

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 901/ 1986
T.A. No.

DATE OF DECISION February 22, 1988.

Shri M. K. Dixit Petitioner Applicant.

Shri J. K. Sibal Advocate for the Petitioner(s).
Applicant.

Versus

Union of India & Another Respondents

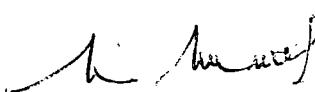
Shri G. Ramaswamy, Addl. Advocate for the Respondent(s).
Solicitor General with Shri T.C. Sharma
and Shri N. S. Mehta, Counsel.

CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether to be circulated to other Benches? No


(KAUSHAL KUMAR)

MEMBER (A)


(K. MADHAVA REDDY)

CHAIRMAN.

February 22, 1988.

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

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v/s.

Union of India & Another Respondents.

CORAM: Hon'ble Mr. Justice K. Madhava Reddy, Chairman.
Hon'ble Mr. Kaushal Kumar, Member (A).

For the applicant Shri J.K. Sibal, Counsel.

For the respondents Shri G. Ramaswamy,
Addl. Solicitor General
with Shri T.C. Sharma,
Counsel and Shri N.S. Mehta,
Counsel.

(Judgment of the Bench delivered by
Hon'ble Mr. Kaushal Kumar, Member)

JUDGMENT

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant who belongs to the Indian Administrative Service allocated to the cadre of Madhya Pradesh and presently posted on deputation to the Government of India as Commissioner of Departmental Inquiries, Central Vigilance Commission, New Delhi, has called in question the warning issued to him on 12.1.1984 (Annexure V to the application) by the State Government of Madhya Pradesh. In particular, it has been prayed that the warning letter should not be kept in the C.R. dossier of the applicant.

2. During the course of the arguments, the learned counsel for the applicant stated that in case a direction is issued by this Tribunal for not keeping the warning letter in the C.R. dossier of the applicant, he would not press for the warning letter itself to be quashed.

3. A few facts necessary to appreciate the various contentions raised in this case may be noticed below.

Mr. Kaushal Kumar

At the relevant time i.e., during the period from 31.7.80 to 30.1.81, the applicant was posted as Managing Director, Madhya Pradesh State Cooperative Marketing Federation Limited Bhopal and on 12.11.1980 he had appointed two private firms, namely M/s. G.T. Exports, Bombay and M/s. Vishwa Udyog (Private) Limited, Cochin, as authorised agents for export of rice to USSR and other countries. The State Government, vide D.O. letter No. E-1/103/81/1/5, dated 12.5.1981 called his explanation for appointing M/s. G.T. Exports, Bombay as an authorised agent on 3% commission for finalizing deals for export of rice and other agricultural commodities to USSR and other countries purportedly against the instructions of the Ministry of Food, Government of India, as contained in the D.O. letter dated 8.10.80 of Shri B. S. Raghavan, Additional Secretary, Ministry of Food, Government of India, and the minutes of the meeting held on 4.11.80 regarding export of rice in the Ministry of Commerce, Government of India, which was attended by the applicant as well. The applicant was required to submit his explanation within 15 days. The applicant sought time and also requested for the record of the minutes of the meeting held on 4.11.80 in the Ministry of Commerce, regarding export of rice. However, he submitted his interim explanation on 27.6.1983. A warning was issued to him by the Government of Madhya Pradesh on 12.1.1984 for having appointed M/s. G.T. Exports, Bombay and M/s. Vishwa Udyog (Private) Limited, Cochin as authorised agents at the rate of 3% and 4% commission respectively in the matter of export of rice to USSR and other countries which was against the guidelines of the Government of India as contained in the Ministry of Food letter No. 4/14/80/Impex dated 8.10.80 as per which payment of commission to private agents was prohibited. The applicant was warned

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by the State Government "to be completely careful in future in such transactions".

4. The applicant submitted an appeal against the warning letter to the Government of India on 1.3.1984. It is stated in the application that subsequently on 6.8.1984, the applicant wrote to the Government of India that in case it was not possible to entertain his appeal dated 1.3.1984 as an appeal, it might be converted into and treated as a memorial under Rule 25 of the All India Services (Discipline and Appeal) Rules, 1969. In the meantime, the applicant came to know through a counter affidavit filed in C.W.P. No. 540/84 of Delhi High Court that the warning letter dated 12.1.1984 had been kept in his C.R. dossier by respondent No.2 (the State Government of Madhya Pradesh). Respondent No.1 (Government of India, Department of Personnel and Training), vide their letter dated 24.10.85 addressed to the Chief Secretary, Government of Madhya Pradesh, Bhopal with a copy endorsed to the Secretary, Central Vigilance Commission informed the applicant that "the Memorial of Shri M.K. Dixit IAS (MP:67) has been carefully considered by the President of India and it has been decided to reject his Memorial and keep a copy of the warning (Order No.1/183/91/5 dated 12.1.1984) issued by the State Government in the CR dossier of Shri Dixit".

5. The aforesaid warning letter has been challenged on the ground that the principles of natural justice had been violated in issuing the same inasmuch as the explanation of the applicant was called for only in regard to the appointment of M/s. G.T. Exports, Bombay as an authorised agent for export of rice whereas the warning letter covered the appointment of two parties namely M/s. G.T. Exports, Bombay and M/s. Vishwa Udyog (Private) Limited, Cochin. Further the explanation called

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for did not seek any clarification or elucidation in regard to the terms and conditions on which the aforesaid two private parties had been appointed nor in regard to the rates of commission offered to them. It is also contended by the learned counsel for the applicant that the aforesaid private parties were appointed as authorised agents on the advice received in writing from the Managing Director of the Madhya Pradesh State Export Corporation. The learned counsel for the applicant also pleaded that the warning was not justified on the ground that there had been a fluctuating policy of the Government of India in regard to the appointment of private parties as authorised agents and that the applicant at the time he appointed the concerned parties was not aware that there had been a shift in the policy of the Government in that behalf.

6. The more important question which arises for consideration in this case is in regard to the placing of the warning letter in the C.R. dossier of the applicant. The learned counsel for the applicant contended that the warning could not be placed in the C.R. dossier without following the procedure indicated in the Department of Personnel and Administrative Reforms letter No. 11018/5/79-AIS (III) dated 3.4.1981 as reproduced on page 124 in part I of the All India Services Manual (Fifth Edition) and which is also incorporated in the Government of India's orders referred to under Rule 2 of the All India Services (Confidential Rolls) Rules, 1970. These instructions envisage that a warning addressed to a member of an All India Service can be placed in his C.R. dossier only when a reference to the same is made in the Confidential Report of the office for the relevant period. This procedure was admittedly not followed in

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the present case since there is no reference of the warning in any of the Confidential Reports of the applicant.

7. On the other hand, the learned Additional Solicitor General Shri Ramaswamy appearing for the State of Madhya Pradesh argued that issue of a warning is an executive or administrative function and it does not come within the pigeon-hole of any major penalty or within the parameter of an entry in the Confidential Report. The learned Additional Solicitor General also contended that in any case these instructions or orders relied upon by the applicant are not "mandatory". According to him, they are merely "directory" and as such only the principle of natural justice is required to be complied with before placing a warning in the C.R. dossier. In this case the explanation of the applicant having been called for before the issuance of the warning and the same having been considered, the warning could be placed in the C.R. dossier since the rationale behind the instructions or orders issued by the Government of India that a reference be made to the warning in the Confidential Report before placing it in the C.R. dossier is merely to provide an opportunity to the concerned official to represent against the adverse entry which will be communicated to him. If the object of providing an opportunity for making a representation against a warning is achieved by linking it through an entry in the Confidential Report, this purpose is equally served when a warning is issued after calling for an explanation which was done in this case and, therefore, the warning letter can as well be placed in the C.R. dossier without violating the spirit of the instructions and orders issued by the Government of India.

8. The learned Additional Solicitor General also contended that such documents could be included in the

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Confidential Roll or C.R. dossier as may be specified by the Central Government by a general or special order in this behalf as provided in Rule 2(b) of the All India Services (Confidential Rolls) Rules, 1970. Whereas the instructions reproduced and referred to under Rule 2 of the said Rules were covered by a general order issued in pursuance of clause (b) of Rule 2, in the present case a special order had been issued by the Central Government vide their communication dated 24.10.85 for placing a copy of the warning in the C.R. dossier of the applicant and, therefore, the placement or inclusion of the warning in the Confidential Roll or C.R. dossier of the applicant was not only covered by the overall guiding principles or rationale of the general orders but also by a specific order.

9. Para 3 (ii) of the Department of Personnel and Administrative Reforms letter No. 11018/5/79-AIS (III), dated 3.4.81 as reproduced in the All India Services Manual (Fifth Edition) is extracted below: -

"In the Ministry of Home Affairs letter No. 7/4/59-AIS(II) of 20th March, 1959, it is stated that there may be occasions when a superior officer may find it necessary to criticise adversely the work of an officer working under him, and he may feel that while the matter is not serious enough to justify the imposition of a formal punishment, it calls for some informal action such as communication of a written warning, admonition or reprimand. It has now been decided that where such a warning/displeasure/reprimand is issued, it should be placed in the personal file of the officer concerned. At the end of the year (or period of

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report), the reporting authority while writing the confidential report of the officer, may decide not to make a reference in the confidential report to the warning / displeasure / reprimand, if in the opinion of that authority, the performance of the officer reported on after the issue of the warning or displeasure or reprimand, as the case may be, has improved and has been found satisfactory. If however, the reporting authority comes to the conclusion that despite the warning/displeasure/reprimand the officer has not improved, it may make appropriate mention of such warning/displeasure/reprimand, as the case may be, in the relevant column in Part II of the ACR form prescribed under the All India Services (Confidential Rolls) Rules, and in that case a copy of the warning/ displeasure / reprimand referred to in the confidential report should be placed in the ACR dossier as an Annexure to the confidential report for the relevant period. The adverse remarks should also be conveyed to the officer and his representation, if any, against the same disposed off in accordance with the procedure laid down in the rules.

10. Rule 2(b) of the All India Services (Confidential Rolls) Rules, 1970 defines 'confidential roll' as meaning the compilation of the confidential reports written on a member of the Service and includes such other documents as may be specified by the Central Government, by general or special order, in this behalf.

11. Government of India orders as referred to under Rule 2(b) of the All India Services (Confidential Rolls) Rules, 1970 (pages 211-212 of the All India Services

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Manual Part I - Fifth Edition) specifying the various documents to be included in the Confidential Roll are also reproduced below: -

"In pursuance of clause (b) of rule 2 of the All India Services (Confidential Rolls) Rules, 1970, the Central Government hereby specifies the following documents to be included in the confidential roll, as defined in that clause namely: -

- (i) Letter of appreciation Resolution issued by the Government to a member of the All India Service; record about any medals, award etc. awarded to him in recognition of his services.
- (ii) Copy of order imposing on the member of the Service any of the penalties specified in the All India Services (Discipline and Appeal) Rules, 1969.
- (iii) Copy of the Communication addressed to a member of the Service warning him or conveying the displeasure or reprimand of Government, to which a reference is made in the Confidential Report for the relevant period.
- (iv) Record of final result of the inquiry into the charges or allegations against a member of the Service; mentioned in his confidential report.
- (v) Copies of certificates regarding languages learnt by the member of the Service.
- (vi) Copies of certificates regarding educational qualifications acquired by the member of the Service after entering the Service.
- (vii) Copies of certificates regarding training received by a member of the Service.
- (viii) Record about any books, articles and other publications brought out by a member of the Service or for the publications of which he may be responsible.

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NOTE 1 - Mention of items (v) and (vi) may also be made on the first page of the C.R. Dossier in the Columns "Languages known" and "Educational qualifications" respectively.

NOTE 2 - Details of the training under item (vii) may also be mentioned on the first page of the C.R. Dossier below the column "Educational qualifications".

NOTE 3 - Information relating to item (viii) may be entered in a separate list to be kept in the C.R. Dossier. Copies of the articles, books and other publications need not be kept in the C.R. Dossier. No distinction is to be made between articles, books and other publications of a professional and those of a non-professional nature."

12. The instructions and orders of the Government of India referred to at (iii) above make it amply clear beyond doubt that warning issued to a member of an All India Service can be placed in his Confidential Roll only if a reference has been made to the same in the Confidential report of the officer for the relevant period. The warning was issued on 12.1.84 and admittedly there is no reference of the said warning in the confidential report of the applicant for the year 1983-84.

13. We are unable to agree with the contention of the learned Addl. Solicitor General that since in this case an explanation had been called for from the applicant and thus the principle of natural justice had been complied with, the warning can be placed in the confidential roll or C.R. dossier of the applicant without a reference having been made to the same in the confidential report of the applicant for the relevant period. If the argument of the learned Addl. Solicitor General were to be taken to its logical conclusion, in all cases where an explanation is called for and the same is

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followed by issuance of a written warning, the inclusion of the warning in the confidential roll would be justified without following the procedure referred to in the general orders under Rule 2. If that were so where was the necessity for prescribing the detailed procedure as is outlined in the Office Memorandum of 3.4.1981. A warning by its very nature is different from a "censure" which is a minor penalty and can affect the future prospects of the concerned official. A warning by its very nature is supposed to be by way of serving as a caution to the concerned official to improve himself so as not to give an occasion for complaint for repeating the same kind of irregularities and lapses in future and, therefore, the intention is that a warning should not be placed in the confidential roll or C.R. dossier of the concerned official which is taken into consideration at the time of any selection, promotion, crossing of Efficiency Bar etc. A non-recordable warning not placed in the confidential roll or C.R. dossier is intended merely to awaken the concerned official to his shortcomings or lapses with a view to giving him an opportunity to improve himself without damaging or marring his prospects in any manner. This can be achieved only if the warning is not placed in the confidential roll or C.R. dossier of the officer. This purpose would be defeated if the warning is placed in the confidential roll at the back of the officer concerned since he would have no means of knowing that it is included in his C.R. dossier and he would not get any opportunity to represent against such an inclusion of the warning in the C.R. dossier. That is why the Government following the observations of the Delhi High Court in the case of Shri Nidhan Singh v/s. Union of India that "warning kept in the C.R. dossier has all the attributes of 'Censure' which is a formal punishment and which can only be awarded by the

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competent authority after following the procedure prescribed in the relevant disciplinary Rules" thought it necessary to prescribe that at the end of the year (or period of report) the reporting authority while writing the confidential report of the officer, may decide not to make a reference in the confidential report to the warning/displeasure/reprimand, if in the opinion of that authority, the performance of the officer reported upon after the issue of the warning or displeasure or reprimand, as the case may be, has improved and has been found satisfactory. It is only where the reporting authority reaches the conclusion that despite the warning, the officer concerned has not improved, it may make appropriate mention of such a warning in the confidential report and only in such a case a copy of the warning has to be placed in the C.R. dossier as an Annexure to the confidential report for the relevant period. In this way it is ensured that the adverse remarks containing inter alia reference to the warning will be conveyed to the officer concerned and his representation, if any, against the same disposed off in accordance with the procedure prescribed.

14. Now we proceed to consider whether the rejection of the Memorial as communicated by the Department of Personnel, Government of India vide letter dated 24.10.85 (Annexure VII to the application) constitutes a special order as contended by the learned Addl. Solicitor General. The said letter is extracted below: -

" No. 10(20)ED(PR)/84
Department of Personnel

New Delhi, the 24th Oct. 1985

To

The Chief Secretary,
Government of Madhya Pradesh,
Bhopal.

Sub: Memorial from Shri N.K. Dixit, IAS
(MP:67) against Order State Government's
Order No.1/103/81/1/5 dated 12.1.84.

Shri Dixit

" Sir,

I am directed to refer to your letter No. F-15/5/85/1/6, dated 21.5.1985 on the subject mentioned above and to say that the Memorial of Shri M.K. Dixit IAS (MP:67) has been carefully considered by the President of India and it has been decided to reject his Memorial and keep a copy of the warning (Order No.1/183/91/5, dated 12.1.1984) issued by the State Government in the C.R. Dossier of Shri Dixit."

The wordings of the above cited letter do not in any way show that it was intended to be a special order under Rule 2(b) of the All India Services (Confidential Rolls) Rules, 1970. The letter was in reply to a reference made by the State Government on 21.5.1985 and communicated the rejection of the Memorial submitted by the applicant to the President of India. It inter alia does convey the decision of the Government for keeping a copy of the warning issued by the State Government in the C.R. dossier of the applicant. This decision is obviously not in accordance with the instructions or general orders of the Government of India on the subject of inclusion of documents in the C.R. dossier of a member of an All India Service. There is no reference in the said letter dated 24.10.85 to the statutory rules or the particular rule viz., Rule 2(b) in pursuance or in exercise of which a special order was sought to be issued. The learned Addl. Solicitor General argued that it is not necessary in all such cases to refer to a particular clause or rule as such and that the authority for issuance of the order is implied through the "doctrine of tracing" and the same could be inferred from the facts and circumstances of the case without there being any express mention of or reference to the specific rule. We are unable to uphold this contention in view of the attendant facts and circumstances

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of the case. The applicant in para 6.13 of his application had averred that "in the meanwhile, the applicant, through a counter affidavit filed in C.W.P. No. 540/80 of Delhi High Court, learnt that the letter dated 12.1.84 of the State Government of M.P. - Annexure V - had been kept in his C.R. dossier by respondent No.2". In their counter-affidavit the averment made in para 6.13 is not denied by the respondents. On the other hand Respondent No.2 i.e., the State Government of Madhya Pradesh vide their affidavit dated 25.4.87 in reply to paras 6.13 and 6.14 stated as follows: -

"With reference to paragraphs 6.13 & 6.14 of the said Application, it is submitted that the respondent No.2 kept the letter dated 12.1.1984 of the Government of Madhya Pradesh in the C.R. dossier of the Applicant as directed by the Government of India while turning down the memorial of the Applicant vide Memo No.10(20) EO (PR/84 dated 24.10.1985 (Annexure VII)"

15. From the above it is clear that the warning letter had been kept in the C.R. dossier of the applicant much before 24.10.1985 when the decision of the Government of India was communicated to the State Government of Madhya Pradesh since the Writ Petition had been filed in the Delhi High Court in 1984 and the counter-affidavit by the State Government had also been filed in the said Writ Petition much earlier to the decision communicated by the Government of India in October 1985. In the circumstances of the case it cannot be pleaded that the warning letter was placed in the C.R. dossier pursuant to the directions contained in the Government of India letter dated 24.10.85. Neither the wording of the communication dated 24.10.85 nor the attendant circumstances in regard to the time

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when the warning letter was placed in the C.R. dossier of the applicant would warrant an inference or lead one to accept the contention that the reply dated 24.10.85 was a special order under Rule 2(b) of the All India Services (Confidential Roll) Rules, 1970 as contended by the learned Addl. Solicitor General.

16. The learned Addl. Solicitor General also contended that in the application the Presidential Order dated 24.10.85 had not been challenged and no relief for quashing the said order had been prayed for. In this connection, the learned counsel for the applicant Shri Sibal referred to item 3 on page 3 of the application wherein it is clearly stated that the present application is against Order No.1/103/81/1/5 dated 12.1.1984 passed by the State Government of Madhya Pradesh and Order No.10(20)/PR/84 dated 24.10.85 passed by the Government of India. As such placing of the warning in the Confidential Roll or C.R. dossier of the applicant has no legal validity, is against the principles of natural justice and is in violation of the instructions and orders issued by the Government of India. We are unable to hold that these instructions or orders are merely directory. Since these general orders have been issued in pursuance of statutory rules having all the force of law, their violation cannot but result in the annulment of the action of the Respondents in placing the warning in the C.R. dossier of the applicant.

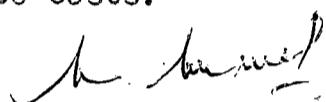
17. In the light of the view which we have taken and the submissions made by the learned counsel for the applicant, we do not consider it necessary to go into the question of the validity of the warning issued to the applicant.

18. The application is partly allowed and the letter dated 24.10.85 addressed by the Government of India,

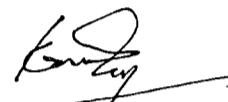
John Thawarath

Department of Personnel, to the Chief Secretary, Government of Madhya Pradesh is quashed in so far as it relates to the decision regarding keeping a copy of the warning in the C.R. dossier of the applicant. A direction shall issue that the aforesaid warning issued to the applicant shall forthwith be taken out from the confidential roll / C.R. dossier and it shall not form part of the C.R. dossier at any stage.

19. In the circumstances, there shall be no order as to costs.

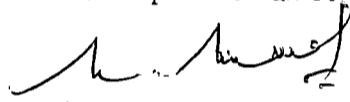


(KAUSHAL KUMAR)
MEMBER (A)



(K. MADHAVA REDDY)
CHAIRMAN.

Pronounced today in the open court.



(KAUSHAL KUMAR)
MEMBER (A)
22.2.1988.