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DATE OF DECISION 7.12.1987.

K.P. Sharma Petitioner

Shri R.P. Oberoi Advocate for the Petitioner(s)

Versus

Union of India and others Respondent

Shri M.L. Verma Advocate for the Respondent(s)

CORAM :

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

~~The Hon'ble Mr.~~

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)
7.12.1987.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. C.A. 1043/1986.

DATE OF DECISION: 7.12.1987.

K.P. Sharma Applicant.

V/s.

Union of India and
others Respondents.

For the applicant Shri R.P. Oberoi, Advocate.

For the respondents Shri M.L. Verma, Counsel.

(Judgment delivered by Hon'ble Mr. Kaushal Kumar,
Member (A).)

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who belongs to the Indian Defence Estate Service, has challenged the adverse remarks recorded in his annual confidential report for the year 1985 when he was posted as Cantonment Executive Officer, Ramgarh. He held this post from May 1982 till mid August, 1985 when he was transferred to the Directorate of Defence Estates at HQ Eastern Command, Calcutta. The report was initiated by Brig. T.K. Gupta, who was the President, Cantonment Board, Ramgarh at the relevant time and who has also been impleaded as respondent No.5. The report was reviewed by the Director, Defence Lands & Cantonments, HQ Central Command, Lucknow (respondent No.3). The adverse remarks were communicated to the applicant by the Director, Defence Lands and Cantonments, Central Command, vide his letter dated 10th October, 1985 (Annexure II to the application). The applicant made a representation on 8.11.1985 to the Director General, Defence Lands & Cantonments, Government of India, Ministry of Defence, New Delhi (Annexure III to the application). The said representation was rejected vide letter dated 19th June, 1986 and runs as follows: -



(9)

CONFIDENTIAL / REGISTERED
No.106/8/ADM/D.E./KPS-19
Dte Gen Defence Estates
Government of India
Ministry of Defence
West Block No.IV, RK PURAM
NEW DELHI-110066

19 June 86

To

The Director, D.E. (By name)
Directorate of Defence Estates,
Western Command,
PANCHKULA


Sub: ANNUAL CONFIDENTIAL REPORT A - 1985 -
REPRESENTATION AGAINST ADVERSE ENTRIES

Reference your letter No.C/9/Oftrs/DLC/C.C/85
dated 07 Feb 1986.

2. A Representation No 360006/KPS/AO/EC dated 08 Nov 1985 against the adverse entries made in the Annual Confidential Report for the year 1985 (Covering the period 1-1-85 to 13-8-85) together with Comments of Reporting and Reviewing Officer in respect of Shri K.P. Sharma, ex CEO RAMGARH Cantonment (Now attached Officer), Dte. of Defence Estates, Eastern Command Calcutta) was placed before the undersigned.
3. The representation of the officer is hereby rejected as it lacks substance.
4. The Officer may be informed accordingly.
5. Please acknowledge.

Sd/-
(K.M. SEBASTIAN)
DIRECTOR GENERAL
DEFENCE ESTATES

N.O.O.
Shri K.P. Sharma,
Attached Officer,
Dte of Defence Estates
Eastern Command
Ministry of Defence
CALCUTTA

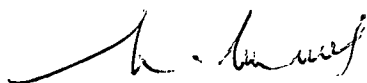
2. The main attack on the impugned order rejecting the representation of the applicant is on the ground that it is a non-speaking order and further that the adverse entries were made by the Reporting Officer maliciously with
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the intention of harming the applicant. It is contended that the entries were false, incorrect and unrelated to the performance of the applicant during the period covered by the report.

3. Respondent No.5, who initiated the report of the applicant and against whom allegations of malice have been made, has not filed any counter-affidavit, even though he has been impleaded by name as respondent No.5.

4. In support of his contention that where a representation against communication of adverse entries is disposed of through a non-speaking order, the rejection based on such a non-speaking order is bad in law and liable to be quashed, the learned counsel for the applicant relied on the decision of this Tribunal in E.G. Nambudiri v. Union of India and another (A.T.R. 1987 (2) C.A.T. 360). In the decision referred to above, the judgment after dealing with the case law as propounded in Dr. Gopeswar Dutta v. Union of India (1982(1) SLJ-207) and Madan Mohan Khatua v. State of Orissa and others (1978 (1) SLR 829 (Orissa) held that -

".....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 CR 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, the 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."

5. On the other hand, the learned counsel for the respondents Shri M.L. Verma placed reliance on certain observations made by the Supreme Court in *Union of India v. M.E. Reddy & another* (1979 All India Services Law Journal page 738) wherein the observations made by Hidayatulla, C.J. in *R.L. Butail v. Union of India & Ors.* were quoted with approval. These are extracted below: -

"These rules abundantly show that a confidential report is intended to be a general assessment of work performed by a Government servant subordinate to the reporting authority, that such reports are maintained for the purpose of serving as data of comparative merit when questions of promotion, confirmation etc. arise. They also show that such reports are not ordinarily to contain specific incidents upon which assessments are made except in cases where as a result of any specific incident a censure or a warning is issued and when such warning is by an order to be kept in the personal file of the Government servant. In such a case the officer making the order has to give a reasonable opportunity to the Government servant to present his case. The contention, therefore, that the adverse remarks did not contain specific instances and were therefore, contrary to the rules, cannot be sustained. Equally unsustainable is the corollary that because of that omission the appellant could not make an adequate representation and that therefore the confidential reports are vitiated".

6. The learned counsel Shri Verma also referred to the ruling of the Orissa High Court in *S.S.S. Venkatarao v. State of Orissa and others* (1975 All India Services

[Signature]

Law Journal p. 266) wherein the following observations were made:

".....The Govt. in maintaining the character roll is exercising administrative function in which it is to act justly and fairly. That is not a quasi judicial function, though certain elements in the exercise of both the functions are similar. The Govt. servant is not entitled to establish his case in any other manner except by way of making a representation against the adverse entry. Excepting this, no other principle of natural justice is available. It is not open to the Govt. servant to justify his stand by giving evidence. ..."

7. The above rulings relied upon by the learned counsel for the respondents do not refute the contentions made on behalf of the applicant. What has been held in these rulings is that the Government in maintaining the character rolls is exercising an administrative function and that it is not necessary to give a personal hearing to the Government servant concerned before disposing of his representation. On the other hand, the ruling of this Tribunal relied upon by the learned counsel for the applicant clinches the issue that where a representation against adverse remarks is rejected through a non-speaking order, such an order cannot be sustained in the eyes of law. Moreover, in this case, no reasons have been given as to why respondent No.5 did not file a counter-affidavit when allegations of mala-fide have been made against him. In the absence of such a counter-affidavit, only an adverse inference can be drawn.

8. It is stated in the counter-affidavit "that the decision for acceptance or rejection of the representation is not a judicial order and therefore not expected to be speaking order." Even though rejection of representation



may not be a judicial or quasi-judicial function, the principle of natural justice and equity requires that rejection should be based on and supported by sound reasons, which can be done only through a speaking order.

9. It is also contended that the present application is outside the jurisdiction of the Tribunal since no memorial against the rejection of the representation was placed before the Government. This contention also cannot be sustained since the memorial to the President is only by way of an alternative remedy which the Government servant may seek to avail of or not. Sub-section (3) of Section 20 provides as follows: -

"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 the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial."

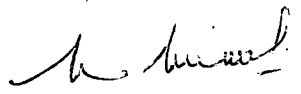
Thus, it is clear that only where a Government servant chooses to avail of the remedy of submitting a memorial the same shall be taken into account for the purpose of examining whether he has exhausted all the remedies available to him or determining the period of limitation. In this case, the applicant admittedly did not file any memorial to the President and for that reason, the present application cannot be considered as being not maintainable or outside the jurisdiction of the Tribunal as contended.

10. The learned counsel for the applicant referred at great length to the various adverse remarks to show as to how they were unwarranted in the light of the attendant circumstances and conditions in which the applicant was working. In the light of the view which is being taken, it is not necessary to deal with those contentions or go into



the merits of the adverse entries. On the short grounds that the rejection of the representation was made through a non-speaking order and that the reporting officer who is impleaded as a respondent by name did not refute the allegations of malice through a counter-affidavit, the present application has to be allowed.

11. As discussed above, the present application is allowed with the direction that the adverse entries in the annual confidential report for the year 1985 communicated to the applicant shall be treated as having been expunged, and the impugned order rejecting the representation against the adverse entries is hereby quashed. There shall be no order as to costs.


(KAUSHAL KUMAR)
MEMBER (A)
7.12.1987.