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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 358 of 1989 198
T.A. No.

DATE OF DECISION 22.9.89.

K.S. Bharti Applicant (s)

Shri R.K. Kamal, Advocate for the Applicant (s)

Versus

Union of India Respondent (s)

Shri P.P. Khurana. Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. B.C. MATHUR, VICE-CHAIRMAN.

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

This is an application under Section 19 of the Administrative Tribunals Act, 1985, filed by Shri K.S. Bharti, Section Officer, Ministry of External Affairs, New Delhi, against impugned orders dated 18.3.87 passed by the Director (CNV), Ministry of External Affairs, conveying adverse entries in his confidential report for the period January-June, 1986, and orders dated 29.10.87 rejecting the representation of the applicant.

2. Brief facts of the case, as stated in the application, are that the applicant joined I.F.S.(B) in Grade IV as Assistant in April, 1974 and was promoted as Section Officer in the integrated Grades II and III of I.F.S. (B) in 1980. Upto 1985, his record of service has always been "very good" or "outstanding". During August 1983, he was posted to Karachi (Pakistan) as Vice-Consul in the office of the Consulate General of India. During October, 1985, he received a memorandum dated 29.10.85 (Annexure A-4) from Shri G.L. Sharma, Head of Chancery, indicating some shortcomings in his performance of duties. After receiving the said Memo, the applicant tightened up his supervi-

sion over his subordinates and no adverse entries were made in his A.C.R. for the period ending 31.12.1985. During February/March, 1986, Shri G.L. Sharma was deployed as Consul (Consular, Trade and P.R.) and the applicant came under his direct control. Subsequently, when the applicant was posted as Section officer in the Ministry of External Affairs, New Delhi, he received a letter dated 18.3.87 (Annex. A-1) conveying adverse remarks in his A.C.R. for the period January 1986 to June, 1986. The applicant categorically states that during the period under report, there was no occasion when his reporting officer, Shri G.L. Sharma, brought to his notice any of the shortcomings mentioned in Annexure-A 1 either verbally or in writing. The applicant had rendered full satisfactory service and maintained a high standard of personal conduct. Hence the entries were without any foundation or basis whatsoever. Aggrieved by the impugned order, the applicant submitted his representation dated 16.4.87 (Annexure A-2) for judicious consideration by the competent authority in which he brought out several material irregularities, procedural lapses and factual errors. His representation was rejected by a cryptic, unreasonable and non-speaking order conveyed to him under the order dated 29.10.87. (Annex. A-3) According to the applicant, the impugned orders dated 18.3.87 and 29.10.87 are violative of the binding procedures and instructions in force and based on malicious motives and mere figments of imagination and are in colourable exercise of power.

3. The grounds urged by the applicant against the impugned orders are that during the period under report, the reporting officer or any other senior controlling officer never brought any of the alleged shortcomings to the notice of the applicant either verbally or in writing. The shortcomings brought to his notice in October, 1985 had been successfully overcome by the applicant to the full satisfaction of his seniors and as such no adverse entry was made in his A.C.R. for the year ending 31.12.1985. The writing of the report was in colourable exercise of power by the Reporting Officer and the approval by the Reviewing Authority was as a result of non-application of mind. The impugned adverse entries are, therefore, illegal and ab initio void.



Some adverse entries in the A.C.R. for the period Jan. to June 1986 are irrelevant. Against column (2)(a)(Part III) - "In his social and professional relations, is he natural and at ease or is he snobbish or obsequious" - the entry has been made "Tends to form small group". The entry has no relevance to the column. The entries, therefore, are illegal and void due to non-application of mind. Some important adverse entries are without any instance or support. Against column 4-Part III, the entry made is "Lack of initiative". Against this column, according to the note given in the ACR Form, specific instances are required to be given. No such instance has been hinted. There is vagueness about a number of entries such as "Tendency to laugh at others", "resentful and tends to nurse a grievance" etc. Entries like "Needs frequent reminders" have no value or nexus with the object of making improvement without any specific instance. Against "General Assessment", entries like "tends to speak against", the applicant categorically states that there was no instance to support these entries. For disobedience even disciplinary action could be taken against him while no such action was even hinted during the period under report.

4. In accordance with the DOP's Memo No. 21011/1/77-Estt.A dated 30.1.78, the report of the period January to June, 1986 should have been communicated to the applicant within one month of being recorded and the report itself should be recorded within one month of the expiry of the period. According to this, the report should have been communicated to the applicant by September, 1986 latest. Actually, the report was communicated on 18.3.87 i.e. more than six months late. According to DOP's O.M. dated 20.5.72, the reviewing officer is required to make additional remarks when the report is "too brief, vague and cryptic", but no remarks were made by the reviewing officer which make the report illegal and void.

5. The order dated 29.10.87 appears to have been made by the Director (C.N.V.) who was, himself, the reviewing officer. The order is illegal and violative of the principles of natural justice i.e. nobody shall be the judge of his own cause.

6. The respondents in their reply have stated that it is not known as to how the applicant contends that his CRs upto 1985 were always

"very good" or "outstanding", since these reports are confidential, he has no means of knowing the assessment made in his reports. His contention is not correct. The claim of tightening up supervision over subordinates and effecting improvements is only his self-assessment. Shri G.L. Sharma, Consul (PR) had brought to the notice of the authorities instance of disobedience of instructions by the applicant as a result of which a Memorandum dated 13.5.86 (Annexure R-1) was issued to the applicant, asking him to show cause as to why disciplinary action should not be taken against him, copy of which has been signed by the applicant in token of acknowledgement. The communication of the adverse entries vide memorandum dated 18.3.87 and the order dated 29.10.87 rejecting his request for expunging the adverse remarks were made in accordance with the instructions on the subject and after following the necessary procedures.

7. The contention of the applicant is misconceived. The remarks are the comments of the Reporting Office on the applicant's sociability and his tendency to form small groups is a reflection on the nature of his social and professional relations with his colleagues. The applicant's lack of initiative is amply demonstrated as per Memoranda No. KAR/ADM/556/11/83 dated 29.10.85 (Annex.A-4 to the application) and dated 13.5.86 (Annex R-1) issued to him by the Consulate General of India, Karachi. As regards disobedience, the applicant was warned on 13.5.86 (Annex.R-1) and asked to show cause as to why disciplinary action should not be taken against him. The applicant replied and admitted that he was "accountable for insubordination". He had, however, mentioned certain circumstances to explain his non-compliance with the instructions given by his superior officer. Although the explanation was not entirely satisfactory, it was decided by the Consul General to take a lenient view.

8. As regards delay in writing the report, his CR was recorded by the Reporting Officer at the end of the year and the Reviewing Officer communicated a gist of the entire to the applicant on 3.3.87 (Annex. R-4). The Reviewing Officer's assessment was made after due consideration and application of mind. Two written Memoranda

were issued to the applicant on 29.10.85 and 13.5.86 highlighting the shortfalls in his work and performance and disobedience of instructions. The Reviewing officer was the Consul General of India in Karachi and the applicant's representation against the adverse remarks was examined at the level of Joint Secretary (Ad) who was the competent authority in this case; the order dated 29.10.87 clearly states that the competent authority has not agreed to his request.

9. I have gone through the pleadings on both the sides carefully and have given serious consideration to the arguments by the learned counsel for the applicant and the respondents.

10. The case of the applicant is primarily that during the period January to June, 1986, to which the impugned A CR pertains, neither the Reporting Officer nor any senior officer brought to his notice any shortcomings either verbally or in writing, that the shortcomings brought to his notice in October 1985 had been overcome and could not have been taken into consideration in the A CR for 1986 and that the entries are a direct result of malice on the part of Shri G.L. Sharma. It has been argued on behalf of the applicant that his representation has been rejected in a cryptic manner without a speaking order which has been held by this Tribunal as arbitrary and void and that the Reviewing Officer did not apply his mind while reviewing the A CR. It has also been stated that the impugned order dated 18.3.87 appears to have been made by the Director (CNV) who was a Reviewing Officer and as such it is violative of the principles of natural justice. It has also been pointed out that para 4/ of the printed A CR on "self-reliance and initiative" states that specific instances of lack of initiative must be briefly cited; otherwise, normal assessment should be given as good and that if any adverse entries are recorded, must be such which have persisted despite the Reporting Officer's efforts to have them corrected.

11. The case of the respondents is that the A.C.R. had been written very carefully based on the judgment of the Reporting Officer as well as the Reviewing Officer and the adverse entries were conveyed to the applicant to help him correct and improve himself so as to be an efficient member of the Service. He was warned for disobedience on 13.5.86 and asked to show cause why disciplinary action should not

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be taken against him. The letter of 13.5.86 issued by Shri Amitav Banerji, DCG & HOC, in the Consulate General of India, Karachi, brings out the fact that the applicant refused in writing to carry out instructions and that this was not the first occasion on which the applicant had deliberately refused to implement the directives issued by the Consul (PR). In his reply dated 26.5.86, the applicant did admit some shortcomings and assured the Dy. Consul General that he would continue to make every endeavour to ensure that there shall be no cause for complaint against him. In this context it cannot be said that non-speaking orders have been passed against the applicant. The Consul General of India, Karachi, also sent a memorandum dated 3rd March, 1987 to the applicant saying that he was an officer with a reasonably sharp mind and he is capable of producing good work, provided he makes an effort to improve himself and overcome the weak points which have been brought to his attention both verbally and in writing. He brought to his notice that the applicant had a tendency in indulging factionalism and to nurse grievances. He was also advised to moderate his drinking habits.

12. Having gone through the personal file and the A CR, I am of the view that no malafide has been established against the respondents. The fact that his work has been considered good otherwise shows that there ^{was} ~~no~~ malice. Had there been any malice against the applicant, perhaps the report would not have made any complimentary references to him. In the circumstances, I see no reason to interfere with the assessment report except that the adverse entry on lack of initiative mentioned in para 4 of Part III of the A CR should be ~~deleted~~ ^{expunged} as under *Ba* this column it was necessary to point out specific instances. The entry 'lack of initiative' should be expunged from the A CR. The application is allowed to that extent only. There will be no orders as to cost.

B. C. Mathur
(B.C. Mathur)

Vice- Chairman