

(7)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. No. 372/89.

Date of decision

1/4/92

Shri G.D. Bhartiya

... Applicant

V/s

Union of India & Ors.

... Respondents

CORAM:

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

For the applicant ... Shri R.R. Rai, Counsel

For the respondents ... Shri P.H. Ramchandani,
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

The reliefs sought in this application are that the impugned order dated 27.10.1988 (Annexures A & B) rejecting the Memorial filed by the applicant to the President regarding expungement of adverse entries in the ACRs for the years 1982 and 1983 and for 1985, be quashed and the respondents directed to give all consequential of benefite of promotion, seniority etc. to the applicant.

2. The adverse entries of 1982 and 1983 were communicated to the applicant on 29.5.1985. They are at Annexures C & D of the application. The applicant represented against them on 12.6.1985 but his representation was rejected on 25.7.1985. The applicant appealed to higher authorities but the appeal was also rejected on 16.2.1987. Thereafter, he filed a Memorial to the President which too was rejected by communication dated 27.10.1988.

3. The adverse remarks in the ACR of 1985 were communicated to the applicant on 18.2.1986. He represented against them on 27.3.1986 and the representation was rejected on 13.2.1987. He filed a Memorial to the President which too was rejected on 27.10.1988.

4. The contentions of the Learned Counsel for the applicant were -

- (i) The rejections of representations were done by non-speaking orders. Therefore, this was illegal. The Counsel quoted the case of E.G. Nambudiri versus Union of India decided by the Principal Bench [AIR 1987 (2) CAT 360].
- (ii) No reprimand, no warning, no displeasure was ever communicated to the applicant.
- (iii) The applicant was due for promotion with effect from 1.5.1985 as Office Superintendent from the post of Deputy Staff Superintendent (Level I) and DPCs were held between 20.5.1985 and 24.5.1985 but the applicant was not selected perhaps on the ground of adverse entries and two juniors were promoted. When the adverse entries were not communicated to the applicant and when his representations were not finally disposed of, the DPC should not have ignored his case and recommended juniors.
- (iv) The ACRs were written by officers other than the concerned officers.
- (v) There was inordinate delay in communication of adverse remarks since the adverse remarks of 1982 and 1983 were communicated on 29.5.1985.

5. The Counsel for the respondents argued that -

- (1) The application is hit by limitation since the representation against remarks of 1982 and 1983 were rejected on 25.7.1985 and in respect of 1985 on 13.2.1987.

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- (2) The rejection was after due consideration and in the case of E.G. Nambudiri v/s Union of India [1991 SCC(L&S) 813] the Apex Court finally decided that the rejection of adverse remarks in ACRs without giving reasons was in order.
- (3) The Joint Director on several occasions personally called the applicant and told him of his deficiencies. The Joint Director had also warned him that persistent deficiencies would entail adverse comments in the ACRs.
- (4) The applicant was considered for promotion for the post of Office Superintendent but the adverse remarks were detected by the DPC held on 27.5.1985 and the DPC observed that the adverse remarks for 1982 and 1983 be communicated to him. Accordingly, the adverse remarks were sent and served on the applicant.
- (5) The ACRs of the applicant were written by the concerned controlling officers.

6. Analysing the facts and arguments of the case it is found that the adverse remarks of 1982 and 1983 were communicated after a lapse of about 2½ years and 1½ years. There was inordinate delay and the respondents have also admitted this matter. The records of Bench DPC were shown to the by the Counsel for the respondents on direction. It was observed that a DPC was held on 27.5.1985 and the DPC noticed that the adverse remarks were not communicated to the applicant as they ought to have been. Therefore the DPC observed that in fairness to the applicant a final decision of suitability

should be deferred until after the adverse remarks have been communicated to him and a decision arrived at by the competent authority on his representation. Another DPC was held on 12.9.1985 when it was observed by the DPC that the explanation of the applicant on the adverse remarks for 1982 and 1983 was considered by the Director General and rejected and the applicant was informed accordingly. The applicant was therefore not recommended for promotion against a post which was a selection post and the DPC after considering all eligible officers approved three names for promotion including ~~that~~^{those} of Shri S.S. Sood and Shri J.S. Sodhia whose names have been mentioned by the applicant in his application. The Learned Counsel for the respondents argued that the DPC of September 1985 was held only after a decision on the representation of the applicant.

7, As regards the contention of the Learned Counsel for the applicant that the rejections of representations by non-speaking order were illegal, Our attention was drawn to the judgement of the Apex Court in Union of India versus E.G. Nambudiri [AIR 1991 SC 1260; 1991 SCC (L&S) 813] where it was held that if a representation is rejected after its consideration in fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons and it is not open to the court to interfere ^{with} in such order merely on the ground of absence of any reason. The Hon'ble Court added that it did not, however, mean that the administrative authority was at liberty to pass order ^{without} ~~when~~ there being no 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.

8. In this case the representation of the applicant was considered by the Director General and the Central Board of Excise and Customs and they were rejected. Even the Memorial to the President was rejected. Therefore, it is clear that in this case the matter was considered at various levels but the adverse remarks were not expunged.

9. As regards delay in communication of the adverse remarks, it is true that there was considerable delay. Such delays are highly undesirable and improper but the point is whether the adverse remarks can be expunged only on the ground of delay. We have not been shown any statutory rule specifying strictly the periods within which adverse remarks should be communicated and the representation considered. The guidelines and the instructions of the respondents in this regard are directory in nature and not mandatory. Therefore, the Bench is unable to quash the adverse remarks on the ground of delay, ~~moreso~~, when the cases of ^{promotion of} persons were considered only after ^{the} communication of adverse remarks to the applicant and disposal of his representation after it.

10. In the conspectus of the aforesaid facts, the application is dismissed ^{with} ~~as~~ no order to costs.

I. P. Gupta
(I.P. Gupta)
Member (A) 1/9/92