

5 6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 57
T.A. No.

1987.

DATE OF DECISION 24.9.1987

Dr. Hari Dev Goyal, Petitioner

Shri B.R. Sharma, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mrs. Kiran Chaudhary, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P. Mukerji, Administrative Member.

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.


(S.P. MUKERJI)
ADMINISTRATIVE MEMBER

67

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: DELHI

....

Regn.No.OA-57/1987

Date: 26.9.1987

Dr. Hari Dev Goyal

... Applicant.

Versus

Union of India & Ors.

... Respondents.

For Applicant.

... Shri B.R.Sharma,
Advocate.

For Respondents:

... Mrs. Kiran Chaudhary,
Advocate.

CORAM: Hon'ble Shri S.P.Mukerji, Administrative Member

JUDGEMENT

The applicant who is a Member of the Indian Economic Service has moved this application under Section 19 of the Administrative Tribunals Act for the expunction of the adverse entries communicated to him for the years 1979-80 and 1980-81. The case in brief is that from the Planning Commission he was sent on deputation to Chandigarh between between 29.9.79 and 1.3.1981 as General Manager, District Industries Centre under the Director of Industries of Chandigarh Administration. His reporting officer was Director of Industries, Reviewing Officer was Home Secretary and Counter signing Officer, Chief Commissioner, Delhi Administration. The adverse report for 1979-80 communicated to him was as follows:

"Although your overall performance during the period under report has been assessed as just average, your performance has been assessed as poor with regard to attention to details, judgement relating to administrative as well as technical matters and willingness to accept responsibility and take decisions. It has also been reported that you are more suited to secretariat work than field work. It has been further noted that as an officer you were a great disappointment and were not found fit for promotion to the next rank."

52
The adverse report for the period 1980-81 as communicated to him was as follows:

"that your performance during the period under report

has been assessed as poor with regard to attention to detail, judgement relating to administrative as well as technical matters and willingness to accept responsibility and take decision. It has also been reported that you are more suited to Secretariat work than field work. It has further been reported that you were not able to do justice to the job entrusted to you. It has also been noted that your relations with subordinates are strained and indifferent with your colleagues. You did not enjoy good reputation during your tenure as G.M. District Industries Centre, and your integrity has not been above doubt. In the column of General Remarks your performance has been assessed as under:

"He is a rather poor specimen of an officer in the higher ranks. His approach to work is anything but prompt, honest and objective. A quiet, almost submissive exterior hides a scheming, insincere and very greedy tendencies."

The applicant's main contention is that these adverse reports were communicated to him with considerable delay on 23.6.1982 for the year 1979-80 and on 19.5.1984 for the year 1980-81. His further contention is that his representations and appeal against these adverse reports were rejected without giving ^{any} a reason by non-speaking orders. He has contended that contrary to the instructions issued by the Government, the Reporting Officer did not give him any previous admonition or guidance before ~~rec~~ ^hording the adverse remarks and ^{that} ~~reading~~ ^h two years' reports together, it appears that they had been written subsequently together on the same day. He has also alleged that the representation which were to be dealt with by an officer superior to the Reviewing Authority were dealt with and disposed of by the Reviewing Authority himself.

2. The respondents have admitted that the adverse remarks were communicated with delay but explained the same by stating that delay was caused due to ^{the} ~~the~~ correspondence amongst various authorities on procedure. They ~~have~~ ^h admitted that ^h the report of 1979-80 could not be signed by the Counter-Signing Authority as he had retired. They have also admitted that the representations were rejected by non-speaking orders as "it was not considered necessary to give grounds."

89

: 3 :

3. I have heard the arguments of the learned Counsel for the applicant and the respondents and gone through the documents carefully. In Gita Ram Gupta Vs. Union of India, 1979-SLJ-727, though the High Court of Delhi has observed that delay in the communication of adverse remarks is fatal as it does not serve the remedial purpose, I have some reservations, whether these observations can be applied universally in all cases. In the case before the High Court, the Reporting Officer who had recorded the remarks ^{had} ~~and~~ expired and because of the delayed communication of the adverse remarks, the representation of the officer reported upon ^{not} could be commented upon by the Reporting Officer who had expired in the meantime. Further, as the Full Bench of the Orissa High Court in S.S.S.Venkata Rao Vs. State of Orissa, 1974-Lab.IC-1192 has observed, the time prescribed for communication of adverse entry is not mandatory but directory and delayed communication cannot wipe out the adverse entry. With the latest ruling of the Supreme Court in Brij Mohan Singh Chopra Vs. State of Punjab 1987(2)SLR-54, that adverse reports which are not communicated cannot be acted upon unless they are communicated and representations are disposed of, the need to expunge adverse remarks merely because they were communicated with delay has been blunted. In any case, I do not find any malafides in the delayed communication as the delay has been explained by the respondents satisfactorily as due to bureaucratic redtapism.

4. I am, however, disheartened by the manner in which the representations of the applicant against the adverse entries were disposed of. The representation against the adverse entries of 1979-80 was disposed of by the letter of the Home Secretary dated 4.7.1983 as follows:

12

"I am directed to refer to your letter dated the 26th April, 1983 on the subject noted above and to state that your representation has already been considered and rejected by the Chief Commissioner, Chandigarh.

Yours faithfully,

Sd/-
Under Secretary Home-II,
for Home Secretary,
Chandigarh Administration."

In similar manner the representation against the adverse entries of 1980-81 ^{was} ~~were~~ disposed of by the Home Secretary in his letter of 21.11.85 as follows:

"I am directed to refer to your letter dated the 1st June, 1984, on the subject noted above and to state that your representation has been examined and it has been considered that it is not possible to accede to your request.

Yours faithfully,

Sd/-
20.11.85
Superintendent Home III,
for Home Secretary,
Chandigarh Administration."

It has been held by the various Courts that representations against adverse remarks in the character-roll have to be disposed of by speaking orders. In Dr. Gopeshwar Dutta Vs. Union of India, 1982(1)SLJ-207, the Calcutta High Court observed 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". It was further observed by them 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

B2

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 a quasi-judicial enquiry."

A similar view ~~was~~ taken by the Orissa High Court in Madan Mohan Khatua Vs. State of Orissa & Others, 1978(1)SLR 829 (Orissa) is as follows:

"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 of 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 representationist is in a position to appreciate that the grievances indicated in the representation were taken into account. A bald order indicating 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."

5. Relying on the aforesaid other ruling, the Vice Chairman of the Principal Bench on OA-511/1986, in his judgement dated 27.7.87 observed as follows:

"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 effect 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."

6. In view of the aforesaid rulings I find that the

RC

: 6 :

the representation and appeal of the applicant against the adverse remarks of 1979-80 and 1980-81 have not been properly considered. Further, in accordance with Ministry of Home Affairs O.M. No.51/14/60-Estt.(A) of 31.10.1961, "representations against adverse remarks are to be examined by an authority superior to the Review Officer." Since in the instant case, the representation against the entry of 1980-81 was rejected by the Home Secretary, Chandigarh Administration who was the Reviewing Officer and not by the Chief Commissioner who was the authority superior to the Reviewing Officer, this order of rejection is irregular on this count also and cannot be sustained.

7. In the above facts and circumstances, I allow the application to the extent of directing that the representation of the applicant against the adverse entries of 1979-80 and 1980-81 should be reconsidered by the Chief Commissioner, Chandigarh Administration within a period of 2 months from the date of communication of the order after giving an opportunity of personal hearing to the applicant. The applicant should be informed about the results of his representations and allowed to file an appeal, if any, within a period of one month after receipt of the orders on his representations and the appeal, if any, should be disposed of within a month of its receipt by the competent authority. We also direct that until the representation and appeal, if filed within time, are disposed of, the impugned adverse entries will remain inoperative and should not be acted upon for any purpose whatsoever. In the circumstances, there will be no order as to costs.

Sill
(S. P. Mukerji)
Administrative Member
25-9-87