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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Dated Friday the twentieth day of January, one thousand nine hundred and eighty nine.

PRESENT

Hon'ble Shri S.P. Mukerji - Vice Chairman

ORIGINAL APPLICATION NO.1055/87

V.K. Gupta .. Applicant

Versus

1. Union of India through
Secretary, Department of
Statistics, Ministry of
Planning, New Delhi.

2. The Under Secretary
(Shri Mukul Roy),
Department of Statistics,
Ministry of Planning,
New Delhi.

.. Respondents

Applicant in person.

Counsel for the respondents: Smt. Rajkumari Chopra

ORDER

Hon'ble Shri S.P. Mukerji, Vice Chairman

Shri V.K. Gupta, Sr. Investigator of the Central Statistical Organisation of the Department of Statistics has filed this application dated 25.7.87 under Section 19 of the Administrative Tribunals Act praying that the warning order dated 14.4.87 should be set aside. It appears that while working in the Research and Reference Division of the Central Statistical Organisation at Patel Bhavan he was transferred to another Division of the same organisation situated a few kilometres away in New Delhi. He represented on 15.12.86 against the

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transfer and in his representation he made some adverse comments against his Assistant Director.

A Memorandum dated 28th January, 1987 was served on him indicating that the allegations made by him in his representation against the Assistant Director were found to be baseless and that he ~~is~~ found to ^{had fun} have committed some acts of misconduct while working in the Research and Reference Division which are unbecoming of a Government servant. These acts referred to his resenting against allocation of work, his refusal to accept written note from the Assistant Director, his avoidance and delaying work assigned to him and his misconduct by alleging incompetence on the part of his Assistant Director. He submitted his explanation to the Memorandum on 9.2.87 after considering which the impugned order was passed in the following terms.

MEMORANDUM

Subject: Acts of misconduct committed by Shri V.K. Gupta, Senior Investigator, while working in the Research and Reference Division of CSO.

Shri V.K. Gupta, Senior Investigator, Central Statistical Organisation, New Delhi, is informed that his explanation dated 7.2.87 for the acts of misconduct listed in this Department's Memorandum of even number dated 9th Feb. 1987 has been considered very carefully by the Competent Authority but the same has not been found satisfactory.

2. The competent authority has therefore decided that Shri Gupta may be warned to be careful and avoid such lapses in future. Accordingly Shri V.K. Gupta is warned to be careful and to avoid such lapses in future.

3. The competent authority has also decided that a copy of this Memorandum may be kept in the CR. Dossier of Shri V.K. Gupta".

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2. His appeal was rejected by a non-speaking order. According to the applicant the impugned warning was passed due to malafides and he had represented against his transfer and was in relation to ^{some} ~~the~~ alleged conduct of his, which was in 1986, whereas the Memorandum was served on him long thereafter.

3. The respondents have stated that the applicant's representation against the Assistant Director was enquired into by the Deputy Director and it was found that the allegations made by the applicant against the Assistant Director were factually not correct. The report of the Deputy Director also reveal certain ^{conduct} ~~actions~~ on the part of Shri Gupta which was blameworthy. A Memo was served ¹⁹⁸⁷ on him on 28th January ^{to explain} why suitable action should not be taken against him "for the acts of misconduct listed in the Memo." The respondents have further mentioned in the Counter Affidavit that "this memo was not a memorandum of charges for penalties under Rule 16 of the CCS (CCA) Rules but an administrative ^{Memo} ~~for~~ was seeking explanations of Shri Gupta for certain acts of mis-conduct on his part which came to the notice of the administration while investigating certain allegations made by Shri Gupta himself. After duly considering the explanation given by Shri Gupta, a recordable warning was issued to him vide Memo dated 14th April 1987 with the approval of the Director General, CSO." (Umashankar added)

4. I have gone through the documents as also the written arguments filed by the applicant and the learned counsel for the respondents. The Delhi High Court in Nadhan Singh Vs. Union of India and others, 1969 SLR 24 observed that a warning placed on the C.R. Dossier "was intended to be ^{taken} taken into consideration for that assessing the official career of the petitioner and is likely to be effected, the same adversely since the Memorandum itself states that the copy of the communication has been placed in the character roll of the petitioner. Under these circumstances, in my opinion notwithstanding the word 'warning' used in the said Memorandum, that Memorandum really imposed penalty of censure on the petitioner based on the finding that he was guilty of mis-conduct....." In view of the aforesaid ruling ^{which} with which I respectfully agree, I find that the recordable warning is tantamount to censure as contemplated in Rule 11 of the CCS (CCA) Rules and ^{could not} cannot be awarded to the applicant through an administrative Memo as admitted by the respondents, outside Rule 16 of the CCS (CCA) Rules. In the circumstances I set aside the impugned Memorandum dated 14.4.87 as also the Memorandum dated 16th July, 1987 rejecting his representation, and direct that the Memorandum should be physically removed from the C.R. Dossier. The respondents, however will be at liberty to initiate disciplinary proceedings, if so advised, in accordance with law.

5. There will be no order as to costs.