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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

R.A.No.281 of 1994 in
OA No.2069 of 1989
MA Nos. 1494 and 1495 of 1994

New Delhi this the 8th day of November, 1994

Mr. Justice S.K. Dhaon, Vice-Chairman
Mr. B.N. Dhoundiyal, Member

Shri B.D. Makkar
R/o D-13 D, MIG Flat,
Mayapuri,
New Delhi.

...Applicant

By Advocate Shri K.B.S. Rajan

Versus

1. Union of India through
the Secretary to the Govt. of
India,
Min. of Surface Transport,
Transport Bhavan,
New Delhi.
 2. Director General (Road Development),
and Additional Secretary to the
Government of India,
(Roads Wing) Transport Bhavan,
New Delhi.
- ...Respondents

By Advocate Shri M.M. Sudan

ORDER (ORAI)

Mr. Justice S.K. Dhaon, Vice-Chairman

This is an application seeking the review of the judgment given by a two member Bench of this Tribunal presided over by Hon'ble Mr. Justice V.S. Malimath, the then Chairman.

2. In O.A. No. 2069 of 1989, the controversy pertains to the promotion of the applicant to the post of Superintending Engineer, a selection post. One Shri N. Subba Rao, a gentleman junior to the applicant was promoted to that post. Feeling aggrieved by his supersession, the applicant made a representation on 11.07.1988, which was

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rejected by an order dated 3.1.1989. The said order was challenged in the O.A.

3. It appears that by a communication dated 27.02.1986, the applicant was given a minor penalty of warning. It also appears that no representation was made by the applicant against the said warning. It also appears that in the ACR for the years 1984-85 and 1985-86, adverse remarks were given. He made a representation against the said remarks which was rejected by a letter dated 23.02.1987.

4. In the representation dated 11.07.1988, no doubt the applicant made a grievance with respect to the aforesaid warning and the adverse remarks given for the years 1984-85 and 1985-86.

5. In the O.A., the thrust of the argument was that one Shri J.C. Bhandari, who was not well disposed ^{towards} the applicant had given motivated entries to the applicant for the years 1984-85 and 1985-86. The Tribunal, in a well considered judgment, has recorded the finding that the Departmental Promotion Committee while considering the case of the applicant for promotion to the post of Superintending Engineer must have taken into account the warning given to him (the applicant) and the entries in his ACRs for the years 1984-85 and 1985-86. In view of the allegations of so called mala fides made against Shri Bhandari, the Tribunal felt it proper to go into the question of legality of the warning as well as the aforesaid adverse entries. The Tribunal felt that the applicant having slept over the orders dated 22.07.86 and 23.02.87, those orders could not be permitted to be challenged

by an indirect method of challenging the legality of the order dated 3.1.1989 whereby his representation against his supersession has been rejected. It felt that the proper course for the applicant would have been ^{to} challenge the said orders dated 22.07.86 and 23.02.87 directly by taking appropriate proceedings before this Tribunal. Eventually, it recorded the finding that the attack on the said orders was a belated one and it, therefore, declined to interfere.

6. Learned counsel has vehemently urged that the Tribunal committed an error in giving its judgment without disposing of the applications filed by him. Those applications are MA No. 1494 and 1495 of 1994. In MA No. 1494 of 1994, the prayer was as follows:-

"Due to lack of character on the part of Shri J.C. Bhandari, the applicant has been suffering for odd 10 years. In view of the submissions made above, the applicant most respectfully prays that this Hon'ble Court may graciously be pleased to expunge the CRs of the applicant written by Shri J.C. Bhandari, as reporting officer and substitute the grading of the subsequent years of his CRs as follows....."

It is evident that the substance of the prayer in the application was that since Shri Bhandari's conduct itself was bad, he was disqualified to give any entry in the ACR of the applicant. This argument has to be rejected as slated. The bad conduct of a superior officer cannot entitle him from giving an adverse entry to his subordinate.

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7. In MA No.1495 of 1994, the prayer was that the respondents may be directed to produce the record of the applicant containing the ACR for the years 1990-91 to 1993-94 for the inspection of the court. Even if the application had been allowed and the record had been summoned and the same had been perused by this Tribunal, the result, in our opinion, would not have been different from the one which has emerged in the judgment under review. We have already indicated that the Tribunal has taken the view that the warning given to the applicant on 22.07.1986 and the adverse entries given to him in the ACR for the years 1984-85 and 1985-86 on 23.02.1987 had attained finality in so far as they had not been challenged in an appropriate form within time. Those, according to the Tribunal, were enough to enable the Departmental Promotion Committee to come to the conclusion that the applicant did not deserve a promotion to the post of a Superintending Engineer.

8. Learned counsel has next urged that the representation has been disposed of not by the superior authority but by the same officer who had given the adverse ^{entries}. We have gone through the contents of the grounds raised in the O.A. and we are unable to find even a whisper of this plea. However, learned counsel has drawn our attention to paragraph 4.17 of the O.A., wherein the material averments are these:-

".....The orders rejecting the applicant's representation being cryptic and non-speaking are also bad in law....."

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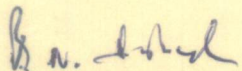
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
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We may at this stage note that the applicant failed to appear before the Tribunal at the time of hearing of the O.A. and the judgment was given by it after perusing the records and after hearing the learned counsel for the respondents. It cannot be said that, by reading the aforequoted averments any reasonable person could have drawn the inference that the said averments conveyed the idea that the representation of the applicant had not been disposed of by a competent authority. Therefore, the Tribunal did not commit any error much less an error apparent on the face of the record in not dealing with the contention which is sought to be raised now.

9. We are satisfied that the provisions of Order 47 Rule 1 of the Code of Civil Procedure are not attracted to the facts and circumstances of the present case. Our jurisdiction to review our judgment/order is circumscribed by the said provisions.

10. The Review Application is rejected but without any order as to costs.


(B.N. DHOUNDIYAI)
MEMBER (A)


(S.K. DHAON)
VICE CHAIRMAN

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