

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
* * *

O.A. NO. 1855/90

DATE OF DECISION : 1.10.92

Shri Nav Ratan
vs.

...Applicant

Union of India & Ors.

...Respondents

JURAM

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Shri P.L. Mimroth

For the Respondents

...Shri P.H. Ramchandani

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

JUDGEMENT

The applicant has been working on the post of Scientist/Engineer 'SD' in Department of Electronics, Government of India and was given the charge of S.T.Q.C. Training Institute.

The applicant was working at Jaipur and has been transferred to New Delhi on 19.4.1989. The applicant has been given adverse remarks in the Annual Confidential Roll for the year 1988-89 by the OM dt. 31.5.1989 (Annexure A10). The applicant made a representation dt. 28.6.1989 which was rejected by the Deputy Secretary, Government of India by the OM dt. 15.11.89. The applicant preferred an appeal dt. 7.3.1990 against the said rejection of the representation which was rejected by the competent authority by the order dt. 13.6.1990. The applicant filed the present application on 11.9.1990 challenging

both these orders dt. 15.11.1989 and 13.6.1990 as well as
the order of giving adverse remarks for the year 1988-89
dt. 31.5.1989.

2. The applicant has claimed the relief for quashing the
adverse remarks given to him for the year 1988-89 and treating
the same as non existent on his service record.

3. The brief facts as stated by the learned counsel are
that the applicant was Incharge of S.T.Q.C. Training Institute
Electronic Test and Development Centre, Jaipur and worked
there till April, 1989. The learned counsel for the applicant
stated that though the applicant has performed his duties
satisfactorily, but his Director, Mr.G.C.Mandal became very
unhappy, highly biased and prejudiced and the present
adverse remarks for the year 1988-89 are given out of malice.
It is further stated that the Director has issued baseless
Memoranda to the applicant. The applicant has further stated
that attitude of the Director became prejudicial because
the applicant was deputed in purchasing committee for TV sets.
The applicant was not allowed to go to the market and was made
to sign on the report which was required to be submitted by the
committee after purchasing the said items. The applicant
refused because the said items were not purchased in his

presence. Certain memoranda were issued to the applicant to which he replied particularly regarding not making arrangements for video projection system promptly by 26/27.9.1988. The applicant was not given any suggestion or instruction during this period and he was issued Memorandum for absolutely no cause or complaint against him. The applicant has also stated certain incidents in the application, but these are not material to be discussed as facts of the case. Thus according to the applicant, the remarks are not objective in nature and have been given out of malice in order to harm the service career of the applicant.

4. The respondents contested the application and stated that the applicant was entrusted with the activities of S.T.Q.C. Training Institute and from time to time was assigned with other responsibilities also. But the averment of the applicant that he discharged the duties most efficiently, diligently, honestly and sincerely is wrong and denied. Further the satisfactory completion of probation period is also denied by the respondents and the probation was extended for six months from 9.3.1989 to 9.9.1989. The respondents also stated that the claim of the applicant that

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he actively participated in the curriculum development is not correct. The respondents have also filed annexures to the counter, which are the memos served on the applicant from time to time informing him about the shortcomings and the investigation done in a complaint made by the applicant (Annexure R3/4 to R3/8). The respondents also denied the allegation that the Director, Mr.G.C. Mandal was biased or prejudiced against the applicant. Thus according to the respondents, the assessment made in the ACR of the applicant for the period from 1.4.1988 to 31.3.1989 are quite justified.

5. The applicant has also filed a rejoinder reiterating the same facts as alleged in the application.

6. I have heard the learned counsel for the parties at length and have gone through the record of the case. The respondents have categorically stated that the applicant was duly served with Memoranda from time to time pointing out the shortcomings inefficiency and adamant attitude and not only this, the applicant has also replied and full details of the correspondence have come

on record. Now going through all these correspondence between the applicant and the Director, the assessment made by the Director in giving the annual remark to the applicant has to be judged in that light. The remark given to the applicant dt. 31.5.1989 (Annexure A10) is reproduced below :-

- (i) Poor in planning
- (ii) Compiles incomplete or irrelevant information
- (iii) Often assesses wrongly
- (iv) is poor coordinator
- (v) is incoherent in speech, unclear and diffused writing
- (vi) Has restricted or superficial knowledge.
- (vii) His judgement cannot be relied upon.
- (viii) is a poor organiser.
- (ix) is unable to lead or direct staff.
- (x) Has apt to be ignored
- (xi) Has difficulty at working with others.
- (xii) is Apathetic stipshed or lazy.
- (xiii) Never trusts his own judgement
- (xiv) lacks integrity.
- (xv) is irresponsible.

It is not that the applicant should enter into self praise, but the applicant has to justify that the remarks have been given to him because of malice in fact or malice in law. In the application, the applicant has pointed out certain facts by which the Director has become prejudiced against him. The allegations are levied in para-4.10 of the application. The respondents have denied that any such report was got to be signed by the applicant. In reply the respondents have stated that at one place the applicant alleged that the so called report was torn into pieces and at other place he stated in the application that

on account of pressure from the Director he unwillingly had to sign on the report. On a scrutiny of the averment made in the Original Application, this is a fact. So when a fact is contradicted by its own narration another time, it does not carry much force.

7. The contention of the applicant is that he has been given adverse remarks to spoil his career and future prospects. However, the record annexed with the counter goes to show that the applicant was instructed to complete his job in specific time which he failed to do so and a memo was issued in that regard. It is needless to discuss all the correspondence between the parties on the various memos addressed to the applicant time and again on account of his shortcomings. The departmental file was also called and seen along with his personal file. There is a definite report on record that the probation period of the applicant was extended beyond 9.3.1989 upto 9.9.1989. The present adverse remarks to the applicant have been given almost covering the same period for 1988-89. There is no challenge to the extension of the probation period by the applicant. The order dt. 7.9.1989 (Annexure A3) is

an order which extends the period of probation of the applicant with the approval of the competent authority. The copy of this order has also been served on the applicant. As said above, the present application has been filed by the applicant on 12.9.1990 and he has not assailed this order which goes to show that the applicant's probation was deferred for six months to have another watch on his performance in the course of his duties.

8. The annual remarks, of course, should not be based on extraneous considerations and should project about the actual performance of the person reported upon. The Court, of course, cannot sit over the opinion expressed as an Appellate Authority assessing the same on the basis of rival contentions. The Court on the whole has to see that there has been a proper application of mind and that the officer reported adversely during the course of the year has been duly communicated his shortcomings and guidance for further improvement in order to come upto the mark. In the adverse comments at Serial No.8, the reporting officer has mentioned it as a fact that a number of memos have been issued to the applicant and these have also been forwarded to

the Director General, S.T.Q.C. along with his assessment. Those, who have watched his work, have commented that his quality of performance is hardly worth mentioning. It is further commented that the applicant is not able to assess the responsibility of any assigned work and needs constant supervision in carrying out even simple duties. It is further commented that the officer has the tendency of blaming his staff for his own lapses. Further it is stated that sometimes the officer tries to justify his failure on the ground of ignorance or even he does not hesitate to take the shelter of lies to save himself. The revisional officer, Director General, S.T.Q.C. has fully agreed with the above remarks of the reporting officer.

9. In view of the above facts, the contention of the learned counsel that the adverse remarks have been given out of malice cannot be sustained. Annexures R3/1 to R3/10 are documents which have been annexed with the ^{counter} rejeinder. Annexure R3/2 are the copies of various letters which rebut the averment made by the applicant in para 4(iv) that he has been discharging his duties efficiently, diligently, honestly and sincerely. Annexure R3/2 runs in about 34 pages, and gives various memos and replies received from the applicant to them. The reply given by the applicant

dt. 19.12.1988 to the Director, ETDC, Malviya Industrial Area, Jaipur goes to show the language the applicant has used. For example, "Rest of the other statements in your Memorandum are false and baseless." Instead of substantiating his explanation which was called by the Memo dt. 16.12.1988, the applicant has given a reply about the lapse and the reason as to why he flatly refused to put into records the remarks in file when asked to do so. All this goes to show that the Director, Shri G.C.Mandal also basically had better opinion about the working of the applicant. But during the period under review, the applicant has only been asked about the performance of the official, work and the shortcomings found in that respect were communicated to him and he was also asked to explain certain facts. That by itself does not show that the reporting officer has not made an objective assessment of the work of the applicant during the period under review. Thus in view of the above facts, the applicant could not make a case that the remarks given to him are out of malice and not based on records.

10. In view of the above discussion, the present application is devoid of merit and is dismissed leaving the parties to bear their own costs.

J. P. Sharma
(J.P. SHARMA) 1.10.92
MEMBER (J)