

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

REGN.NO. OA 511/1986.

.....

27.7.1987

Shri E.G. Nambudiri

....

Applicant.

V/s.

Union of India & Another

.....

Respondents.

PRESENT

For the applicant

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Shri R.R. Rai, Advocate.

For the respondents

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Shri M.L. Verma, Advocate.

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

This is an application under Section 19 of the Administrative Tribunals Act 1985, against the impugned order No.A-28012/1/85-Vig. dated 6.1.1986 passed by the Ministry of Commerce in which the representation of the applicant for expunging the adverse entries in his A.C.R. for the year 1984 has been rejected. The main thrust of the applicant is that while rejecting his representation, no reasons for such rejection have been given and the order is a non-speaking order and, therefore, arbitrary in nature. The applicant has also alleged some motives against respondent No. 2 who has not filed any counter against the application. The learned counsel for the respondents has stated that the application is not maintainable as the applicant has concealed from the Tribunal a material fact that he preferred an appeal to the President of India on 13.6.1986 against the rejection of the representation about the adverse entries. It has also been stated that the application has become infructuous as the representation to the President of India has been considered and the same has been decided in favour of the applicant for deleting the adverse entries mentioned at items 1 and 4 of his representation and this was duly communicated to the applicant on 14.8.1986, a copy of which is at Annexure R-1 to the reply filed by the respondents.

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2. The learned counsel for the applicant states that he has not concealed anything from the Court. Under sub-section (3) of Section 20 of the Act, for the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant has elected to submit such a memorial. Since the applicant had submitted such a memorial to the President, it should have been brought out in the application. In the rejoinder, the applicant has, however, stated that he brought the case before the Tribunal as it was not obligatory to make any memorial to the President and he has also requested for amending the application to that extent if so desired. As a result of the memorial to the President, paras 1 and 4 of the adverse entries communicated to the applicant on 7.5.1985 vide Annexure IV to the application have been expunged. But the other paras viz. 2,3 and 6 have not been expunged. As far as para 5 is concerned, it reads as follows:

"That nothing adverse has come to notice regarding your integrity".

This is no adverse entry and, therefore, no orders are actually required on this. The communication deleting paras 1 and 4 was issued by the Government on 14.8.1986 but the applicant had filed this application before the Tribunal on 4.7.1986 and, therefore, at that time he was not aware of the order expunging paras 1 and 4 of the adverse entries in his annual confidential report for the year ending 1984.

3. The learned counsel for the applicant has cited several authorities to establish that where orders are cryptic without giving reasons why the representation has been rejected, this should be considered bad in law. In this connection, the following cases have been cited:-

Dr. Gopeswar Dutta Vs. Union of India
(1982 (1) SLJ - 207)

On the question of adverse entries and confidential reports, the court has held that "where an appeal has been rejected without

assigning any reason and where an authority makes an order in exercise of a quasi judicial function, it must record its reason in support of the order it makes. Rejection of appeal without giving reason as such cannot be sustained and must be quashed". The court further held that "it is essential that the administrative authorities or tribunal should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. The rule requiring reasons to be given in support of an order is like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in proper spirit and mere pretence of compliance with it would not satisfy the requirement of law....Arriving at a just decision is the aim of both quasi-judicial as well as administrative enquiries, an unjust decision in an administrative enquiry may have more far-reaching effect than in aquasi-judicial enquiry."

The other case cited is:

Madan Mohan Khatua Vs. State of Orissa & Others
(1978 (1) SLR 829 (Orissa))

In this case it was held that representations against adverse entries should not be disposed of by bald order and that the appropriate authority should dispose of representation in such a manner which should indicate that the grievances made in the representation were taken into consideration. The order states:

"In the instant case, the representation of the petitioner has been disposed of without indication of any ground. It also does not show that the defects pointed out by the petitioner against the record of the entry were taken into consideration. Undoubtedly, the representation made by the petitioner to the administrative superior is not required to be disposed/ as a revision to a judicial authority. Yet, it is appropriate that the representation made to the administrative superior is disposed of in such a manner that the representaionist is in a position to appreciate that the grievances indicated in the representation

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were taken into account. A bald order indicting the fact of rejection would not satisfy the aggrieved officer and it is likely to create an impression that the merit of the matter has not been taken into account."

4. The learned counsel for the respondents states that ACRs cannot be bracketed with disciplinary proceedings or penalties and as such rejection for expunging adverse entries do not require detailed reasons to be recorded for such rejection. In support of this he has cited two authorities:

(i) In Ramesh Prasad Mahapatra Vs. State of Orissa and others (1981 (1) SLJ 497), a Division Bench of Orissa High Court held that:

"maintenance of character rolls is not enjoined by any statutes or rules framed under Article 309 of the Constitution. Principles regarding record of confidential reports and communication of adverse remarks have been laid down in Administrative Instructions issued from time to time. The Instructions prescribe guidelines for subordinate officers in making assessment of the worth and calibre of their subordinates. In view of the fact that administrative guidelines required preparation of ephemeral character rolls, merely on the ground that such procedure had not been adopted in the case of the petitioner these entries cannot be quashed."

In this case the court did not interfere with the character rolls on the ground that reasons for rejection of the representation had not been given.

(ii) In Punjab and Haryana High Court's judgment (1981 (1) SLJ 5 - Puran Singh Vs. The State of Punjab) it has been held that:

"An annual confidential report is in essence subjective and administrative whilst a departmental enquiry is inevitably objective and quasi-judicial."

It goes on to say that:

"The recording of the confidential report is in the sheer public interest and in a large governmental organisation, the same would be imperative and equally its confidential nature must also be maintained to a certain extent."

5. The judgment of the Calcutta High Court in Dr. Gopeswar Dutta Vs. Union of India referred to earlier, three cases of the Supreme Court

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have also been referred to:-

1. Binapani Dei's Case, AIR 1967 S.C. 1269.
2. A.K. Kraipak Vs. Union of India, AIR 1970, SC 50.
3. Seimens Engineering and Mfg. Co. Vs. Union of India, AIR 1970 S.C. 150.

The case of Dr. Gopeswar Dutta was also regarding adverse entries in his annual confidential reports.

✓6. While it may be accepted that character roll entries are not the same things as departmental enquiries and do not entail immediate punishment, but adverse entries in the ACRs of an officer can have adverse affect on his promotion and even in some cases his continuation in service. A person can be retired under certain circumstances on the basis of his ACRs. It is, therefore, necessary that ACRs though of an administrative nature, have to be written carefully and any representation against adverse entries must be considered carefully and no impression should be given that the authority concerned did not apply its mind to such a representation. If no reasons are given and a bald order is passed rejecting the representation, it could be constituted that the concerned authority had not applied its mind. ✓ In the present case while rejecting the applicant's application for expunging adverse entries in his C.R. for the year 1984, the administrative authority viz. the Ministry of Commerce in their order dated 6.1.1986 as well as in the subsequent order dated 14.8.1986, applicant's representation to the President, no reasons have been given for rejecting the representation of the applicant. In the consequence, these should be held as bad in law and liable to be quashed. The order rejecting the representation against the adverse entries is hereby quashed and the adverse remarks are to be treated as having been expunged. In the circumstances of the case, there will be no order as to costs.



(B.C. Mathur)
Vice-Chairman
27.7.1987