

24

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

CA NO. 482/90

DATE OF DECISION: 10.7.1990

SHRI S.M. ANSARI

APPLICANT

VERSUS

UNION OF INDIA & OTHERS

RESPONDENTS

SHRI P.L. BETHI

ADVOCATE FOR THE APPLICANT

SHRI P.L. VERMA

ADVOCATE FOR THE RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. GBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASBOTRA, MEMBER (A)

J U D G M E N T

(Delivered by: the Hon'ble Mr. I.K. Rasgotra, Member (A))

22

The applicant, Shri S.M. Ansari is aggrieved by his reversion from the post of Section Officer to that of an Assistant, acting on the adverse entries in the Confidential Report (CR) for 1988 before they were communicated to him and without giving him an opportunity to explain his conduct leading to adverse report for the year 1988 (calendar year). He filed this application under Section 19 of the Administrative Tribunals Act, 1985, on March, 19, 1990. As this is a short matter it was taken up for hearing and final disposal as jointly prayed for by

2

(3)

the learned counsel for both the parties.

By way of relief, the applicant has prayed that order of reversion dated 28.12.1988 and the appellate impugned order dated 6th February, 1990 be declared null and void and he be allowed to continue as Section Officer on adhoc basis with consequential benefits from the date his junior is continuing to officiate as Section Officer. He had also prayed that the operation of the impugned orders be stayed as an interim measure. The Tribunal vide order dated 23.7.1990 restrained the respondents from operating the impugned orders dated 6.2.1990 purporting to revert the applicant from Section Officer to the post of Assistant.

2. The applicant is a permanent Assistant borne on the cadre of Ministry of Human Resources since October, 3, 1978. The cadre controlling authority is the Department of Education. He was promoted on 26th October, 1989 (page 11 of the paper book) as Adhoc Section Officer on the basis of seniority-cum-fitness for a period of 45 days or till the post is filled on regular basis, whichever is earlier. He assumed charge of the post of Section Officer on 27.10.1989. The applicant was reverted vide office order No. 4-321/174/89-E.I dated 22.12.1989 (page 14 of the paper book) on the expiry of officiation for 52 days i.e. w.e.f. 27th October, 1989 to 27.12.1989. Subsequently, vide office order No. 127/90-E.I dated 6.2.1990, Assistants junior to the applicant have been promoted on adhoc basis and they are said to be continuing to officiate as Section Officers. The representation made by the applicant on 12.1.1990 has been rejected by the respondents vide impugned order dated 6.2.1990. The applicant has been informed that the Annual Confidential Report (ACR) on

2

2

him for the year 1988 "containing some adverse/unfavourable remarks, on the consideration of which Shri Anand was reverted to the post of Assistant M.O. the afternoon of 29.12.1990. Action to communicate these adverse remarks is being taken by E-II Section. The contention of the applicant is that he should not have been reverted on the basis of the uncommunicated remarks and without giving him an opportunity to make a representation against those remarks for consideration of the competent authority. The respondents in their reply already confirm the facts of the case as given above. They have, however, stated that at the time of consideration of the case of the applicant for adhoc promotion in October, 1987, the CR Docket of the applicant did not contain the CR for the period 01.12.1986 to 31.12.1988 as the same was not received from the Ministry of Information and Broadcasting (Ministry Office) where he was in deputation during that period. However, keeping in view his seniority and consideration reports on his photo December, 1987, the applicant was promoted in October, 1989. While, he was officiating as Section Officer, during the CR of the applicant for the period 01.12.1986 to 31.12.1988 was received in the Department of Education, which contained adverse remarks against the applicant with regard to his conduct etc. His integrity was also not in question. The adverse remarks were communicated to the applicant on 14.12.1990 by the Ministry of Information and Broadcasting vide No. G.23012/1/90-DI. The respondents have further submitted that the application is premature as the

9

26

1979 (2) JCE 518 *Bundjal Singh Singh vs. State of

the learned counsel of the applicant, Shri R.L. Sethi.
judicial pronouncements which have been brought to our notice by
Before proceedings further, we may analyse the various

some how or to arrange the adverse entries in CR for 1988.
the competent authority to take the final decision, to refrain to
separately explain its conduct to the competent authority enabling
the same to him and without giving him an opportunity to
certain entries in the CR for the year 1988 without communicating
officiating as Section Officer on adhoc basis on the date of
whether it was fair and just to revert the applicant while
The issue that emerges from the above for decision is

management level of gazetted post of Section Officer.
been certified. He was, therefore, not considered fit to hold
adverse/unfavourable remarks with regard to his conduct, may of
case, the report of the applicant contains not only
promotion etc. They have, however, submitted that in the instant
account for the purpose of considering the officer concerned for
which representation has not been decided, cannot be taken into
consideration that the uncommunicated adverse remarks against
judgements of the Hon'ble Supreme Court and the executive
responsibility towards that they are fully aware of the various
for a delay before filing the application to the Tribunal. The
representations of the concerned authority and waited
applicant, all the have first represented against the adverse

(t)

8

Punjab & Others

"The issue in this case, was, non-issuance of the integrity certificate as no decision had been taken on the representation made by the petitioner against the adverse remarks in the C.R. "The chain of reaction began with the adverse report and the infirmity in the link of causation is that no one has yet decided whether that report was justified."

The Hon'ble Supreme Court observed that the well settled principle in accordance with the rules of natural justice is that an adverse report should not be acted upon to deny promotional opportunities, unless it is communicated to the person concerned to enable him to improve his work and conduct or to explain the circumstances leading to the adverse entries in the report. "Such an opportunity is not an empty formality, its object partially, being to enable the superior authority to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified."

11: 1937 (1) FLP-54 Brl; K.E. Chopra Vs. State of Punjab. The author cited in this case relates ^{to} premature retirement of the petitioner without giving him an opportunity to make representation against the adverse remarks in the Confidential Report on him.

The Supreme Court again emphasised that adverse report in a Confidential Report cannot be acted upon to deny promotional opportunities unless it is communicated to

9

the person concerned, so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. "Unless the representation against the adverse entries is considered and disposed of, it is not just and fair to act upon those adverse entries.

(11) 1989 (2) 171-76 Arun Kumar Gupta Vs. Union of India
This case deals with the grant of selection grade to an officer by taking into account the adverse remarks in the CR when the representation made by the petitioner against the adverse remarks had not been considered and a decision taken. The Tribunal, therefore, directed the competent authority to take a decision on the representation of the applicant against the adverse remarks within specified time.

The well established law that emerges is that uncommunicated adverse remarks recorded in the CR cannot be acted upon, unless such adverse remarks are communicated and an opportunity given to the concerned official to explain his conduct leading to the adverse remarks.

6. The facts of the case before us, however, are materially different. The applicant in this case was already promoted on adhoc basis in view of his seniority and in consideration of his performance reflected in the Annual Confidential Reports available upto the end of 1987. Confidential Report for the year 1988 was not available at the time he was considered for adhoc promotion as Section Officer. The order reverting the applicant

10

were issued on 27.12.1987 on receipt of the Confidential Report for 1988 which contained adverse remarks. At that stage, the adverse remarks had neither been communicated to the applicant nor he had an opportunity to explain his conduct by making a representation. Further, the promotion initially was for 45 days although he had continued to officiate for 117 days when he was reverted. The case before us is not of regular promotion but of continuance of promotion on adhoc basis on account of continued availability of short term vacancies, as is evident from the continued officiation of persons junior to the applicant. Having promoted the applicant on adhoc basis, on the basis of the record upto December, 1987 the proper course would have been to not to revert him till the adverse remarks in the CR have been communicated and a decision taken on his representation explaining his conduct. The respondents have heavily relied on the premise that his integrity has also not been certified in the said CR of 1988. We cannot speculate about the nature and the gravity of the non-certification of the integrity of the applicant for the year 1988 in absence of the details of the remarks in the integrity column. At the same time, the fact that the applicant sought adhoc promotion on the basis of seniority and his performance and the integrity as reflected cumulatively in the Confidential Report upto the period ending December, 1987 cannot be ignored.

2. In the facts and circumstances of the case, we are of the view that the reversion of the applicant, after he had been promoted on the basis of his performance etc. upto 1987 was in

11

violation of the principle of natural justice. The respondents shall not have acted on the adverse remarks in the Annual Confidential Report for 1988, till they were communicated and a decision taken on the representation made by the applicant. We, therefore, quash the order No. A-11011/1/89/E-1, dated 5.2.1990 purporting to revert the applicant from the post of Section Officer as violative of principles of natural justice. The respondents, however, shall be at liberty to take suitable action, as warranted, after the adverse remarks in the CR for 1988 have been communicated to the applicant and a decision taken on the representation made by him, explaining his conduct leading to the adverse remarks in the CR for the year 1988, to retain, downgrade, or expunge the adverse remarks.

There will be no orders as to the costs.

M. K. Bhatnagar
M. K. Bhatnagar 10/7/90
MEMBER (A)

S. S. Bhatnagar
S. S. Bhatnagar 10.7.90
(T.S. Bhatnagar)
MEMBER (C)