

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No.OA-838/86

Date of decision: 20.8.92

Smt. Shaswati Rao Applicant

Versus

Govt. of India through Respondents
Chief Administrative
Officer, Ministry of
Defence.

For the Applicant In person

For the Respondents Smt. Raj Kumari Chopra, Advocate
with Shri K.S. Dhingra, Senior
Administrative Officer.

CORAM:

The Hon'ble Mr.P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr.B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporters or not? *Yes*

JUDGMENT

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

The applicant, while working as Assistant Director in the Directorate General of Inspection in the Ministry of Defence, ~~xxx~~ filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:-

- (i) To declare the annual confidential report
for the period 1.1.1984 to 14.9.1984 written

and reviewed by Shri Upendra Kumar, S.C.S.O.,
as null and void;

- (ii) to restore her seniority to the original position obtaining prior to the order of promotion issued on 10.10.1985;
- (iii) to grant her due promotion with retrospective effect by cancelling the orders dated 10.10.85 and directing the respondents to issue fresh orders, including the promotion of the applicant;
- (iv) to cause the respondents to make good to her the entire loss in terms of salary suffered by her due to her wrongful supersession; and
- (v) to order them to compensate her duly, keeping in view the mental agony and humiliation caused to her by them.

2. We have gone through the records of the case and have heard both the parties. The applicant joined the Armed Forces Headquarters Service (AFHQ) in the Section Officer's Grade on 1.3.1977 as a direct recruit Assistant Civilian Staff Officer (ACSO) after successfully competing the I.A.S., etc., Examination, 1975. She got her first promotion on 5.10.1981 along with her batchmates to the senior scale as Civilian Staff Officer (C.S.O.).

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3. According to the AFHQ Civil Service Rules, 1968, a C.S.O. with a minimum continuous service of five years in the grade becomes eligible for regular promotion to Senior Civilian Staff Officer (SCSO). Due to non-availability of CSOs with requisite five years' service, vacancies of SCSOs occurring from time to time, are filled up by the grant of ad hoc promotion to CSOs with less than five years' service. The applicant has stated that 35 CSOs were granted ad hoc promotions to SCSOs since June, 1983. She has challenged the validity of the appointment of five of her colleagues on ad hoc basis to the Selection Grade of AFHQ Civil Service by the impugned order dated 10.10.1985. By the said order, she feels that she has been superseded.

4. According to the applicant, what stood in her way was the adverse remarks contained in the confidential report which had been written for the first period from 1.1.1984 to 14.9.1984. She has alleged mala fides on the part of Shri Upendra Kumar, who had not only written but also reviewed her confidential report for the said period. She has also contended that there had been inordinate delay in communicating the adverse remarks to her, and that the same were communicated only in September, 1985, which was barely three weeks in advance of the ad hoc promotions to SCSOs made by the impugned order dated

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10.10.1985. She has also called in question the authority of Shri Upendra Kumar to act as the Reporting Officer and the Reviewing Officer in her case.

5. At the relevant time, the applicant was working as Assistant Director in Section Admn.14 of the Directorate General of Inspection (D.G.I.). Shri Upendra Kumar (SCSO) joined the D.G.I. as Joint Director (Administration) from 18.4.1984 and thereby became her immediate superior from the said date. During that period, Shri A. Mukhopadhyay was Director (Admn.). From 15.9.1984, she was transferred out of Section Admn.14 to Vehicles Directorate. For the year 1984, two ACRs were written for evaluating her work and conduct. The ACR for the period 1.1.1984 to 14.9.1984 was written by Shri Upendra Kumar and reviewed by him. The A.C.R. covering the period from 15.9.1984 to 31.12.1984 was written by Shri S.C. Dogra and reviewed by Col. D.P. Kohli.

6. For ad hoc promotions to be effected from October, 1985, six candidates, including the applicant, were in the zone of consideration against their existing/anticipated vacancies of SCSOs. She has stated that according to the seniority list, she is placed at serial No.5. For ad hoc promotions, only seniority and absence of adverse C.R. and vigilance clearance are required. She was within the zone of consideration and there was no vigilance case pending

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against her. It was only because of the adverse ACR written and reviewed by Shri Upendra Kumar that she was not promoted on ad hoc basis along with others. The respondents have stated in their counter-affidavit that her name was also considered along with others for appointment to Selection Grade on ad hoc basis and on the basis of her record of service, she was not found fit for such appointment. They have denied the allegation of mala fides made against Shri Upendra Kumar.

7. The applicant submitted her self-appraisal in January, 1985. According to the respondents, the delay in writing the ACR in the case of the applicant may be attributed to the following two factors:-

- (a) She did not complete her part of the ACR relating to self-appraisal in time and submitted the same to the Reporting Officer very late; and
- (b) the Reporting/Reviewing Officer took time in completing their parts of the report.

8. Undoubtedly, for the period from 1.1.1984 to 17.4.1984, Shri Upendra Kumar was not the superior officer of the applicant but nevertheless, he had included the said period also while recording his assessment about her work and conduct. As he had no occasion to watch her performance during this period, he ought not to have included the same in his assessment report. The applicant has alleged that only her confidential report was delayed by Shri Upendra Kumar while that of all other subordinates were written in time. This has not been controverted by the respondents in their counter-affidavit. These lend support to her contention that he did so with ulterior motives.

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9. The adverse remarks communicated to the applicant contained the following:-

"PART III - ASSESSMENT OF REPORTING OFFICER"

- (a) Key items of the duties and responsibilities of the post in order of importance (care is to be taken that no item is left out) - Looked after the general routine working of the Section Adm. 14 dealing with work of allocation of funds, various advances and grant of systematic overtime to different DGI establishments.
- (b) Does the Reporting Officer agree with all that is recorded under Part II by Officer. If not, enumerate precisely the extent of disagreement with and reasons therefor. - No. I only agree to the extent that all the duties mentioned by the officer in her resume were part of the charter of duties of Adm. 14. The officer, looked after only the routine aspect of these duties. The jobs requiring budget planning and analysis were directly handled by the JD as it was beyond the capabilities of the officer.
- (c) General comments on the results achieved and the quality of performance and application of knowledge, delegated authority and conceptual and professional skills on the job. - Her performance was not up to the mark. Even for carrying out routine jobs, which the officer was performing, she had to be guided and reminded regularly. She takes leave too often (out of 7½ months under report she took leave for 72 days most of which was EOL) and is in the habit of absenting during office hours without permission besides being unpunctual. Not much of application of knowledge or professional and conceptual skills were displayed by the officer.

Comment clearly and in unambiguous terms on the following attributes of the officer in relation to his performance:

- (1) Commitment to the tasks assigned - Average
- (2) Devotion to duty - Needs to be more conscientious
- (3) Human relations (his conduct with his colleagues, superiors and subordinates) and capacity to get work done. - The officer is obedient and respectful to superiors, nice to colleagues however, her relations with subordinates lacked harmony and she was not even on speaking terms with her ACSO for a long time.

- (4) Public relations - Very Good
- (5) Intellectual honesty, creativity and innovative qualities. - Intellectual honesty average but no creative or innovative qualities displayed.
- (6) Integrity - Nothing adverse has come to my notice.

3. Please indicate if on any The Officer was advised many of the items in this part the times orally to be more Reporting Officer administered punctual in office, careful any written or oral warning or in dealing with subordinates counselling and how the officer and sincere to work. She, reacted thereafter. however, showed insignificant improvement.

Sd/- Upendra Kumar, SCSD
Joint Director (Adm.) AMS(X)"

10. It will be noticed that Shri Upendra Kumar has made the assessment not only in his capacity as Reporting Officer but also acted as the Reviewing Officer. The applicant has stated that this was illegal. The respondents have, however, contended that no prejudice was caused to the applicant thereby, and that the representation made by her against the adverse remarks on 4.10.1985, was disposed of by Shri A. Mukhopadhyay, Director (Admn.), who was the next higher officer by his letter dated 11.3.1986 and its enclosure. Shri Mukhopadhyay adopted a novel method of disposing of the representation by offering his comments against the various entries made in the ACR as under:-

"ACR IN RESPECT OF MRS. SHASWATI RAO, CSO
FOR THE PERIOD 1.1.84 to 14.9.84.

PART III

- Para 1. No comment. Immediate superior officer i.e. Shri Upendra Kumar is the best judge.
- Para 2. I agree with the remark of reporting officer.
(1)&(2)
- Para 2 The officer is obedient. Her relation with
(3) subordinates was amiable.

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Para 2 Intellectual honesty - good
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Para 3 I agree with the remark that she was not regular and punctual. Her relation with subordinates was amiable.

PART IV

Para 4 She is quite intelligent. However, due to certain problems at home, she could not put in her best in the office work."

11. The applicant again made a representation against the adverse entries in her ACR addressed to the Additional Secretary, Ministry of Defence on 19.3.1986 and another petition addressed to him on 2.6.1986 which were rejected by the next higher authority with the following remarks:-

"REPRESENTATION AGAINST ADVERSE REMARKS IN
ACR : SMT SHASWATI RAO, CSO

Reference your Note No. 27759/CSO/CAO/CRD-CELL dated 23.10.86.

2. The appeal of Smt. Shaswati Rao, CSO, has two angles:-

(a) Whether it was technically correct for Shri Upendra Kumar to initiate and review the ACR and for Dir (Adm.) to dispose of the earlier appeal.

(b) Whether the observations made by the reporting officer and the Dir (Adm) while disposing of the first appeal are justified.

3. Para (a) of the appeal may be examined by the CAO. As a matter of fact, Smt. Rao has also emphasised that this aspect should be examined by the CAO.

4. Para (b) of the appeal have been examined by me. On verification I find that the earlier observation made by Dir (Adm) in the Annexure to note of even number dated 11 Mar 86, are based on facts. It appears that due to some domestic problem Smt Rao was irregular in attending office, she used to leave office during working hours without permission and she was also in the habit of taking leave. I have also been intimated that the Dir (Adm) had spoken to Smt Rao on a number of occasions asking her to mend.

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5. In view of the above Smt Rao's appeal against adverse comments recorded on her ACR deserved to be rejected.

Sd/- RL Kapur
Lt. Gen
DGI"

12. It would appear from a perusal of the records that at the time of the issue of the impugned order dated 11.10.1985 promoting some of the colleagues of the applicant, the adverse remarks in her confidential reports for the period from 1.1.1984 to 14.9.1984, had been communicated to the applicant, but no decision had been taken on her representation addressed to the Defence Secretary on 4.10.1985.

13. In Gurdial Singh Fijji Vs. State of Punjab & Others, 1979 (2) SCC 368 at 376, the Supreme Court has observed that the principle is well settled that in accordance with the rules of natural justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified.

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14. In the instant case, the representations made by the applicant against the adverse remarks in her ACR were pending at the time of the passing of the impugned order dated 10.10.1985.

15. Normally, courts would not interfere with the assessments made by the Reporting Officer/Reviewing Officer in the confidential reports as the authorities concerned are the best judges in regard to the work and conduct of the officer reported upon by them. In the instant case, however, the tenor of the remarks indicates that Shri Upendra Kumar, who functioned as the Reporting Officer as well as the Reviewing Officer, had not been fair and just to the applicant. The applicant had gone on maternity leave and in continuation of the same, she had taken Earned Leave from 1.1.1984 to 20.1.1984. Thereafter, from 23.5.1984 to 13.7.1984, she went on 'leave not due'. The applicant ^{has} stated that she had to take care of her minor child during this period. In her leave application, she had stated that the reason for going on leave is to look after her two minor children.

16. With regard to the remarks that she was entrusted only with the routine aspects of the duties of Adm.14, the applicant has stated that she was brought to the said Section specifically to look after the budget provisions

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of D.G.I. and during the said period, she continued to discharge additional duties of two other Sections-

Adm.11-A and 11-B. She was relieved of the additional duties of Adm.11-A and 11-B on 5.9.1984 only. This has not been controverted by the respondents.

17. The fact that the applicant had to go on leave in continuation of her maternity leave to look after her minor children, does not indicate that the applicant is a habitual absentee. Shri Upendra Kumar had himself duly recommended the leave applied for by her and the leave had been sanctioned by the competent authority. With regard to the remark that the applicant was in the habit of absenting during office hours without permission, besides being unpunctual, the applicant has stated in her representation dated 4.10.1985 that in the discharge of her functions, she had to visit the Ministry of Defence and other sections of DGI sometimes to discuss or to ascertain the progress of various cases projected to them with the prior permission/ knowledge of Shri Upendra Kumar. This has not been dealt with or denied by the authorities concerned while disposing of her representation. The respondents have not controverted the same in their counter-affidavit. The respondents have not stated in their counter-affidavit that there had been any deficiency in her performance in the previous or subsequent years. The other remarks made by Shri Upendra Kumar which have been substantially endorsed by the higher authorities are also not based on any material. The higher authorities

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who have disposed of her representations against the adverse remarks have not considered the allegation of mala fides made by her against Shri Upendra Kumar in the said representations and denied the same in the orders passed by them. The ^{adverse} remarks given by Shri Upendra Kumar as well as the remarks of the next higher officers who disposed of her representations by order dated 11.3.1986, are neither fair nor just.

18. Taking an overall view of the matter, we are of the opinion that the adverse remarks in the ACR of the applicant for the period from 1.1.1984 to 14.9.1984, are liable to be expunged and we do so accordingly. The applicant shall be considered for ~~ad hoc~~ ^a promotion to the Selection Grade of AFHQ Civil Service on ad hoc basis as on the date her colleagues were considered for ad hoc promotion. While considering her case for ad hoc promotion, the respondents shall not take into account the adverse remarks communicated to ~~the applicant~~ ^a which have been ordered to be expunged. In case she is found suitable for such appointment, she shall be appointed on ad hoc basis with effect from the date her immediate junior was so appointed. In that event, she will be entitled to arrears of pay and allowances. Her seniority should also be refixed on that basis.

19. The application is allowed to the extent indicated above. The respondents shall comply with the above

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directions expeditiously and preferably within three months from the date of communication of this order. There will be no order as to costs.

B. N. Dhoundiyal
(B.N. DHOUNDIYAL) 20/8/72
MEMBER (A)

P. K. Kartha
20/8/72
(P.K. KARTHA)
VICE CHAIRMAN (J)