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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 574 of 1989
T.A. No.

DATE OF DECISION 8.12.1989

Kamaluddin Applicant (s)

Shri A.S. Grewal Advocate for the Applicant (s)

Versus

Lt. Governor of Delhi & Others Respondent (s)

Shri Mukul Talwar Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. B.C. Mathur, Vice- Chair man.

The Hon'ble Mr.

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 ?

JUDGEMENT

In this application, filed under Section 19 of the Administrative Tribunals Act, 1985, Shri Kamaluddin, S.I. Police, CID, Special Branch, Delhi, has prayed for expunging the adverse remarks recorded in his Annual Confidential Report No. D/2428 for the period 27.10.86 to 6.3.87 where it has been stated that his reputation for fair dealing with the public and accessibility to the public was disreputable and that his loyalty to the Government in power with regard to political and party feelings was not loyal. His reliability was considered disputable. The report also mentions that while posted in Special Branch, there was a complaint against him regarding leakage of information to concerned political quarters and an enquiry in this connection was made by Inspector, Shri D.K. Bhardwaj who confirmed that the applicant had clandestinely given some distorted versions about the working of Special Branch to some politicians and thus acted in a disloyal manner. The Annual Confidential Report also mentions that he was called by the Addl. C.P., C.I.D. in office and admonished for this behaviour. His work was thus classed as lacking in dedication and loyalty. These remarks were communicated to the applicant who made representations

against the same which, according to the applicant, were rejected through a short, cryptic and non-speaking order dated 14.3.88.

2. The case of the applicant is that the adverse remarks recorded in his ACR are not based on any material available with the Reporting Officer. The performance of the applicant during this period remained excellent as is evident from the Commendation Cards Class-one granted to the applicant on 5.2.87 and 10.7.87. The applicant was granted commendation cards in recognition of the good work done in connection with secret duties with cash reward of Rs. 50/-. It is alleged that the Reporting Officer gave vague remarks to the applicant without indicating as to what information he leaked to the political quarters and that the adverse remarks were recorded at the instance of Inspector, B.L. Bhardwaj, who was biased against the applicant and the Reporting Officer perhaps deputed him to make enquiry in this regard in the same office.

3. It has also been stated that the DCP could not write his ACR as he had not worked during the period under one DCP. The report is for the period 27.10.86 to 6.3.87. During this period, Shri Deep Chand was the DCP between 27.10.86 to 14.11.86 and Shri J.P. Singh was the DCP thereafter. The report has been recorded by Shri J.P. Singh for the entire period which is wrong. He had no knowledge for the period he was working under the DCP, Shri Deep Chand. Besides, he was on leave from 13.12.86 to 20.12.86 and again from 2.1.87 to 6.1.87 i.e. for a period of 11 days and this period cannot be included in the period of the report. It has also been stated in the application that the adverse remarks recorded in the ACR are contrary to Government of India's instructions contained in O.M. No. 51/5/72-Estt. (A) dated 20.5.1972. According to these instructions, the adverse remarks should be communicated within one month of the period of report, whereas the remarks have been communicated to the applicant after a lapse of 7 months and as such these remarks are liable to be quashed. Besides, the instances of his acts of leaking out information have not been mentioned and the representation has been rejected summarily without the application of mind and without giving any reasons.

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4. The respondents have denied that Inspector, Shri Bhardwaj, who made the confidential enquiry had any bias and in any case he could not influence the writing of the A CR by the Deputy Commissioner against whom no bias has been alleged or established. It has been said that time and again reports about the leakage/distorted versions of the working of the Special Branch to some politicians by the applicant were received. These reports were confirmed on enquiry and the applicant was personally called by the ^{Additional} DCP, CID, in his office and admonished for his misbehaviour. ^{by.} However, in order to keep the secrecy of the Department, it was not expedient to give details of such leakages in writing or to mention them in the A CR. The applicant was considered to be extremely disloyal and deserved greater punishment. However, the remarks were conveyed to the applicant both verbally and in writing to give him a chance to improve. The competent authority applied his mind to the representation and keeping in view the confidential nature of work, the details could not be mentioned in the letter of rejection, but the case was considered fully before rejecting the representation.

5. The learned counsel for the applicant said that the adverse entries must be expunged as procedure was not followed. Not only the instructions of the Government in conveying entries in time not followed, but no instances were given to establish the adverse entries. The applicant was a very competent officer and it is only due to the enmity with the Inspector, Shri Bhardwaj, who did the enquiry that the report was written adversely.

6. I have gone through the pleadings and given careful consideration to the arguments on both sides. As far as the question of bias is concerned, although it has been said that Inspector, Shri Bhardwaj, was biased against the applicant, no reasons have been given why he should have such a bias and no malafide as such has been established. The remarks in the Annual Confidential Report are based on the subjective assessment of the Reporting Officer and unless there is a distinct malafide or infringement of rules, normally courts may not interfere in the same. The fact that the Addl. Commissioner of Police called the applicant and talked to him about the matters referred to in the A CR indicates that the applicant knew of the adverse remarks. It is accepted that in a Department dealing

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with confidential matters, it would not be prudent to write many things of confidential nature and, therefore, while it is accepted that normally reasons should be recorded, but in cases of this nature giving specific instances or reasons may not be necessary and the subjective assessment of the senior officer, unless a malafide is established, has to be accepted. It is, however, true that the Deputy Commissioner of Police, Shri J.P. Singh, could not have written the A CR for the period 27.10.86 to 14.11.86 when he was not the Deputy Commissioner looking after the work of the applicant. As such, the A CR should be treated as A CR for the period 15.11.86 to 6.3.87 which is a period of more than 90 days duration. In view of the above circumstances, I see no reason to order expunction of any adverse remarks in the A CR of the applicant for the period 15.11.86 to 6.3.87. With these observations, the application is dismissed. There will be no orders as to cost.


8/12/89

(B.C. Mathur)
Vice-Chairman