

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

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

822 198 7

DATE OF DECISION 7.12.87

Shri Tilak Raj

Petitioner

Shri R.P.Oberoi,

Advocate for the Petitioner(s)

Versus

Union of India & others

Respondents

Shri P.P.Khurana,

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Kaushal Kumar, 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*
4. Whether to be circulated to all the Benches? *No*

h. kumar
(Kaushal Kumar)
Member
7.12.87

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Central Administrative Tribunal
Principal Bench: Delhi

Regn. No. OA 822/87

Date of decision: 7.12.87

Shri Tilak Raj

....

Applicant

Vs.

Union of India & others

....

Respondents

Coram: Hon'ble Mr. Kaushal Kumar, Member.

For the Applicant

....

Shri R.P.Oberoi, Counsel.

For the Respondents

....

Shri P. P. Khurana, Counsel

(Judgement delivered by Hon'ble Member Shri Kaushal Kumar)

This is an application under Section 19 of the Administrative Tribunals Act, 1985 wherein the applicant, who was appointed as a Cantonment Executive Officer in the Military Lands and Cantonments Service with effect from 12.8.1975 and is presently working in the senior time scale of the said service, has challenged the adverse remarks for the calendar year 1985 communicated to him vide Confidential Memorandum dated 10.2.1986 (Annexure I to the application). The main ground for challenging these adverse entries is that the representation made by the applicant against the said remarks was disposed of by the Reviewing Authority which was not competent to dispose of the same.

2. The applicant had made a representation on 28.2.1986 against the said adverse remarks communicated to him on 10.2.1986. The same was disposed of by the Director General, Defence Estates through a non-speaking order vide his letter dated 16.6.1986 (Annexure III to the application). The same is extracted below:-

Confidential/Registered
No. 106/8/ADM/D.E./TR-94
Dte. General Defence Estates,
Min. of Defence,
Govt. of India,
West Block No.4, R.K.Puram,
New Delhi-1100 66.

h. mawal

Dated: 16 June, 1986

To

The Director, Defence Estates (By name)
Ministry of Defence,
Western Command,
Panchkula- 134108

Sub: Annual Confidential report for the year 1985
(Representation) Shri Tilak Raj.

Reference your letter No.C/9/Offrs/Adv.Remarks/C.C/D&C
dated 25-- March, 1986.

2. Representation No.R/ACR/TR/85 dt.28 Feb., 1986 made by Shri Tilak Raj, D.E.O., B&C Circle, Danapore Cantt- against the adverse remarks endorsed in his Annual Confidential Report for the year 1985 have been examined by the undersigned.
3. The representation of the Officer is hereby rejected.
4. Please inform the Officer accordingly.
5. Please acknowledge.

Sd/-

Director General
Defence Estates. "

3. The above facts are not disputed by the Respondents. It is admitted that the Director General, Defence Estates, who had disposed of the representation was himself the Reviewing Authority. The stand of the Respondents as mentioned in paragraph 6.15 of the counter is that ".... Since in this case, the adverse remarks were given by the Reporting Officer, consideration of the Representation by the Reviewing Officer who also functions as the Head of Department, was administratively in order. Consideration of the representation by officer of appropriate status in the Ministry of Defence would have been rather unfair to the Applicant as such officers are neither aware nor are expected to be aware of the performance of individual field Officers of the service."

4. The stand taken by the Respondents is not tenable. in view of the clear instructions issued by the Government of India from time to time. The instructions issued by

M. B. D.

the Ministry of Defence vide their Circular No.106/3/ADM/I&C/75 dated 6.12.1975(Annexure V to the application) clearly envisage in clause (vi) thereof that the "representations against adverse remarks will be disposed of by the authority superior to the Reviewing Officer, who may, at his discretion, consult the Reporting/Reviewing Officer before arriving at a decision." Instructions issued by the Department of Personnel and Administrative Reforms vide their Memorandum No.21011/1/77-Estt.A dated 30.1.78 also lay down that all representations against adverse remarks should be decided expeditiously by the competent authority and in any case, within three months from the date of submission of the representation. It is contended by the learned counsel for the Respondents that in this case the Reviewing Authority merely endorsed the remarks of the Reporting Officer. Even so apart from the Government of India instructions on the subject, the principles of natural justice and equity require that a representation against the adverse remarks should be disposed of by an authority higher and other than the Reviewing Authority.

5. In the light of the view which is being taken, it is not considered necessary to deal with the other contentions raised in the application. The application is allowed to the extent that the case is referred to the competent authority for disposal of the representation made by the applicant against the adverse remarks in accordance with rules and law on the subject within a period of three months from the date of receipt of this order by the Respondents. It is further directed that the adverse remarks for the year 1985 shall not be taken into account for any purpose affecting adversely the service interests of the applicant such as promotion, confirmation or pre-mature retirement etc.

Sh. Naresh

till the representation is finally disposed of.

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

K. Kumar

(Kaushal Kumar)
Member
7.12.1987