

18

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A. No.1386/87.

New Delhi, this the 27th day of January, 1994.

SHRI J.P.SHARMA, MEMBER(J).
SHRI B.K. SINGH, MEMBER(A).

Shri Shiv Kumar Parti,
son of late Shri C.L. Parti,
resident of Qr. V5 CMRS Colony,
Barwa Road,
Dhanbad-826001,
working as Scientist E-I,
Central Mining Research Station,
Barwa Road,
Dhanbad-826001 (Bihar).

...Applicant

(By advocate: Shri K.K.Rai)

VERSUS

1. Director General,
C.S.I.R.,
Rafi Marg, New Delhi-110001.

2. Director,
C.M.R.S., Barwa Road,
Dhanbad-826001.

3. Dr. B. Singh,
Director, C.M.R.S.,
CMRS Colony, Barwa Road,
Dhanbad-826001.

4. Shri H.C. Singh,
Scientist E II,
C M R S, Barwa Road,
Dhanbad-826001.

...Respondents

(By advocate: Shri A.K.Sikri)

O R D E R (ORAL)

SHRI J.P.SHARMA :

This application under Section 19 was filed on 21-9-1987 when the applicant was working as Scientist E-I in the CMRS, Dhanbad. The applicant has since superannuated on 30-6-1993. However, at the time this application was filed, his age is shown as 54 years. The grievance of the applicant has been with regard to the Core Assessment Committee for assessment of Scientists E-I notified by the memo dated 27-8-1987;

declaration of the result of the assessment in view of the memo dated 6-12-1986 for promotion of Scientists E-I to Scientists E-II; the drawing of eligible list in a panel of the applicant with those Scientists E-I who became eligible for promotion to the Scientist E-II after 31-3-1983.

2. The reliefs claimed by the applicant are as follows :-

- (i) The Hon'ble Tribunal may be pleased to direct the respondents not to hold interview for assessment for promotion without disposing off the representations of the applicant pursuant to communication dated 27.8.87 as it would be arbitrary and opposed to law.
- (ii) This Hon'ble Bench may be pleased to direct an impartial enquiry into the affairs of the CMRS, so that a national laboratory can be geared to the honest pursuit of Scientific goals for the reasons which have been discussed at length in para 6, as has been done on various occasions by the Hon'ble Supreme Court in public interest.
- (iii) Quash the Order dated 27.8.87, holding the interview as unconstitutional, as being malafide, violative of Principles of Natural Justice, opposed to respondent No.1's direction dated 3.12.86 and also in violation of Articles 14 and 16 of the Constitution of India.
- (iv) Quash the order dated 6.12.86 declaring the result of assessment for promotion of 4.12.86 as being unconstitutional, as being malafide, violative of principles of Natural Justice, opposed to respondent No.1's direction dated .
- (v) Direct the respondent No.2 to put the applicant in the correct assessment year.
- (vi) Grant exemplary damages for putting the applicant to mental agony and torture.

(vii) Direct the respondents to expunge the adverse remarks in the applicant's C.R. as the particulars have not been given in accordance with law as laid down by the Hon'ble Supreme Court in "

Shri K.K.Rai represents the applicant and at the commencement of the hearing, the learned counsel gave a statement at the Bar that in this application he is pressing only the relief for expunging of the A.C.R. given to the applicant for the period ending 31st of March, 1986. Subsequently, when the order was being dictated, the learned counsel Shri Rai also made a submission that the relief in para 9(ii) for directing impartial enquiry to the affairs of the CMRS be taken up and disposed of on merits. In view of this statement of the learned counsel, the reliefs prayed in para 9(i), (iii), (iv), (v) and (vi) are dismissed as not pressed. The application, therefore, is confined only to relief prayed in para 9(ii) and (vii).

3. The pleadings in this case are voluminous from either side and in fact certain averments have been made which are not relevant to the issue for decision. In view of this fact, it shall not be necessary to give a detailed narration of the averments made in the application. The application shall only be confined to those pleadings which are pertinent and relevant to the matter in issue, i.e., regarding a direction to the respondents for an enquiry against the then Director, CMRS, and the adverse remarks given to the applicant by Dr. B. Singh, his controlling officer, for the period from 1-4-85 to 31-3-1986.

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4. A notice was issued to the respondents who contested the application and in their reply specifically made denial of various averments in various paras of the original application supplementing the same, as and where necessary. The contention of the respondents is that adverse remarks relate to the punctuality of the applicant, his organisational capacity. On both, he has been commented by the reporting officer as irregular and poor, respectively. The reporting officer also made an advisory observation that the applicant needs ^{fact} improvement in both the phrases of his working procedure. Regarding certain allegations against the Director, there are rival contentions raised by the authorities, by the applicant in the application and by the respondents in the reply to the application. Since the Tribunal has no jurisdiction whatsoever to judge the verasity or credibility of averments made on either side, they are not discussed in the body of the judgment and the applicant is left to seek his remedy in the proper competent forum with a right to the respondents to contest the same, if any such occasion arises. It is sufficient in this case to say that allegations made from one side against the Director cannot be the basis to judge the actions regarding the award of entries to the applicant in the relevant period in the A.C.R. It is obviously because the Tribunal is not entering into that arena or to give a finding on such averments touching the personal and professional life of the head of an institution. The relief claimed by the applicant in para 9(ii) is, therefore, disposed of accordingly.

5. As regards the entry in the C.R. that the applicant was irregular in attendance, firstly the applicant did not make any representation, whatsoever. The only document pointed out by the learned counsel for the applicant at page 194 is regarding furnishing of certain particulars to justify the said entry. It is argued by the learned counsel for the applicant that since the particulars were not furnished, so the representation was not made. This contention of the learned counsel for the applicant cannot be accepted. At least the applicant was free to submit a supplementary representation and request for supply for details. It was expected that he should have categorically denied the observations touching the working of the applicant in that request. This has not been done. Further, the said request also is conditional one where filing of further representation may be undertaken and in that event, he is satisfied that the details desired by him are furnished to him. The application, therefore, is hit by section 20 of the Administrative Tribunals Act, 1985 as the applicant has not exhausted the departmental remedy.

6. The other entry against the applicant is regarding the poor organising capacity and the respondents in para B(III) at page 24 of the counter and page 234 of the paper-book have given details which justify the giving of the entry to the applicant. The learned counsel for the respondents also pointed out that there are a number of documents on record which go to show that the applicant has been whiling away his time making representations.

7. The applicant in the rejoinder, however, had denied these averments made in the counter. In any case, the documents on record go to show that applicant was whiling away his time in questioning respondent no.2 for giving work to other persons who were not even found capable for the same.

8. The learned counsel for the applicant basically regarding the mode and manner of giving entries in ACR which are most important in the future career of a Government servant has referred to the O.M. of October 1961 issued by the Ministry of Home Affairs. Having given a careful consideration, it is evident on record that the applicant was on 'french leave' even in the working hours. The learned counsel for the applicant, however, argued that the respondents were in their right to correct and guide the applicant at the proper time. This may be one of the line of actions on the part of the administration but that does not deprive the reporting officer from making observations regarding the working of the person concerned under him to comment in the manner the work was performed. The learned counsel for the applicant referred to the annexure at page 92 of the counter/page 303 of the paper-book which goes to show that not on one or two occasions but repeatedly the applicant on his own volition went out in the office hours on certain unofficial work regarding his person or his family affairs. The adverse remarks given to the applicant, therefore, is the picturisation of this action of the applicant during the period under review. A person who does not perform regular work also becomes

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irregular in the organising capacity and draws the same inference. Therefore, the other remarks also cannot be faulted with.

9. This Tribunal cannot substitute its own opinion or now after years together enter into objective analysis of the working of the applicant on a post which is of expert nature. Science by itself is a disciplined subject and persons of Science can very well ^{attend} ~~attend~~ append their actions regularly while doing project work or other such expert work assigned to them. The learned counsel for the applicant also argued that since the applicant has not made any representation, now he should be given an opportunity. This argument has no basis at this stage.

10. In view of the above facts and circumstances, we find no merit in this application and is, therefore, dismissed. No costs.


(B.K.SINGH)
MEMBER(A)


(J.P.SHARMA)
MEMBER(J)

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