

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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R.A. No. 15

Date of decision 2/2/93

in

O.A. No. 1345/89.

SHRI S.K. SINHA

V/s

UNION OF INDIA & OTHERS

This Review Application has been filed in respect of the judgement delivered on 29th September, 1992 in O.A. No. 1345/89. The petitioner in R.A. has admitted that a copy of the judgement was received by the Counsel of the applicant towards the end of October, 1992 by post. The R.A., however, has been filed on 12.1.1992, much after expiry of the prescribed period of 30 days. The reason adduced for the delay is communication gap between the applicant and his counsel who was either pre-occupied or out of station periodically. This is not sufficient cause to condone the delay. Nevertheless, we proceed to examine the review application on merit as well.

2. There has been no denial of reasonable opportunity to the applicant in the case. The O.A. was against adverse remarks in ACR of 1982-83. The representation of the applicant against adverse remarks, the appeal against

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rejection of representation and the memorial against rejection of appeal were all considered and rejected.

3. It has been contended in the R.A. that the ACR was not written until September, 1983 as evident from Annexure A-9. Annexure A-9 is the communication of adverse remarks on 14.9.1983. The respondents have stated that ACRs for 1982-83 were finalised in June, 1983 (page 7 of the counter, para 5(vi)). The mention of date 14.7.1983 as the date of communication of adverse remarks in para 11 of the judgement was a typing error. It should have been 14.9.1983 but that does not alter the tenor or analysis of the case in the application. It was observed in para 11 of the judgement that the applicant's report was finalised in June 1983 which cannot be termed late. Even if there was some delay according to the guidelines, these guidelines are obligatory in nature and not mandatory. There is nothing mandatory about the instructions of the Government of India about the time period for writing reports or communicating adverse remarks. The instructions are not statutory in nature and they cannot be treated as a condition, non-compliance of which will invalidate the remarks. There are no rigid time limits. Of course, it is not intended that directory provisions need not be complied with even substantially

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but in this case the delay is not so inordinate as to direct invalidation of the remarks. The reports, as mentioned above, for the year 1982-83 were written in June, 1983 and communicated to the applicant in September, 1983.

4. The petitioner has again stressed in R.A. that Shri Vinod Sharma was not competent to write the ACR for 1982-83 since the applicant had worked under him between 10th September 1982 to 3rd December 1982 i.e. less than three months. The respondents have stated in the counter that the applicant had worked under the supervision of Shri Vinod Sharma from 7.9.1982 to 6.12.1982 and again from 27.2.1983 to 6.3.1983 i.e. for more than three months. They have stated that the applicant was transferred to Tezpur on 28.2.1983. The decision of J.O. Shillong on his representation against transfer order was conveyed on 4/5.3.1983, whereupon he at joined Tezpur on 7.3.1983. Be that as it may, the applicant has worked for nearly three months under Shri Vinod Sharma and this was the maximum period for which he had worked during the year under an officer. His assessment was done at more than one level since the Reviewing Officer had also remarked on the work and he had worked under the Reviewing Officer for more than three months. The applicant

took over at Srinagar on 18.4.1982. He was relieved on 14.6.1982. He joined at Tezpur on 23.6.1982. He was posted to Itanagar under Assistant Director from 17.7.1982. From 10.9.1982 to 3.12.1982, according to the statement of the applicant himself, he worked under Vinod Sharma. He took over at Tezpur on 7.3.1983. Therefore, it is obvious that for the maximum period during 1982-83 and for very nearly three months, the applicant had worked under Shri Vinod Sharma. Moreover, what was important was the assessment at more than one level and this was done. Since the Reviewing Officer had given his remarks and since remarks of the Reviewing Officer would have an over-riding effect, no prejudice can be said to have been caused to the applicant.

5. The petitioner has again agitated that the ACR related to 1982-83 and the suspension order was issued in April, 1983 and a mention of this matter should not have been done in the report of 1982-83. We do not see how the applicant was prejudiced if the fact of suspension was mentioned in the Report which was written in June 1983. The suspension is a fact and even otherwise a copy of the suspension order and a copy of the penalty later imposed could have been placed in the ACR of the officer at the appropriate time, when orders were passed. The suspension order was dt. 29.4.83.

6. The petitioner has further said that he had challenged

the adverse remarks on eleven grounds mentioned in his application. These grounds related to malice, non-competence, non-communication of adverse remarks in time, succumbing of Shri Vinod Sharma to the allure-ment of Shri Kamal Kumar, Assistant Director, non-competence of Shri Kamal Kumar to review ACR, covering of the suspension in April 1983 in the ACR for 1982-83, non-communication of adverse remarks within one month, the efforts made by the Reporting and Review Officer by way of guidance and admonition, non-qualification of Shri Vinod Sharma and Shri Kamal Kumar to write ACRs as they were simply graduates from science, subjectivity of remarks, non-decision of representation within six weeks. A perusal of the judgement will show that all the important aspects of the case have been discussed in the judgement. It is not necessary to deal with each and every point which may not be very relevant e.g. was it necessary to deal with the point that Shri Vinod Sharma and Kamal Kumar, being simply graduates, were not qualified to appraise the capability of the applicant. Regarding the absence of reasons in the order rejecting the representation of the applicant, the judgement has brought out that as held

in the case of Union of India versus E.G. Nambudiri

[AIR 1991 SC 1216_7] while rejecting the representation against adverse remarks the absence of reasons in the rejection order will not by itself render the order illegal. The representation, the appeal and the memorial of the applicant against the adverse remarks were considered at different levels and each was rejected.

7. It is desirable that an officer who lacks in certain qualities is cautioned in time for guidance and for steps. corrective. His own application (in para 4 (xiv), (xvi), (xvii) and (xvii)) shows that some cautioning was done and in any case there is no mandate that a written warning or admonition is a pre-requisite to an adverse entry.

8. The question of malice was also discussed in the judgement in para 12.

9. It may be mentioned that by a review application the petitioner cannot re-agitate or restress covered grounds. A mere repetition of old and over-ruled points, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient for a review. The review of a judgement is a serious step and reluctant resort to it is proper only

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where a glaring omission or patent mistake has crept in earlier by judicial fallibility. If the decision in the judgement was erroneous on merits, the remedy does not lie in filing a review petition but it would be within the province of a court of appeal.

10. In view of the above, the Review Application is dismissed both on grounds of limitation as also on merit.

I.P. Gupta
(I.P. Gupta) 2/2/93
Member (A)