

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 2043/1988.

DATE OF DECISION: 9.5.1991

J.S. Negi

....

Applicant.

v/s.

The Secretary, Planning
Commission, New Delhi
and Others

....

Respondents.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

Shri K.N.R. Pillay, counsel for the Applicant.
Shri P.P. Khurana, counsel for the Respondents.

1. Whether Reporters of local papers may be allowed to see the judgment? *yes.*
2. To be referred to the Reporter or not? *yes.*
3. Whether their lordships wish to see the fair copy of the judgment? *no.*
4. To be circulated to other Benches of the Tribunal? *no.*

J.P. SHARMA
(J.P. SHARMA)
Member (J)

C.J.
(P.C. JAIN)
Member (A)

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Shri P.P. Khurana, counsel for the Respondents.

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

JUDGMENT

The applicant, who belongs to a Scheduled Tribe and was appointed to Grade IV of the Indian Economic Service on the basis of a competitive examination held by the UPSC, is aggrieved by his non-promotion vis-a-vis his juniors, to Grade III of the above Service, and rejection of his representation against adverse remarks on the ground of being belated. In this application under Section 19 of the Administrative Tribunals Act, 1985, he has prayed for the following reliefs: -

- "(i) The Hon'ble Tribunal may be pleased to summon the records from the respondent and
 - a) Quash the impugned promotion of Shri Chagan Lal Mahar, the applicant's junior, promoted from 25.11.87 superseding the applicant, by the order at Annexure A-VII.
 - b) Quash the impugned supersession of the applicant by two more junior Scheduled Tribe Officers, S/Shri P.D. Tshering and S.S. Negi.
 - c) Direct the respondents to have the applicant's case for promotion from the due date reconsidered by a Review DPC ignoring the adverse remarks in the Confidential Reports for the years 1984-85 and 1985-86 at Annexures A-I and A-IV, which were

(c)

recorded in violation of the instructions on the subject and which were tainted by malice in law, if not by malafide on the part of respondent No.3.

(ii) To grant any other relief which the Hon'ble Tribunal may consider just and proper in the circumstances of the case."

2. The respondents have contested the application by filing a reply. The applicant has also filed a rejoinder thereto. We have perused the material on record and have also heard the learned counsel for the applicant. Shri Arun Sharma, Proxy counsel for Shri P.P. Khurana, counsel for the respondents, had appeared on 12.12.90 when the learned counsel for the applicant had made his oral submissions. However, he sought for a day's time to make oral submissions. None appeared for the respondents when the arguments were completed on 31.1.1991.

3. At the outset, it may be stated that the learned counsel for the applicant submitted at the bar that he does not press the reliefs in (a) and (b). We are, therefore, left to deal with the relief in para 9(c) of the O.A., which is to the effect that the applicant's case for promotion from the due date should be reconsidered by a Review DPC ignoring the adverse remarks in the Confidential Reports for the years 1984-85 and 1985-86 as they were recorded in violation of the instructions on the subject and which were tainted by malice in law, if not by malafide on the part of respondent No.3.

4. The applicant joined as Research Officer in FR Division of the Planning Commission on 18.5.1984 and for the financial year 1984-85, he was conveyed adverse remarks vide Annexure A-I dated 12.10.1987. He did not make any representation to the competent authority within the allowed period of one month. However, he sent a note dated 13.10.87

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to Adviser (FR) - Dr. P.D. Mukherjee, vide Annexure A-III, which is reproduced below: -

" Reference Director (Administration)'s office Memorandum No. Dir(A)/CA/7/87 dated 12th October, 1987 (copy placed below) communicating to me some extracts from my Annual Confidential Report.

In this connection, I personally met Adviser (FR) Dr. P.D. Mukherjee and explained to him my personal problems. During the period under report, I was writing Civil Services Examinations for which I was compelled to take long spells of leaves. This, perhaps, has led to the present adverse reporting.

I have appologised and also promised to be more careful and responsive to my duties in future.

I humbly request that keeping my long term future prospects, my Annual Confidential Reports for the years 1984-85 and 1985-86 may kindly be reviewed sympathetically and I may please be given to improve my past performance.

For a kind consideration please. "

Similarly, for the year 1985-86, he was communicated with adverse remarks, vide Office Memorandum dated 28.1.1988, Annexure A-IV. Against this communication also, he did not make any representation to the competent authority within the allowed time, but again sent a note dated 3.2.1988 addressed to Adviser (Dr. P.D. Mukherjee), vide Annexure A-V, which is also reproduced below: -

" Reference Under Secretary (Administration)'s Office Memorandum No. 28012/2/88-Adm. II dated the 28th January, 1988 (copy placed below) communicating adverse remarks in my Annual Confidential Report for the year 1985-86. In this connection I personally met Adviser (F.R.) and promised to improve my performance and at present I am directly working under the guidance of Adviser.

Keeping in view of my long term future prospectus my A.C.R. for the above mentioned period may be reviewed.

For kind consideration please. "

5. Admittedly, the applicant made a representation addressed to the Director (Admn.), Planning Commission, New Delhi on 26.9.1988 against the adverse remarks communicated to him for the years 1984-85 and 1985-86. This representation was rejected on the ground of being excessively time-barred, vide Office Memorandum dated 17.8.1988 (Annexure A-X).

6. From a perusal of the above facts, it is clear that the adverse remarks were communicated, though belatedly to the applicant, who did not make any representation to the competent authority against the adverse remarks within the time allowed in the communication conveying the adverse remarks. There was a delay of nearly 9 to 10 months in making representation against the adverse remarks for the year 1984-85 and of nearly six months against the remarks for the year 1985-86. Further, the notes dated 13.10.87 and 3.2.88 sent by the applicant to the Adviser (Dr. P.D. Mukherjee), which have been reproduced above, clearly show that the applicant was conscious of his deficiencies. Learned counsel for the applicant urged before us that late communication of adverse remarks defeats the very purpose of communicating such remarks, which is to enable the concerned Government employee to remedy the defects and to improve his performance. He cited the following two cases: -

- (1) *Baidyanath Mahapatra v. State of Orissa and Anr.*
- SLR 1989 (4) p. 220.
- (2) *Gita Ram Gupta v. Union of India*
- SLJ 1979 (Delhi) p. 727.

In Mahapatra's case (supra), adverse entries for the years 1969-70, 1970-71, 1972-73 and 1975-76 were communicated in a lot to the appellant in 1978. The Hon'ble Supreme Court held that if the adverse remarks are communicated to a Government servant after several years, the object of communicating entries is defeated and it is imperative that

the adverse entries are communicated with in a reasonable period to afford an opportunity to the Government servant concerned to improve his work and conduct and also to make representation in the event of the entry being unjustified.

It was further held that belated communication of the entries resulted into denial of reasonable opportunity to the appellant to improve his performance and since adverse remarks for several years were communicated with inordinate delay, it was impossible for the appellant to make an effective representation against the same. In Gita Ram Gupta's case (supra), a Single Member Bench of the Delhi High Court observed that the delay in communication of the adverse remarks is fatal as it does not serve the remedial purpose. In the case before us, delay in communication of the adverse remarks is apparent, though the delay is not so much as was in Mahapatra's case. Moreover, the adverse report was communicated for the two years separately at different times and not in one lot. The respondents, in their reply, have stated that the adverse remarks recorded in the Annual Confidential Report for 1984-85 were communicated as soon as the completed report was received by them and that for the year 1985-86, the applicant had himself submitted the self-appraisal portion in December, 1986 and the Reporting Officer wrote the report on 30.12.1986, which was reviewed on 30.3.87. The point for consideration, however, is whether the D.P.C. which met on 26.5.87 had considered the uncommunicated adverse remarks for the aforesaid two years in the case of the applicant at the time of consideration for promotion to Grade III of the Service. If it had been so, this would have been unsustainable. The respondents have stated in their counter-reply as below: -

"The DPC meeting which took place on 26.5.87 decided to keep the candidature of the applicant in abeyance in view of non-availability of his CRs for the year 1983-84 and 1984-85. The assessment

for the year 1985-86 had unfavourable overtones which were to be communicated to the officer."

"Again the DPC meeting which took place on 11th April 1988 examined the applicant's case carefully. It was noticed that the applicant's assessment have been consistently of adverse nature. Considering the consistently adverse record, and the nature of 1986-87 CR which was of average category, the DPC decided to recommend the rejection of the applicant's case for promotion."

From the above, it is clear that in the DPC meeting held on 26.5.87, the case of the applicant was not considered and, as such, the question of taking into account the adverse report against him did not arise. Further, when the DPC met again on 11.4.1988, when the case of the applicant was considered, the adverse remarks both for the year 1984-85 and for the year 1985-86 had already been communicated to him, vide O.M. dated 12.10.1987 and O.M. dated 28.1.1988 respectively and the applicant had not made representation within one month allowed to him from the date of receipt of the concerned O.M. As such, the DPC cannot be faulted for taking into account the adverse entries made in the ACRs for the above two years, in its meeting held on 11.4.1988. Department of Personnel & A.R. Office Memorandum No.22011/3/80-Estt(D), dated 26.3.80 (extract at Annexure A-VI) enabled the DPC to defer consideration of the case of the officer if the period allowed for submission of the representation against the adverse remarks was not over, or a decision on the representation had not yet been taken. As the adverse remarks had not been communicated to the applicant when the DPC first met in May, 1987, it accordingly decided to defer consideration of the case of the applicant. Since the adverse remarks had been communicated and no representation had been received within the time prescribed, the DPC considered the case of the applicant in its meeting held on 11.4.1988. As such, we see no case for directing the

respondents for holding a Review DPC and for ignoring the adverse remarks recorded in the ACRs of the applicant for the above two years.

7. There are no specific allegations of malafide against respondent No.3, who has been made a party by name. In any case, no particulars of any such malafide have been mentioned. As already stated, the notes submitted by the applicant to the Adviser (Dr. P.D. Mukherjee) clearly show that he himself realised that his performance was deficient. In any case, there is no prayer in this O.A. for expunction of the adverse remarks given to the applicant in his ACRs for the years 1984-85 and 1985-86.

8. The only point which remains for consideration is whether the applicant is entitled to any relief in regard to his representation against the adverse remarks as aforesaid. It cannot be disputed that the adverse remarks were communicated to him with delay, which cannot be said to be marginal. In view of the law cited by the learned counsel for the applicant, we are of the view that in view of the belated communication of the adverse remarks, the respondents, in fairness and equity, should not have rejected his representation on the ground of it being excessively time-barred.

9. In view of the above discussion, the O.A. is disposed of in terms of the directions that the respondents should consider and pass appropriate orders on the representation dated 26.9.1988 given by the applicant against the adverse remarks communicated to him for the years 1984-85 and 1985-86, even though the same was belated, within a period of three months from the date of receipt of a copy of this judgment. The applicant is not entitled to any other relief in this O.A.

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10. In the facts and circumstances of the case, we leave the parties to bear their own costs.

Sharma.

(J.P. SHARMA)
Member (J) 9/5/91

(Dec 9/5/91)
(P.C. JAIN)
Member (A)