

In the Central Administrative Tribunal
Principal Bench, New Delhi

Regn. Nos.:

Date: 11.5.1990.

1. OA-1906/88
2. OA-1894/88
- 3. OA-1907/88

Shri D.S. Sekhon

.... Applicant

Versus

Union of India & Ors.

.... Respondents

For the Applicant

.... In person

For the Respondents

.... Shri N.S. Mehta, Counsel

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Shri D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*

(Judgement of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice-Chairman)

The applicant, who is working as an Assistant Director (Technical) in the Aviation Research Centre, Directorate General of Security in the Cabinet Secretariat, filed these applications under Section 19 of the Administrative Tribunals Act, 1985 praying for quashing the adverse remarks recorded in his confidential reports and for promoting him to the next higher post w.e.f. 16.8.1988. In OA-1906/88, he has prayed for expunging the adverse remarks recorded for the year 1983-84. In OA-1894/88, the period of the report is 1984-85, while in OA-1907/88, it is 1985-86.

2. The facts of the case in brief are that the applicant joined Government service in 1954 as Sub-Inspector (Technical) in the Intelligence Bureau. In

1964, his services were transferred to the Aviation Research Centre. In the next year, he was promoted to the post of Assistant Central Intelligence Officer, Grade I (Technical). In 1969, he was appointed as Deputy Central Intelligence Officer (Technical). In 1974, he was appointed to the post of Technical Officer. In 1977, he was appointed as Assistant Director (Tech.) and was confirmed in the said post in 1981. He has not earned a promotion thereafter, while two persons junior to him have been promoted to the next higher post of Joint Deputy Director (Technical).

3. The version of the applicant is that the adverse remarks for the years 1983-84, 1984-85, and 1985-86 came to be recorded in his confidential reports out of bias and mala fides on the part of the Reporting Officer. In this context, he has mentioned the name of Shri P.K. Sen. (Respondent No.3) under whom he has worked for about 10 years, who allegedly was on inimical terms with him.

an The apprehension of the applicant is that Shri Sen suspected that the applicant, who knew about the domestic circumstances of Shri Sen, had circulated a gossip to the effect that Shri Sen's wife was mentally unsound, and that he married her to further his service career as his wife was related to a senior ranking Police officer.

4. The above allegation of bias and mala fides has been denied by the respondents in their counter-affidavit. The applicant had submitted several representations to higher authorities but in none of them has he brought out the aforesaid fact of having strained his relationship with Shri Sen. an the cause of Shri Sen's inimical attitude towards him. In our opinion, the allegation of bias and mala fides has not been substantiated by the applicant. an

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5. The adverse remarks for the year 1983-84 were communicated to him on 16.10.1984. The adverse remarks for the year 1984-85 were communicated to him on 19.9.1985. The adverse remarks for the year 1985-86 were communicated to him on 20th August, 1986. There has been some delay in the communication of these remarks to the applicant. In our opinion, the instructions regarding the time schedule for communication of adverse remarks to the Government servant are only directory and not mandatory. What has to be seen is whether any prejudice was thereby caused to the Government servant concerned. If no prejudice was caused to him by the delay ^{as in the instant case, a} it cannot be said that there has been a violation of the rule of natural justice.

6. We may now consider the adverse remarks communicated for the three years in question which are as under:-

(i) For the year 1983-84

"Grading of your ACR for the year 1983-84 indicate 'Very Good' in the areas of Intelligence and Quality of Expression but Tact, Dependability under pressure have been graded as 'Average'. The handling of subordinate staff has been graded as 'below average'. In general remarks, I.O has been observed:

"Has problems of man management. Subordinate GOs have not been handled satisfactorily and have not been delegated responsibilities well. He has been abrasive with subordinate".

2. The Reviewing Officer has given the following remarks:

"His management capabilities are poor and handling of subordinate staff is unsatisfactory. He should develop managerial qualities".

3. The next superior officer has agreed with IO, RO and stated that he is not yet fit for promotion in view of his inability to lead his men properly.

4. You are advised to improve."

(ii) For the year 1984-85

"You have been graded very good in the areas of intelligence and qualities of expression. You have been graded adequate for dependability under pressure and relations with your colleagues.

2. Your ACR reflects that you have not made efforts to improve the shortcomings communicated to you during last year. You have also left the station without obtaining prior approval, handing over CTC or sending leave application. It has been recorded in your ACR that you are not yet fit for promotion as you lack managerial qualities.

3. You are advised to improve."

(iii) For the year 1985-86

"You have been graded very good in the area of Intelligence and Quality of expression. It has been mentioned in your ACR that you are 'Technically competent and knowledgeable'. Though you have some difficulties in man-management but you are showing some signs of improvement in the present posting. However, it has been mentioned "While the officer has been conscious of his rights, he has exhibited a sad lack of consciousness of his duty and responsibility. He did not hand over office keys, stamp etc. on transfer from Karnal". It has also been mentioned that you have applied for the post outside the department directly without obtaining permission.

This is for your information."

7. The contention of the applicant is that he had never been forewarned about his deficiencies before the aforesaid remarks came to be recorded in his confidential reports of the respective years. He has stated that no instance has been pointed out wherein he displayed the defects brought out in the adverse remarks. He had not been given any advice, guidance or assistance to correct the alleged faults and deficiencies.

8. He has also alleged that the respondents did not give reasons for rejection of his representation.

9. The contention of the respondents is that the adverse remarks came to be recorded on the basis of certain complaints received against him and that he had been verbally advised to show improvement in respect of matters which were pointed out to be his deficiencies. As regards the adverse remarks for the year 1983-84, they have also drawn our attention to memorandum dated 9.7.1985, whereby the applicant had been informed about the reasons for the adverse remarks. The applicant has, however, stated that he never received a copy of the said memorandum.

10. We have carefully gone through the records of the case and have heard the applicant in person and the learned counsel for the respondents. At the outset, it may be stated that the confidential rolls are intended to reflect the general assessment of the performance of the officer concerned. The system of maintenance of such records is not always foolproof and much depends on the objectivity and impartiality of the superior officers who function as Reporting Officers and Reviewing Officers. As the Supreme Court has observed in *Amarkant Chowdhary Vs. State of Bihar*, AIR 1984 S.C. 531 at 534:-

"Courts can give very little relief in such cases. The Executive itself should, therefore, devise effective means to mitigate the hardship caused to the officers who are subjected to such treatment." (Emphasis supplied).

11. In *R.L. Butail Vs. Union of India*, 1970 (2) S.C.C. 876 at 880, the Supreme Court observed that a confidential report is intended to be a general assessment of work performed by a Government servant subordinate to the

reporting authority. Such reports are maintained for the purpose of serving as data of comparative merit when questions of promotion, confirmation, etc., arise. Such reports are not ordinarily to contain specific instances upon which assessments are made, except in cases where, as a result of any specific instance, a censure or a warning is issued and that such warning is by an order to be kept in the personal file of the Government servant. In such a case, the officer making the order has to give a reasonable opportunity to the Government servant to present his case.

12. In the instant case, the remarks about the applicant for the three years in question deal with general assessment of his work. In view of this, following the decision of the Supreme Court in R.L. Butail's case, the contention of the applicant that the adverse remarks did not contain specific instances and as such, are liable to be quashed, cannot be sustained.

13. Normally, a Court or Tribunal will not sit in judgement over the assessment of officer's performance made by the Reporting and Reviewing Officers who are in the best position to know about the worth of the officer reported upon. Judicial review would come into play only in the event of arbitrariness or mala fides on the part of the Reporting Officer/Reviewing Officer. In the instant case, the applicant has not substantiated the allegation of mala fides or arbitrariness on the part of the Reporting Officer/Reviewing Officer. In such a case, we do not consider it appropriate to interfere with the assessment made by the authorities concerned in the discharge of their normal duties.

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14. The applicant also cannot claim promotion to the next higher post of Joint Deputy Director(Technical), which is a selection post. He cannot make a grievance of the promotion of a junior to the said post in case he has been adjudged by the Departmental Promotion Committee as more meritorious than the others. The applicant has only a right to be considered for promotion.

15. In the conspectus of the facts and circumstances of the case, we see no merit in these applications and the same are dismissed. The parties will bear their own costs.

Let a copy of this order be placed in all the three case files.

(D.K. Chakravorty)
Administrative Member

(P.K. Kartha)
Vice-Chairman(Judl.)

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