

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~AHMEDABAD BENCH~~
~~NEW DELHI BENCH~~

NEW DELHI BENCH

O.A. No. 1621 OF 1990 ~~198~~
~~XXXXXX~~DATE OF DECISION 26.4.1991T.L. Verma, PetitionerApplicant-in-person. ~~Advocate for the Petitioner(s)~~

Versus

Union of India & Ors. Respondent sShri K.S.Dhingra, Sr. Admn. Officer. ~~Advocate~~ for the Respondent(s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice Chairman.

The Hon'ble Mr. M.M. Singh, Administrative Member.

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?
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

T.L. Verma,
Son of Shri Madan Lal,
R/o Block 12/2B, Sector-II,
DIZ Area, New Delhi.

.... Applicant.

(Applicant-in-person)

Versus.

Union of India
Through:

1. Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. Director,
Armed Forces Films &
Photo Division,
'H', Block, Krishna Menon Marg.,
New Delhi - 110 001.

3. Shri Jawahar Lal Ralhan,
Ex-Director,
Armed Forces Films and Photo
Division, D-28, First Floor,
Gulmohar Park, New Delhi.

4. Shri Gurdeep Singh,
Deputy Director,
Armed Forces Films & Photo Division
'H' Block, Krishna Menon Marg,
New Delhi - 110 011.

.... Respondents.

(Shri K.S.Dhingra, Sr. Admn. officer
for the Respondent)

J U D G M E N T

O.A.No. 1621 OF 1990

Date: 26-4-1991.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

In this application filed under section 19 of the Administrative Tribunals Act, 1985, against adverse remarks for the two periods (16.7.86 to 31.12.86 and 1.1.87 to 31.12.87) which were separately communicated, separately represented against and separate orders on such representations issued, the reliefs sought consist of directions to expunge the two adverse remarks, declaration that the ACR assessments for the two periods were totally perverse, direction to put the

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appreciation letters of the applicant in his personal file/ACR dossier, direction to reassess the performance of the applicant for the two periods, and to order costs of the suit against the respondents.

2. We have heard the parties and perused the record including written arguments.

3. The adverse remarks for the period 16.7.87 to 31.12.86 were communicated in reference dated 11.9.87, representation against which is dated 9.10.87 and representation allegedly rejected only after the applicant filed O.A.No. 371/90 in this Bench to challenge the extension of the period of his probation.

4. Adverse remarks for the period 1.1.87 to 31.12.87 were communicated in reference dated 18.4.88 and representation dated 17.5.1988 decided by reference dated 28.12.1988 (Annex. A-16). The applicant has alleged that he came to know about this decision only from reply affidavit filed in O.A.No. 371/90, supra. However, it is to be noticed here that the reference bears endorsement of its copy to Shri T.L. Verma, Photographic Officer, AFFPD. The representation was partly allowed.

5. The two sets of adverse remarks are attacked on, by and large, similar grounds. These are that the remarks reflect gross underestimation of the applicant's performance, that the remarks are grossly unwarranted motivated by malafides on the part of Dy. Director (G) the reporting officer and the Director, the reviewing officer. The applicant has exhaustively narrated the allegations of malafides and the reasons for their nursing such attitude. The reasons consist of the applicant's proficiency accompanied by his fairness to improve performance and such irregularities and corruption which allegedly the Armed Forces Film and

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Photo Division, Ministry of Defence (AFFPD for short) was steeped in with the Dy. Director (G) and the Director, to quote from the application, "close friend as well as accomplice..... in irregular and corrupt activities which is a matter of CBI investigation now".

6. The applicant has annexed voluminous material to back his various contentions as above. But it is to be noticed that his two representations (Annexure A-11 against the adverse remarks for the first period and Annexure A-14 against the adverse remarks for the second period) are much different in contents than this original application to question the adverse remarks.

7. In Annex. A-11, the applicant says that the remark that he was never put as incharge of Photo Section refutes his claim in selfassessment that he was put as incharge for two months. We find it difficult to perceive how the applicant being or not the incharge for two months has any adverse component in it unless there are any remarks on his work as incharge and the applicant's reference is that he did not work as incharge. We find no significance of the dispute on this point for adjudication in this O.A. The applicant disputes the remarks that he had to repeat certain photographic jobs twice, claims that his work was of the best quality instead of satisfactory as stated in the remarks. He says that the report is silent on the lectures on photography he gave when on an assignment for 45 days. The applicant further says that adverse remarks and underassessments appear to be the result of a complaint he made against D.D.(G) in December 1986 alleging show of humiliating behaviour and use of derogatory language just because the applicant is a

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member of scheduled tribe. The representation contains no whisper of any allegations against the Director, the reviewing officer, who, in the OA as seen above, has been accused as an accomplice in corrupt activities.

8. In Annex. A-14, remarks on quality of performance are blamed as understatement and best performance is claimed. In fact applicant's representation about 35 mm cinematography remarks admits the remarks but alludes the same to his lack of training which AFFPD allegedly did not arrange despite his requests. While other remarks are refuted by counter-remarks, the remark about discipline and interpersonal relation is also refuted by saying that the applicant has always "given due respect" to superiors, colleagues and subordinates but took objection against abuses and attacks because of his social origin as a member of scheduled tribe. In this representation, no allegations of malice, malafides and vindictiveness have been made against any specific superior officer, including DD(G) and Director, the reporting and the reviewing officers, who have been made by the applicant object of very serious allegations in the application.

9. The representations were decided by the Ministry. There is no allegation or averment in the OA that the Ministry's decision suffered from the same prejudices and weakness of the decisionmakers as suffered of the reporting and reviewing authorities. On the contrary, the Ministry's decision ~~toned~~ down one of the two adverse remarks, namely adverse remarks for 1987.

10. It is also noticed ~~that~~ in the OA some items of bad work are virtually admitted by the applicant but explained away as arising because of poor equipment

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supplied to the applicant for the job and proper equipment not supplied despite his request. To quote the relevant from the OA on this point:

"It is pertinent to mention here that in Independence Day 1986 coverage which included the rehearsal also the applicant took several photographs out of which only three turned out to be shake. It is submitted that this defect in photo is due to slow shutter speed. This also happens during exposure, use of slow speed film in dull light of a moving object as was on independence Day function 1986. This defect cannot be attributed to the Cameraman specially when he is not provided with a fast lens/high speed film/powerful flash gun/tripod etc. as was in this case and these items were denied to the applicant despite specific request for the same..... "

We notice that the representation of the applicant against the adverse remarks attributes the defective photographs to lack of training and training not arranged despite request. Thus, in the OA the applicant has pressed into service significant new grounds also to attack the adverse remarks which grounds do not appear in the representations. He is thus found to be grossly inconsistent in his stand regarding the cause of the admitted bad work. In these circumstances, it will be reasonable to hold that while the remarks are factual and therefore justified the representation against them and the allegations in the OA unacceptable for^M the relief of expunging the remarks.

11. The very exhaustive OA backed by about 20 annexures has received equally exhaustive reply backed by about ten annexures from the respondents. From this reply, some extracts require to be reproduced being significant:-

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"The Applicant does not seem to have submitted a representation against the said remarks to the competent authority through proper channel. However, in a subsequent representation dated 19 May 88, the Applicant stated that he had represented against these remarks enclosing therewith a photostat copy of the representation dated 09 Oct 87, reportedly submitted by him. His representation was subsequently considered by an Officer of the rank of Joint Secretary to the Government of India, as the competent authority who ordered rejection of the representation as the remarks contained in the ACR referred to above were duly supported by material on record. The said authority observed that three Photographic Officers senior to the Applicant were already working in AFFPD, and that the Applicant had only one day service by that date i.e. 17.7.86. In the circumstances, there was no question of Applicant being made in-charge of Photo Section. Further, certain jobs assigned to the Applicant were not found upto the required professional standard."

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"During 1987, the Applicant was detailed for shooting of training films. The quality of cinematographic work done by him was not upto the mark. His coverages had faults like out of focus, jerky camera operation and flashes during the shots, which were show of poor workmanship. Subsequently, the applicant himself admitted these faults in his coverages and agreed that he had no experience or training in 35 mm cinematography and made a request for training. A copy of the Applicant's request is at Annexure R-II. There were also complaints against the Applicant from his superiors, colleagues and subordinates alike. Copies of some of such complaints are placed collectively at Annexure R-III. As would be evident, some of these complaints were brought to Applicant's notice in writing, other orally. But he did not show any improvement in his behaviour. Against this background, some of the adverse remarks in Applicant's ACR for the year 1987 were allowed to be retained by the competent authority. The applicant has also submitted a Memorial to the

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President of India and is under consideration with the appropriate authority."

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"(G) Because the Ministry of Home Affairs O.M. 51/14/60-Ests(A) dated 31-10-61, copy placed at Annexure R-X lays down the policy in regard to issue of letter of appreciation etc. to Government servants. The Government policy discourages the practice of granting appreciation letters, etc. to Government servants and placing them in confidential reports. However, exceptions could be made in the following circumstances :-

(i) Letters of appreciation issued by Government or Secretary or Head of Department in respect of outstanding work done should go into the confidential report dossier.

(ii) Letters of appreciation issued by special bodies, or commissions or committees etc. expressing appreciation of a Government servant by name should go into confidential report dossier.

(iii) Letters of appreciation to individual, non-official or official may go into the confidential report if confined to expression appreciation on services rendered for as a normal call of duty and provided the Secretary or Head of Department so directs.

The so called appreciation letters issued in the name of the Applicant do not fall in any of the above mentioned categories and, therefore were not required to be placed in the ACR Dossier."

12. With regard to the first extract above, the applicant in his rejoinder has asserted that he had submitted his representation. However, he has made no mention regarding the mode of its submission.

Undoubtedly, a representation can be dealt with when received by the concerned authority and not when sent by the person making it without, as in this case, even

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stating the mode of sending and the evidence of sending. The fact^{as if} that the moment the authorities came to know of the assertion that a representation was made, it was dealt with. This is normal way the Govt. Offices work and, one should say, be expected to work. The contents of the second extract find support in the applicant's own application referred to above with regard to his inadequate training in 35 mm cinematography. The third extract is based on instructions on appreciation letters the rationale of which cannot be disputed. In any case, the request of the applicant in regard to these letters could be considered only^{if} permissible under the rules. But we see that it cannot be considered being impermissible.

13. The applicant has^{also} generally attacked the reply to his representations saying that the same are devoid of reasons, are mechanical and suffer from nonapplication of mind. These allegations raise the issue about the nature of function of the authority that considers a representation against adverse remarks and the nature of the representation made. Adverse remarks do not constitute a penalty. Provision of representation against the remarks is not of the nature of an appeal against an order imposing penalty and the function of the authority competent to decide representation not the function identical with appellate authority's in deciding an appeal application against penalty. The proceedings and steps are undoubtedly not judicial. They are not even quasi-judicial as in a disciplinary inquiry. The steps are administrative. Of course, even such administrative steps have to be advised and guided by reason. But looking to the nature of functions, and subject, we are of the view that it is sufficient if reasons for

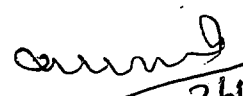
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decision are recorded in the files of the authority competent to decide the representation. We are of the view that it is not necessary to communicate the same to the applicant. The competent authority has to act fairly. If it acts on the suggestion or at the instance or prompting of the reporting or reviewing authorities, it will prima facie be acting unfairly. There is no allegation that the competent authority did not act fairly or that it was actuated by prejudice or malice. We see no circumstances ^{suggesting} that the competent authority was likely to be unfair, prejudiced or likely to be influenced by any sense of malice against the applicant. Merely because the reasons are not communicated to the applicant, the decision on the representation does not become bad.

14. It would be seen from our above discussion that the remarks are far from being entirely baseless and we notice aspects finding support in the applicant's own pleadings which support them. Presuming for the sake of argument that DD(G) nursed prejudice against the applicant as in representation against the remarks of 1986 a mention of it figures, but none figures in the representation against the remarks for 1987. There is no mention in these representations of any prejudice on the part of the Director, the reviewing authority. These representations were decided in the Ministry. There is no allegation of prejudice even in the OA against any concerned functionary in the Ministry. So far as orders not being furnished with reasons is concerned, as stated above that representation against is not an illegality to render the decision on the / the adverse remarks and the adverse remarks void.

15. The forum of the Tribunal in such contests is not to be taken as a authority before which interpersonal day to day squabbling and wrangling should be placed for

any decision or action. The Tribunal cannot discharge the duty the concerned departmental and governmental agencies have to discharge for any remedial steps if found necessary in such a situation. Equally, the Tribunal is not to decide what should and what should not figure, when the pleadings and submissions are punctuated by evidence of such squabbling and wrangling, in the annual confidential remarks. The Tribunal can only exercise extra care in applying mind to the rival record, pleadings and submissions so that it is not even unconsciously swayed away. Question of reassessment of performance for any periods can arise only when the remarks made are found to be void and rules provide for reassessment in that event. It may^{also be} mentioned that Court can give very little relief in such cases. Judicial review will come into play only in the event of arbitrariness or proved mala fides (vide Amar Kant Chowdhary Vs. State of Bihar, A.I.R. 1984 S.C. 531 at 534). In the light of the above legal position and factual analysis, we hold that no acceptable grounds are advanced by the applicant for grant of the reliefs. The application is, therefore, liable to and is dismissed. In the circumstances, there are no orders as to costs.

M. M. Singh
(M.M. Singh)
Administrative Member


(P.K. Kartha)
Vice-Chairman (Judl.)

26/4/91