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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

DA NO. 2300 DF 1990

New Delhi this the 5th day of December 1994.

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

Hon'ble Mr. S.R. Adige, Member (A)

Shri Karma Veer  
S/o Shri R.D. Gautam  
Assistant, I.C.A.R.  
Education-III Section  
Krishi Anusandhan Bhavan  
Pusa, New Delhi-12  
Resident of 432-A, Sector 19-B  
Noisa (U.P.)-201 301.

.....Applicant

( In person)

Versus

- The Union of India through
1. The Secretary to the Government of India  
Department of Agriculture & Co-operation  
Krishi Bhavan, New Delhi.
  2. The Indian Council of Agricultural Research  
Krishi Bhavan, New Delhi through  
the Director General, I.C.A.R.  
Krishi Bhavan, New Delhi.  
The Secretary, I.C.A.R.  
Krishi Bhavan, New Delhi.
  3. The Agricultural Scientists Recruitment Board  
New Delhi through  
The Chairman, A.S.R.B., Krishi Anusandhan Bhavan  
Dr. K.S. Krishnan Marg, Pusa, New Delhi.  
The Secretary, A.S.R.B.,  
Dr. K.S. Krishnan Marg, Pusa, New Delhi.
  4. Others in personal capacity
    - a. Dr. G.C. Srivastava  
Secretary, I.C.A.R.  
Krishi Bhavan, New Delhi.
    - b. Shri Mala Singh Kaundal  
Under Secretary, I.C.A.R.  
Krishi Bhavan, New Delhi.
    - c. Shri D.P. Kumar  
Under Secretary  
I.C.A.R., New Delhi.
    - d. Shri Prahlad Singh  
Section Officer  
I.C.A.R. Krishi Bhavan  
New Delhi.

( Sd/- V. K. RAO )

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..... Responding.

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J U D G E M E N T (Oral)

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

The applicant filed this application in November 1990 when he was working as Assistant in The Indian Council of Agricultural Research (I.C.A.R.), New Delhi, and has assailed the notification issued by the respondents in the year 1990 for holding a limited departmental competitive examination for the post of Section Officers. Besides, he has also grievance that the annual confidential remarks given to him for the period 1989-90 were not based on objective satisfaction of the reporting/reviewing authority and the adverse remarks conveyed to him as well as order of rejection of his representation also be quashed. He has prayed for certain action against the respondents.

2. The matter came up for hearing and the applicant appeared in person. The applicant only pressed the relief that the impugned adverse remarks be ordered to be quashed.

3. The applicant in the original application has taken a number of grounds which pertains to the reliefs claimed by the applicant as stated above. The respondents in their reply have denied various averments made by the applicant, but we are restricting this order only with respect to the relief pressed by the applicant for expunging of the adverse remarks. The applicant also in his rejoinder reiterated the facts in extenso, stating some more facts to substantiate his averments made in the original application, particularly with reference to the remarks in the Annual Confidential Report for the year 1989-90.

4. We heard the applicant in person and Mr. V.K. Rao for the respondents. We are handicapped by not getting applicant's personal as well as Annual Confidential Roll files maintained by the respondents. It is normally expected that such files should be produced to find out the real basis of giving remarks by reporting officer and as to how the reviewing officer has judged the same. However, the respondents have

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filed their reply and on the basis of the counter, we will judge how far the judicial interference is required in a case of the present nature.

5. The adverse remarks, conveyed vide Memo No. 10-CR(89)/90-U.S.(A) dated 21.9.1990 given to the applicant for the year 1989-90 and so far taken to be adverse by the authorities are quoted below:

" He is generally intelligent but is apprehensive of the things which do not exist and often strays from the subject matter".

The case of the applicant is that these remarks have been given to him without any basis in a mala fide manner out of prejudice. These are unspecific and unconnected with the performance. He has also commented on the facts that the reporting officer did not supervise the work of the applicant for three months. The counter is silent whether the reporting officer has actually supervised the work of the applicant for more than 3 months. It is also the case with the applicant that the confidential report of the applicant was not recorded till the notification of 1990 Section Officers' examination. In the whole of the counter, the respondents have not referred to the adverse comments given to the applicant or a memo pointing out his shortcomings which can reflect in awarding the aforesaid remarks to the applicant. In the counter it is stated that the filing of his application in itself is a conclusive proof that the applicant is apprehensive of things which do not exist and strays from the subject matter. On this basis, the aforesaid remarks in the Annual Confidential Report of the applicant by the memo dated 21.9.90 are stated to be valid and justified.

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6. The Bench is aware of the limitation of judicial review in such matters which is an exclusive domain of the administrative authorities.

However, where a question of an employee's service and career is involved, it should be seen whether the remarks given in any way are said to be subjective projection of the view entertained at the relevant point of time by the immediate supervisory authority. The Court or Bench cannot sit as an appellate authority and substitute its own opinion of the performance of the applicant at the relevant point of time. Obviously it is because the performance of the applicant cannot be judged on its self-appraisal. It is to be seen how his performance is judged by his superiors. It is only the opinion harboured by the reporting officer. We have to consider whether on the basis of the documents, if any, or the averments made in the reply, there is a subjective appraisal of the performance of the applicant for the period under review. Coming to adverse remarks 'he is generally intelligent', the word 'generally' does not give any particular meaning in its sense. A person is intelligent, and may, if one point less, be called generally intelligent but what the reporting officer thought cannot be easily assuaged. The fact remains that the applicant has been judged as an intelligent employee and we do not find that this would in any way affect the intensity of his intelligence by qualifying a word 'intelligent' or by a word 'generally'. The observations of the reviewing authority therefore, so far the word 'generally' is concerned, cannot be fairly kept and have to be deleted.

7. The other remarks, similiary of general nature, that "apprehensive of the things which do not exist", do not show whether it is regarding his personal character or professional capabilities. However, how the intention of person so judged can't be known to us? Apprehension is a thing of brain or of a thinking, it can only be understood by overt act by the concerned person.

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What a person feels cannot be judged by others unless and apprehensions until these are put into action. The applicant has never been conveyed either by advisory notes or by memorandums that he arrived at a conclusion on the basis of certain opinion not in existence. This remarks also is to be deleted.

8. The remaining remark: "often strays from subject matter" appears to be <sup>opinion</sup> ~~about~~ the reviewing authority on the basis of the performance of the applicant. The learned counsel for the respondents fervently argued that sometimes the shortcomings are not pointed out and when a person gets disgusted, he makes an impression in the mind and that impression has been projected in the aforesaid remarks. There is nothing on record by way of advisory notes or memorandum pointing out to the applicant his shortcomings in his <sup>performance</sup> ~~work~~ nor is there any evidence shown before us that the applicant deviated from the direction issued to him or the result-oriented work given to him, was not performed in the right manner.

9. However, it appears that the applicant has been litigating with the department for settlement of his grievances and at the relevant point of time when the annual confidential report for the period under review was written, an application 173/90 was pending where the applicant has challenged certain results of the aforesaid examination of Section Officers, 1985, Administrative Officers, 1986 and LDC/SOs, 1988. This may give an inference to the reviewing authority to reach a conclusion regarding the performance of the applicant vis-a-vis duty as an Assistant at the relevant point of time. However, this whole of remarks was considered by the selection body when the applicant took 1990 Limited Departmental Section Officers' Examination. That examination carried written marks of 500 and for the annual confidential report, 150. The

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applicant out of 650 marks obtained the highest marks and stood at No. 1 in the merit list of that examination. It naturally goes to show that the selection body has not taken serious note of the aforesaid remarks. The respondents in their reply also pointed out that the applicant has been an unwilling worker and the periods prior or after the aforesaid adverse remarks were given to him, his performance has not been to the liking of his superiors.

10. In view of the above facts and circumstances, we find no justification for the remarks given to the applicant that "he often strays from subject matter". Unless and until a specific material is furnished before the Tribunal or the Court it can be said that there has <sup>not</sup> been objective assessment of the working of an employee. In the case of U.G. Namboodiri Vs. UOI AIR 1991 SC p. 1216, the Hon'ble Supreme Court considered the matter of adverse remarks and though the representation had been disposed of by a <sup>non-</sup>speaking order but when the matter came up before a judicial review in reply filed by the respondents, it should be justified that the remarks given was fair, impartial and not motivated. In the counter, there is complete silence on behalf of the respondents regarding any short-comings of the performance of the applicant, personal or professional during the period under review. As observed earlier, we are handicapped by non-furnishing of personal as well as annual confidential reports during the course of hearing though the matter has been on board for more than 3 months.

11. The application, therefore, only with respect to the adverse remarks is allowed to the extent that the word "generally" ~~be~~ deleted to read "he is intelligent" and rest of the adverse remarks i.e. "apprehensive of things which do not exist and often stray from subject matter" shall be deleted

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from the adverse remarks conveyed on 21.9.90 for the period 1989-90. The application is therefore disposed of accordingly and as the other reliefs have not been pressed, the application is dismissed with respect to those reliefs. Parties are directed to bear their own costs. Copy of this order be given to the respondents to place in the service records of the applicant so that the said remarks may not be taken into account in future career of the applicant.

*S.N. Adige*  
(S.N. ADIGE)  
MEMBER (A)

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