

11

Central Administrative Tribunal
Principal Bench, Delhi.

....

Regn. No. OA 103/88

Date of decision: 31.12.1988
10.11.

Shri L.T. Tluanga

Applicant

Vs.

Union of India & Others

Respondents

PRESENT

Shri B.S. Bindra, counsel for the applicant.

Shri A.K. Bhera, counsel for the respondents.

CORAM

Hon'ble Shri B.C. Mathur, Chairman.

This is an application under Section 19 of the Administrative Tribunals Act filed by Shri L.T. Tluanga, Section Officer in the Ministry of Defence (Finance Division), against adverse remarks in his annual confidential report communicated to him by the Under Secretary, Ministry of Defence, on 23.2.1987 and rejection of his appeal on 14.4.87.

2. Brief facts of the case, as stated in the application, are that the A.C.R. relates to the year 1986 and in the first month of January the applicant was undergoing his foundational training course at the I.S.T.M. During the next five months i.e. till June he was employed as Section Officer in the Purchase V Section of the A.P.O. where his work performance was looked after by Shri S.S. Sharma, Assistant Chief Director of Purchase (ACDP) and thereafter he was placed as the Administrative Officer (AO) in the same organisation. His performance for the latter part of the year was supervised by the Under Secretary, Shri Prakash Chand, A.C.D.P. In the communication of the adverse entry it has not been mentioned who has written his roll and who has reviewed it. The applicant had successfully cleared his probationary period ending on 30.12.86 without any adverse comments and he was also confirmed in the substantive capacity with effect from 31.12.1986. The applicant had also been included in the eligibility list for the year 1987 for

[Handwritten signature]

the purpose of select list of Under Secretaries indicate that the adverse remarks were totally unwarranted. It has, however, not been pointed out what difficult tasks he could not tackle and how the work suffered.

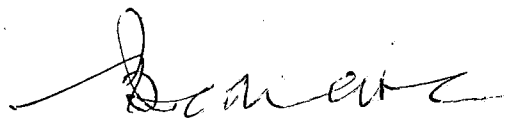
3. The applicant believes that his character roll has been spoiled due to personal bias and prejudice of the Reporting Officer. and the appellate order (Annexure B) is a non-speaking and bald order and, therefore, illegal and liable to be quashed. The applicant has also stated that he worked for five months under Shri S.S. Sharma, A.C.D.P., and for the latter half of the year under Shri Prakash Chand, but he cannot say definitely who wrote his A.C.R. The applicant has cited a few cases to support his contention. In the case of **E.G. Nambudiri Vs. Union of India** ATR 87(2) 360, it has been held that "It is necessary that acts though of an administrative nature have to be written carefully and no impression should be given that the authority concerned did not apply its mind to such a representation. Rejection of representation by a bald order without giving any reason is bad in law and liable to be quashed." In the case of **C.S. Pattanayak Vs. State of Orissa** SLR 1985 (2) 306, relying upon Supreme Court decisions, it has been held that "the representation has to be considered by the higher authority".

4. The respondents in their reply have stated that the ACR is the subjective assessment of the officer based on the actual performance of the officer and the court should not look into such a subjective assessment. It has been stated that the applicant should have made an appeal against the rejection of his representation within six months of its rejection instead of coming to the court. It has been mentioned that the representation of the applicant was considered on 3.4.1987 by the Chief Director of Purchase, an officer superior to the reviewing officer, and the said authority came to the conclusion that it was not necessary to tone down any of the adverse remarks communicated to the applicant. The applicant could have preferred an appeal against such a rejection, but he did not do so. The applicant was posted as Section Officer Purchase (V) Section on 1.2.86.

inclusion in the select list of Grade I, C.S.S. Officers. It has been stated that no charter of duties, functions and responsibilities had been provided or prescribed by the authorities against which the performance of the applicant could be adjudged. There was also no indication during the year 1986 regarding any deficiency, defect or flaw in the performance of the applicant thereby depriving him of the right of an opportunity for improvement. The applicant has stated that on receipt of the adverse entry, he met Shri Prakash Chand, ACDP, who told him that he was pressurised to give an adverse entry by his superior officer, Shri D.K. Chakraborty, D.C.D.P. Had he not done so, he himself was under the threat of getting an adverse entry. When his appeal was rejected in April, 1987, the applicant met the Deputy Controller of Defence Purchase, Shri D.K. Chakraborty, but he was told that it was too late to approach him. Thereafter, the applicant met the next higher authority, namely, the appellate authority, Brig. D.A. Chan Sarkar, Chief Director of Purchase and Head of the Army Purchase Organisation (Respondent No.3). Brig. Sarkar told him that he should not start worrying about the adverse entry as he has still a long way to go in service and, therefore, there was enough chance to improve upon his performance. The adverse remarks communicated to him indicate that the applicant has to seek guidance in difficult cases and has limited capacity in handling unforeseen situations. He was able to guide on routine and simple tasks only and was considered an average worker. The applicant's grievance is that his performance has not been assessed and graded with an open and independent mind and the same should be expunged as they do not contain any objective assessment of the performance. The Reporting and the Reviewing Officers had never provided any reasonable opportunity to the applicant by way of guidance, caution or training by bringing any deficiency to his notice. In the face of the facts that he had completed his probation on 30.12.86, that he had been confirmed as S.O. with effect from 31.12.86 and that his name was included in the eligibility list for

This Section was placed under the charge of Shri Prakash Chand, A.C.D.P., on 9.4.86. The performance of the applicant was looked after by Shri Prakash Chand from 9th April, 1986 onwards. SHRI S.S. Sharma was not required to report on the performance of the applicant as the applicant had worked for less than 90 days under him during 1986. The communications dated 3.3.87 and 6.3.87 were actually representations for cancellation of adverse marks and cannot be termed as appeal. It has been stated that the applicant had been informed from time to time about his deficiencies and flaws in performance orally as well as in notings recorded in number of files (enclosed collectively as Annexure R-5). It has been denied that Shri Prakash Chand, A.C.D.P., told the applicant that he had written the adverse report under the threat of getting an adverse entry in his own C.R. from Shri D.K. Chakraborty. The applicant had met Shri D.K. Chakraborty but he never told the applicant that it was too late to approach him and that had he come earlier he would have done something to remove the adverse remarks from the ACR. The applicant also met Brig. D.A. Chan Sarkar, but the allegations made by the applicant are baseless. In fact, affidavits have been filed by these officers denying the allegations of the applicant. In order to provide the applicant time to learn and to understand various duties in an administrative set up, he was posted in a lighter Section and was posted under an able and excellent superior who not only informed the applicant about his flaws from time to time but did not hesitate to do his work which he was not able to handle. It has also been stated that mere clearing the probationary period and getting confirmation in the same grade and subsequent inclusion in the eligibility list for promotion as Under Secretary is not connected with the adverse entry for the year 1986.

5. I have gone through the arguments on both sides carefully. There is no doubt that no malafide has been made out against the respondents and the report has been rightly written by Shri Parkash Chand, ACDP and reviewed by Shri D.K. Chakraborty, DCDP. The annual confidential report is a subjective assessment of the performance of the work and on perusing the report of the applicant, one gets the impression that the remarks are quite clear and should be considered as speaking directions. For example, when it is mentioned that he is able to guide effectively on routine and simple tasks only but has to gain more experience for doing difficult tasks, is a statement of fact on the working of the applicant. It is not necessary in such cases to bring out a number of cases where he is not able to do the difficult tasks. Similarly, the fact that he was put in the panel for consideration for the post of Under Secretary or that he had successfully completed his probation, are not directly linked with the adverse entries. The applicant has made certain allegations against his superior officers which have been denied by them through affidavits. In case, however, respondent No. 3, Brg. Chan Sarkar did tell the applicant that he had a long way to go in service and had enough time to improve upon his performance, this appears to be a fair advice. I am afraid that is not a case where bald orders had been passed without application of mind by the superior authorities and as such, I see no reason to interfere with the A.C.R. of the applicant. In the circumstances, the application is rejected, with no order as to costs.



(B.C. MATHUR)
Vice-Chairman.
10.11.1988.