hon'ble Shri B.S. Sekhon, Vice Chairman.

For the applicant

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Shri A.S. Grewal, Advocate

For the Respondents

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Shri Mukul Talwar, Advocate

Shorn of superfluities, the applicant who is working as an Inspector in Delhi Police has prayed that the adverse remarks entered in his A.C.R. for the period 10.2.87 to 31.3.88 be expunged. These were conveyed to him vide communication dated 4.5.1988, Annexure A. The learned counsel for the applicant, however, confined himself also to the following adverse remarks which have been set out in Annexure A.

"In one case of P.P. Tilak Vihar, where a suspected thief escaped from the custody of A.S.I. Jai Singh tried to cover up the whole incident without bringing the facts to the notice of seniors".

2. It is common ground between the parties that the departmental enquiry is still pending in respect of the allegations forming the subject matter of the above extract ^{of} ~~adverse~~ remarks.

3. The respondents have resisted the applicant inter-alia on the ground that the aforesaid ~~adverse~~ remarks have not been dealt/ expunged from the A.C.R of the applicant and the same have been incorporated as a statement of facts as per decision contained in Circular No. 21137-75/CB dated 4.10.1974, Annexure B.

4. It may be stated at the very outset that learned counsel for the applicant confined his arguments only to the ~~adverse~~ remarks extracted hereinabove. The questions of considering the validity of other adverse remarks in the A.C.R of the applicant for the period 10.2.87 to 31.3.88 and of granting any relief in respect

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thereof do not arise. During the course of arguments learned counsel for the applicant placed reliance on Bhajan Singh Vs. Shri Bahal Singh, S.P. Rohtak and another (1967-SLR-601) and the decision in the case of Angmal Kapoor Vs. The State of Punjab & Ors. (1973-(1)-SLR-989). In Bhajan Singh (supra) the Superintendent of Police had conveyed a warning to the petitioner in respect of allegations which were still pending enquiry before the departmental authorities. The petitioner prayed that the remarks and the warning conveyed by the S.P. be quashed. Hon'ble Mr. Justice R.S. Narula, as he then was made the following observations in para 6 of the judgement:-

" Without entering into the allegations of malafide, I think the Superintendent of Police had no jurisdiction to administer a warning to the petitioner (warning itself being punishment), on allegations which were still pending enquiry before the departmental authorities".

In Nagmal Kapoor (Supra), Punjab and Haryana High Court approved the following observations made by Hon'ble Mr. Justice Sodhi in Kartar Singh Vs. The State of Haryana 1973-Cr. L.J.-56:

" It would not be fair and just to an officer that any confidential report adverse to him should have been based on an incident which was yet to be inquired into. Such a course of action is violative of the elementary rules of natural justice as it deprives the petitioner of an opportunity to be heard".

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On the basis of the aforesaid authorities the learned counsel for the applicant submitted that the aforesaid remarks should not be entered in the A.C.R. and that at any rate these could not be treated as adverse remarks so long as the departmental enquiry is pending.

5. The learned counsel for the respondents met the contention of the learned counsel for the applicant by submitting that the aforesaid remarks merely contain the statement of facts and incorporation of the aforesaid statement of facts is justified

in view of the decision contained in Annexure B. Vids Annexure B it had been decided that mention of pendency of departmental enquiry should be made as it would only be a statement of fact. It was further decided that mention of this fact should not be treated as adverse entry and it should not be communicated to the officer or expunged and that as and when the enquiry is finalised, its result should invariably be mentioned in the confidential report.

6. After bestowing my earnest consideration, I find that the judgement of Punjab and Haryana High Court does not squarely apply to the instant case. In Bhajan Singh's case the Superintendent of Police had administered a warning to the petitioner in respect of the allegations which were still pending enquiry, the aforesaid action of the Superintendent of Police was clearly unwarranted and it attracted the frown of Principles of natural justice. It cannot be gainsaid that incorporation of remarks in the A.C.R in respect of the allegations which form the subject matter of a Departmental enquiry and treating the same to be adverse remarks prior to the conclusion of enquiry is unwarranted and unsustainable. This is so for the simple reason that very allegation on the basis of which the remarks have been made are under challenge and await the decision of the Competent authority. It may also be added that making any entry in respect of such allegations in the A.C.R during the pendency of the enquiry is a mere exercise of futility. In the premises I would hold that following adverse remarks:

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"In one case of P.P. Tilak Vihar where a suspected thief escaped from the custody of ASI Jai Singh tried to cover up the whole incident without bringing the facts to the notice of seniors."

in the A.C.R of the applicant for the period 10.2.87 to 31.3.88 be treated as non existent and this cannot be treated as adverse remarks during the pendency of the D.E. This findings will however, preclude the respondents from making such entries as may be justified after the

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conclusion of the departmental enquiry.

7. The application is disposed of on the terms stated hereinabove, leaving the parties to bear their own costs.

B. S. Sekhon
(B.S. SEKHON)
VICE CHAIRMAN

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