

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 1554/90
~~ExxNox~~

199

DATE OF DECISION 16.9.91

SHRI S.B. JAIN	Petitioner APPLICANT
SHRI B.S. MAINEE	Advocate for the Petitioner(s) APPLICANT
Versus	
UNION OF INDIA & OTHERS	Respondent ^s
SHRI N.K. AGGARWAL	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. JUSTICE RAM PAL SINGH, VICE CHAIRMAN

The Hon'ble Mr. R. VENKATESAN, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT

(Delivered by Hon'ble Mr. R.
Venkatesan, Administrative Member)

The applicant is an Asstt. Engineer who has come before this Tribunal with the prayer to quash an order dt; 6.7.1989 communicating an adverse entry for the year ending 31.3.1989, and an order dated 19-7-89/1-8-1989 rejecting his representation against the above adverse entry. A further prayer of the applicant is to direct the respondents to consider the applicant for promotion without taking into consideration the above adverse confidential report which was communicated to the applicant in 1989. A third prayer is to direct the respondents to place the applicant on the panel at the appropriate place in accordance with the Railway Board instructions contained in their letter dated 15.5.1987,

..2..

Dhruv

which provides that a Class II Officer obtaining 17 points in the C.R's of the last 5 years is fit for promotion in the senior cadre.

2. From the narration of the prayers given above, it may be seen that the second prayer is to an extent consequential to the first, but the third prayer is not necessarily consequential to the earlier ones. A further reason for disregarding the third prayer is that the letter dt.15.9.1987 applies only to DPCs held upto the year 1989 and not later, as has been explained by the respondents, and the second prayer already covers the DPC of 1989. Accordingly, we shall confine ourselves to the first two prayers.

2. The applicant says that he joined the Railway Service as an Inspector of Works (IW) on 15-10-1956. By dint of hard work, sincerity and dedication, he got promotion as an Assistant Engineer on 23-5-1986. Through-out he had a blot-less record of service. For the year ending 31-3-1989, an adverse entry made in his confidential report was communicated to him by letter dated 6-7-1989 issued by the Respondent no.1. He submitted a representation dated 11-7-1989 to Respondent no.1 pointing out that he had done his work as Assistant Engineer (Water Supply) satisfactorily, that he had achieved all the targets, that at no time any complaint or deficiencies were pointed out to him. The Respondent no.1 rejected the representation in his letter dated 19-7-1989/1-8-89 by a non-speaking cryptic order. Consequent to the adverse entry in the ACR, he was superseded by several of his juniors for the post of Senior Civil Engineer in the panel published on 28-7-1989 and again in another panel published on 13-7-1990. The applicant further states that the Railway Board has issued instructions in its D.O.Letter No.87/289-B/SECY/ADMN dated 15-5-1987

indicating norms to be observed for selection/promotion and the Respondents have not considered his case in accordance with these norms. The applicant, therefore, contends that his non-inclusion in the panels is contrary to the instructions and, therefore, seeks a direction to the Respondents to consider him for promotion without taking into consideration the adverse confidential report which was communicated to him in the year 1989.

4. The main arguments of the learned counsel for the applicant, Shri B.S. Mainee on the first prayer of the applicant are :

(i) The rejection of the representation against the adverse remarks in the confidential report by a cryptic, non-speaking order is not sustainable. A number of judicial decisions have been cited.

(ii) The ACR for the year 1988-89, according to the counsel is graded "average" and further that he is not fit "for promotion". Counsel contended that it was incumbent on the supervisory officer to have indicated in what respects his performance was. He further contended that the remark "not fit for promotion" was adverse and ought to have been communicated to the applicant, but had not been so communicated.

(iii) It was incumbent on the respondents to have communicated not only the adverse remarks in the C.R. but also the favourable remarks and cited a judgement of the Madras Bench of this Tribunal as well as a memorandum of the Ministry of Home Affairs dated 20.05.1972 in this connection.

5. The learned counsel for the respondents refuted the above contentions of the counsel for the applicant and referred to various paragraphs of the reply affidavit in this regard. He also made available the C.R. file of the applicant as passed by the Tribunal. On the allegation that the applicant

respondents had rejected the representation of the applicant by a non-speaking order without application of mind, he referred to the paras in the reply affidavit dealing with paras 4.12 to 4.14 of the Application in which the Chief Engineer (General)'s remarks on the representation ^{which} had been recorded in the file in the following terms *have been reproduced*:

" Achievement mentioned by the officer in his representation was not entirely due to the efforts but by others. In fact, the officer made very little contribution in regard to progress achieved. Further the officer did not make any personal attempts to improve the output of machines and even a Truck of the organisation remained idle for a long time. "

The rejection of the representation had been done keeping these observations in view. The allegation that the applicant had not been told about his short-comings had also been denied in the reply to para 4.7 of the application, stating that the applicant's weaknesses had been pointed out to him several times by his superior officers.

6. As regards the contention that not only adverse remarks but also favourable remarks should be conveyed, the reply affidavit states that according to the established practice in the Railways, only adverse remarks are communicated, in order that they may improve themselves, in the areas adversely communicated upon.

7. In dealing with the first prayer regarding the above adverse remarks for the year ending 31.3.1989 and the arguments and averments related thereto, we first wish to cite a recent decision of the Supreme Court in Union of India Vs. E.G.Nambudiri (1991)3 SCC 38 delivered on April 23, 1991 in which the law has been comprehensively laid down in regard to representations against adverse entries in confidential reports. In

...5...

Da

that case, a Government servant represented against the adverse entries in his ACR which was rejected by a non-speaking order. The Central Administrative Tribunal quashed the order as being violated ⁱⁿ law, in the absence of ^{reasons} ~~names~~. The Supreme Court allowed an appeal by the Govt. against the above decision. The following are relevant extracts of the judgement :

"There is no dispute that there is no rule or administrative order for recording reasons in rejecting a representation. In the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a Govt. servant against the adverse entries, the competent authority is not under any obligation to record reasons. But the competent authority has no licence to act arbitrarily, he must act in a fair and just manner. He is required to consider the question raised by the Govt. servant and examine the same, in the light of the comments made by the officer awarding the adverse entries and the officer countersigning the same. If the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons. In the absence of any statutory or administrative provision requiring the competent authority to record reasons ^{or} to communicate reasons, no exception can be taken to the order rejecting representation merely on the ground of absence of reasons. No order of an administrative authority communicating its decision is rendered

Ry

illegal on the ground of absence of reasons ex facie and it is not open to the court to interfere with such orders merely on the ground of absence of any reasons. However, it does not mean that the administrative authority is at liberty to pass orders without there being any reasons for the same. In governmental functioning, before any order is passed issued, the matter is generally considered at various levels and the reasons and opinions are contained in the file (and) enable the competent authority to formulate its opinion. If the order as communicated to the Govt. servant rejecting the representation does not contain any reasons, the order cannot be held to be bad in law. If such an order is challenged in a court of law, it is always open to the competent authority to place the reasons before the Court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence before the court to justify its decision. "

8. Following the above decision of Supreme Court, we do not find that we are called upon to quash the order communicating the rejection of the representation there against. It is not necessary that while communicating an adverse entry, any reasons or instances supportive of the adverse remark should be given. A non-speaking order rejecting a representation against an adverse remark is not per se bad in law, so long as there is evidence in the records of the authority considering the representation to show that the representation has been rejected after due consideration and for valid reasons. In

...7...

P₂

the present case, as pointed out by the respondents in their reply, there is evidence of such consideration of the representation by the Chief ^{Engineer} Enquiry (General). It cannot, therefore, be said that the representation was rejected arbitrarily or for no reasons at all. As regards the prayer that the order communicating the adverse entry for the year ending 31.3.1989 must be quashed, what this amounts to is that we should sit in judgement over the administrative authority recording the annual confidential report. In the judgement of this Tribunal in P.N.Gandhi Vs. Union of India, (ATR 1989 (2), CAT 32), it has been held, "The entries in the C.R. are the function of the executive, i.e., the Departmental Authorities. A representation is allowed to be made which is considered by the superior departmental authorities. The Tribunal has to accept the entries as they are unless it is shown that they are made mala fide." (emphasis supplied). We are in entire agreement with the above decision. In the present case, no mala fides have been established by the applicant against the respondents in giving the adverse entry. Accordingly, we find that we cannot quash the communication of the adverse entry for the year ending 31.3.1989.

9. The contention that the C.R. for the year ending 31.3.1989 contains the adverse entry that he was not fit for promotion and that this was not communicated and consequently entry should not have been taken into account, does not have substance. As seen from the letter of the Secy., Railway Board dated 15.5.87 to the G.O.^{M.}I., Northern Railway which the counsel made available during the hearings, the C.R. classifications are as under :

Classification

Marks

...8...

Q

<u>Classification</u>	<u>Marks</u>
Outstanding	5
Very Good	4
Good	3
Good/Not fit(for promotion)	2.5
Average	2
Below Average	1

From the above, it is clear that fitness for promotion is implied in the gradings "outstanding" and "very good", that it is not implied in all cases of "good" C.R.'s which are, therefore, categorised as "good but not fit", and "good" implying "fit for promotion". In the C.R. classifications below "good", it is reasonable, therefore, to conclude that the persons are not fit for promotion, especially as "average" and "below average" are considered adverse entries. As per the contention of the applicant, he was graded "average" for the year ending 31.3.1989. If so, by implication, he was not fit for promotion and there was no need for specific communication that he was "not fit for promotion". The communication of entries in C.Rs. is done as per administrative orders and not as per any statutory rules. The provision in law in this regard has been stated in the judgement of the Supreme Court which we have referred to, in the following terms :

" Entries made in the character roll and confidential report of a Govt. servant or confidential and those do not by themselves affect any right of the Govt. servant, but those entries assume importance and play vital role in the matter relating to confirmation, crossing of Efficiency Bar, promotion and retention in service. Once an adverse report is recorded, the principles of natural justice require the Reporting Authority to indicate the same to the Govt. servant to enable him to improve his

work and conduct and also to explain the
circumstances leading to the report. "

10. Above requirement has been complied with in this case. We accordingly hold that the first prayer has to be rejected.

11. Coming to the second prayer, which is to direct the respondents to consider the applicant for promotion to the post of Civil Engineer without taking into consideration the adverse confidential report which was communicated to the applicant in 1989, we find that once the first prayer is rejected, we cannot grant the second prayer. Once the adverse entry is not quashed, the respondents are bound to take into account the adverse entries in the confidential report for the year ending 31.3.1989, which had been duly communicated to the applicant and the representation against which had also been rejected before the meeting of the DPC for the year 1989.

The counsel for the applicant dwelt elaborately on the DPC for the year 1990 and certain adverse remarks for that year, but we find that neither the first two prayers, which we consider in this order, nor the grounds in the application, deal with the DPC of 1990 or the adverse remarks for the year ending 31.3.1990. In fact, these were communicated to the applicant only in January, 1991, after the application was filed. The applicant had not come before this Tribunal with a Misc. Petition for amending or adding to the prayer in the OA, in the light of the reply filed by the respondents, or in the light of adverse entry which was communicated to him for the year 1990 in January, 1991.

12. We, therefore, find that we cannot deal with the

...10...

B

adverse entries for the year ending 31.3.1990 or with the DPC proceedings for the year 1990, on the basis of the prayers for relief in this application. The applicant is, however, at liberty to file a separate application for this purpose, if he is so advised.

The application is dismissed accordingly, with no order as to costs.

R. Venkatesan
(R. VENKATESAN)
MEMBER (A)

Ram Pal Singh
(RAM PAL SINGH)
VICE CHAIRMAN

/pkk/