

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.
P.W. No.

293/ 1989

DATE OF DECISION August 3, 1989.

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P.D. Makkar _____ Applicant (s)

In person _____ Advocate for the Applicant (s)

Union of India and others _____ Respondent (s)

Shri P.H. Ramchandani _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice Chairman.

The Hon'ble Mr. P.C. Jain, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

yes.
yes.
no.
no.

JUDGEMENT

(Judgement of the Bench delivered by
Hon'ble Mr. P.C. Jain, Member (A).)

This is an application under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicant, who is working as Deputy Controller of Defence Accounts (Air Force), New Delhi, has prayed for a direction to the respondents to promote him to the Junior Administrative Grade with effect from 14.7.88, the date from which his junior Shri V.P. Jain has been promoted and to quash the recorded warning dated 18.9.1985 (Annexure 'F' to the application).

2. The facts of the case, in brief, are that the applicant has been working as Deputy Controller of Defence Accounts in the office of the Controller of Defence Accounts (Air Force), New Delhi. On the basis of his length of service, he is eligible to be considered for officiating promotion to the Junior Administrative Grade of the Indian Defence Accounts

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Service. The Departmental Promotion Committee which met on 9.6.1988 in the office of the Union Public Service Commission considered the applicant along with other eligible candidates for officiating promotion to the Junior Administrative Grade of the Indian Defence Accounts Service, but did not include the name of the applicant in the panel recommended by them. On the other hand, Shri V.P. Jain, who was junior to the applicant, was recommended by the D.P.C. and accordingly, he has been promoted to the Junior Administrative Grade with effect from 14.7.1988. The applicant assails the D.P.C. procedure and has stated that his junior Shri V.P. Jain has been promoted in an unusual manner.

3. On 18.9.1985, the applicant was issued a recorded warning (Annexure 'F' to the application) for certain lapses on his part. He filed an appeal to the Hon'ble Defence Minister, Union of India, New Delhi (Annexure 'G' to the application) which was rejected by the appropriate authority (Annexure 'J' to the application). On 14.7.1986, the applicant was further informed of some adverse remarks in his Confidential Report for the period from 30.3.1985 to 31.12.1985. A copy of the said report was given to him and he was advised to overcome the deficiencies pointed out therein (Annexures 'C' and 'D' to the application). On his supersession by Shri V.P. Jain, who was junior to him, and who has been promoted to the Junior Administrative Grade with effect from 14.7.1988 on the basis of the recommendation of the D.P.C., the applicant gave a representation dated 2.8.1988 (Annexure 'L' to the application) with the request that his case be placed before the Review D.P.C. to restore his relative seniority in the Jr. Administrative Grade select list of June 1988 and order his promotion as Jt. C.D.A. w.e.f. the date his junior Shri V.P. Jain had been promoted.

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In this representation, he also made a mention of his representation dated 11.8.1986 which he had given against the adverse remarks in his Confidential Report for the year 1985 and which remained undisposed of. In reply thereto, the applicant was advised to furnish a copy of his representation dated 11.8.1986 (Annexure 'M' to the application). In a further communication dated 10.1.89 (Annexure 'N' to the application), he was again requested to submit a copy of his representation dated 11.8.86 as the same had been misplaced somewhere in transit and that this fact would be kept in view and also would be highlighted while processing his application-cum-representation. From the counter-affidavit of the respondents, it appears that the applicant has not furnished a copy of his representation dated 11.8.86. The applicant, however, claims that he has the acknowledgement of the P.A. to C.D.A. when he handed over his appeal against adverse remarks in his Confidential Report (Annexure 'E' to the application). In his application, the applicant has made a mention of some allegations against his superiors, which according to him, resulted in recording of adverse entries in his C.R. He has tried to make out a case that it was as a result of biased attitude of his superiors that he was given a recorded warning. He has also assailed the D.P.C. procedure on the ground that his representation dated 11.8.1986 against adverse entries in the C.R. for the year 1985 has not been disposed of and that the facts were not placed before the D.P.C.

4. In the counter-affidavit, the respondents have submitted that the applicant did not care to enquire about the outcome of his representation dated 11.8.86 for over two years and when he was requested to supply a copy of the said representation, he refused to cooperate. They have also stated that the applicant earned an adverse report in the year 1983 also and his appeal against the same was

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rejected in August, 1984. They have denied the allegation of bias as made by the applicant. The adverse remarks were duly accepted by the prescribed Accepting Authority as per Annexure III to the counter-affidavit. According to them, since the applicant's representation dated 11.8.86 was never received in CGDA's office and the applicant failed to give a copy thereof, the question of deferring his case till a decision was taken thereon, did not arise. According to the Recruitment Rules, promotion to Junior Administrative Grade is made by 'selection method' and the D.P.C. which is presided over by the Chairman / Member, UPSC, has to decide its own criteria to be followed by it for selection of the officer, and the Department has no say in such matter.

5. In his rejoinder, the applicant has stated that neither one month's time limit nor review / endorsement by next competent superior authority has been adhered to by the Respondent No.2 while communicating adverse remarks in the ACR-1985 to the applicant. He has reiterated that his representation dated 11.8.86 was received and acknowledged by PA to CDA (PD). He has repeated the allegation of bias by saying that Shri U.S. Prasad, CDA (R&D) had punitive intention towards him. The applicant has further drawn attention to the revised Govt. orders dated 5.6.81 (Annexure VI to the rejoinder), according to which where a warning/ displeasure/reprimand is issued, it should be placed in the personal file of the officer concerned. At the end of the year (or period of report) the reporting authority, while writing the confidential report of the officer, may decide not to make a reference in the confidential report. If, ^{the} however, reporting authority decides to mention such warning in relevant column in Part III of the form of confidential report a copy of the warning should be placed in the C.R. Dossier as an annexure to the Confidential Report for the relevant period. He has reiterated that his C.R. for the year

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1985 was one level as the same had not been reviewed by the officer above Reviewing Officer i.e., Shri R. Venkatraman, the then C.G.D.A. before his retirement on 31.1.1986. In para 9 of his rejoinder, the applicant has prayed for an interim order pending final decision on the application, which had not been admitted till the last date of hearing.

6. We have heard the applicant, who appeared in person, and learned counsel Shri P.H. Ramchandani, appearing on behalf of respondents. We have also perused the records of this case. We feel that the application can be disposed of at the admission stage itself.

7. At the outset, it may be stated that the officers against whom the applicant has alleged mala-fides, have not been impleaded by him as respondents and, therefore, they did not have the opportunity to file their personal affidavits or to defend themselves. The respondents have, however, refuted the allegation of the applicant.

8. For disposing of this application, we do not consider it necessary to go into the merits of the facts or circumstances on the basis of which a recorded warning had been issued and the adverse remarks recorded in the A.C.R. for the period from 30.3.1985 to 31.12.1985. However, it is to be seen whether the Government's instructions on the subject have been followed and whether the principles of natural justice have been adhered to.

9. In regard to the recorded warning, the applicant's case, in brief, is that it has been issued by an authority who is not competent to do so and that in accordance with the Government's order dated 5.6.1981 (Annexure VI to the rejoinder) this warning could not have been placed by the officer issuing the warning in his A.C.R. dossier. The case of the respondents is that under the Government of India, Ministry of Home Affairs O.M. No.39/21/56-Ests(AD), dated

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13.12.1956 reproduced as Government decision No.14 below Rule 11 CCS (CCA) Rules 1965 (Swamy's compilation, 1987 Edition) and DP&AR O.M. No.22011/2/78-Estt(A) dated 16th February, 1979 (Annexure II to the counter-affidavit), warning can be administered by any authority superior to a Government employee in the event of minor lapses like negligence, carelessness, lack of thoroughness, delay etc. If, however, where a copy of the warning is also to be kept in the Confidential Report dossier, it will be taken to constitute an adverse entry and the officer so warned will have the right to represent against the same. The respondents have, therefore, maintained that there is no irregularity in the issue of the recorded warning which was communicated to the applicant and he made a representation against it, which was considered and rejected by the competent authority. The applicant, however, in his rejoinder contended that in accordance with Government of India, D.P.&A.R. O.M. No. 21011/1/81-Estt.(A), dated 5.6.1981 (extract reproduced in Annexure VI to the rejoinder), a warning (as distinct from 'Censure' which is a minor penalty under the Central Civil Services (Classification, Control and Appeal) Rules, 1965) is to be placed in the personal file of the officer concerned and at the end of the year (or period of report), the reporting authority, while writing the confidential report of the officer, may decide not to make a reference in the confidential report to the warning/displeasure/reprimand, if, in the opinion of that authority, the performance of the officer reported upon after the issue of the warning or displeasure or reprimand, as the case may be, has improved and has been found satisfactory. Thus, in accordance with the instructions dated 5.6.1981, the officer issuing the warning could not have straightway order its placement in the C.R. dossier of the applicant.

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10. There is force in the submissions made by the applicant. The warning having been placed in the C.R. dossier of the applicant must have influenced the D.P.C. which met on 9.6.1988 for selection of officers for officiating promotion to the grade of Junior Administrative Grade of the Indian Defence Accounts Service. We, therefore, hold that this had prejudiced the case of the applicant for the above selection.

11. The adverse remarks in the Confidential Report for the period 30.3.1965 to 31.12.1985 have admittedly been written by the same officer both as reporting officer and as reviewing officer. In such a case, the report was required to be reviewed by the next senior officer which admittedly in this case was the Controller General of Defence Accounts (Annexure I to the Rejoinder). The then CGDA did not review these remarks in the C.R. No such review is recorded in the Confidential Report for this period (Annexure 'D' to the application). On the last page of this report, the word "SEEN" is written but there are no names / designations / signatures under this endorsement. The respondents' case is that the adverse remarks were put up on file to the then CGDA and there is no irregularity in the procedure adopted. Annexure III to the counter-affidavit shows how these adverse remarks were processed in the office of the CGDA. These remarks were put up on 17.3.86 and the decision taken on 1.4.1986 with the approval of the then CGDA was that a copy of the entire report be sent to the applicant. Admittedly the CGDA for the period for which adverse remarks were recorded, had retired on 31.1.1986 and his successor could not have reviewed these remarks as he had not seen the work of the officer reported upon for the minimum period of three months. Moreover, Annexure III to the ^{counter-}affidavit does not show that the remarks were reviewed as such.

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12. The Confidential Report also shows that the reporting officer has made a mention against column 3 of Part III of the report, of the communication dated 10.9.1985 from C.D.A. (R&D) in which certain shortcomings intimated by the CGDA in regard to his work in CDA (HQ) were communicated to the applicant. These remarks pertain to the period while the applicant was working in CDA (HQ) office whereas the report for the period 30.3.1985 to 31.12.1985 pertains primarily to the period of work as Deputy C.D.A. (R&D). Thus the mention of these remarks in this report could not have been made. (10)

13. The adverse remarks in the C.R. for the period 30.3.1985 to 31.12.1985 were communicated to the applicant vide letter dated 14.7.1986 (Annexure 'C' to the application). He represented against these remarks within the allowed time on 11.8.1986. His representation was received by the respondents as per Annexure 'E' to the application. We see no reason to disbelieve his version. Admittedly, this representation had not been disposed of before the D.P.C. met on 9.6.1988. According to the well settled legal position, "unless the representation against the adverse entry is considered and disposed of, it is not just and fair to act upon those adverse entries" (vide Brij Mohan Singh Chopra v. State of Punjab, 1987 (3) SLJ 53 (SC); Amar Kant Choudhary v. State of Bihar, 1984 (1) SCC 694). The infirmities in the writing of the C.R., as discussed above, and the fact that the representation against this report had not been disposed of by the time the selection for the officiating post in the Junior Administrative Grade was held, establish that the Government's orders on the subject have not been followed and the applicant has thereby been prejudicially affected in the matter of his promotion.

14. In view of the above discussion, we hold that neither the recorded warning dated 18.9.1985 nor the confidential report for the period 30.3.1985 to 31.12.1985

should have been taken into account by the D.P.C. which met on 9.6.1988 for making selection for officiating promotion to the Junior Administrative Grade of the Indian Defence Accounts Service. We, therefore, quash the proceedings of the D.P.C. dated 9.6.1988 so far as they relate to the case of the applicant and direct that the respondents shall convene a review D.P.C. within six weeks of the receipt of this order and the recorded warning dated 18.9.1985 and the Confidential Report for the period 30.3.1985 to 31.12.1985 should not be taken into account by the review D.P.C. If the review D.P.C. finds the applicant fit for promotion in the Junior Administrative Grade of the Indian Defence Accounts Service, he shall be allowed such promotion with effect from the date his junior Shri V.P. Jain was promoted, with all consequential benefits in regard to pay and allowances and further chances of promotion, etc., if any. The application is disposed of on the above lines. In the circumstances of the case, there is no order as to costs.

(P.C. JAIN)
(P.C. JAIN)
MEMBER(A)

3/8/89
(P.K. KARTHA)
VICE CHAIRMAN