

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

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MP 1123/92 in  
O.A. No. 1746/91

11.11.1992

Shri Bimal Prashad Jain ...Applicant

vs.

The Additional Commissioner of ...Respondents  
Police and Another

CORAM :

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

For the Applicant ...Shri Shankar Raju

For the Respondents ...Shri O.N. Trishal

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

JUDGEMENT (ORAL)

The applicant is a Stenographer and has assailed the adverse remarks for the period 1.4.1989 to 8.1.1990. The applicant has represented against the same, but the representation has been rejected by the impugned order dt. 27.12.1990. In this application, the applicant has prayed that the adverse remarks communicated for the aforesaid period be quashed along with the appellate order dt. 27.12.1990 and the said adverse entries be removed from the A.C.R. of the applicant.

I have heard the learned counsel for both the parties at length. In fact his case was also heard earlier on 28.2.1992 in the absence of the learned counsel for the respondents and an oral judgement was delivered on that date

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along with the OA granting the relief to the applicant, as prayed for, in the application. Subsequently, MP was moved by the respondents that the said ex parte judgement dt. 28.2.1992 be recalled and the respondents be heard. That MP having been allowed, the applicant as well as the respondents have been heard again on the merit of the case after setting aside the earlier judgement delivered on 128.2.1992.

The applicant undoubtedly was working as Stenographer with the reporting officer, who has given the following remarks for the period under review, which according to the applicant are adverse.

Firstly that he has been commented to be not punctual and remained away for some reason or the other; that for being unpunctual and for not being able to hear correctly and typing other material than dictated, he was verbally warned on several occasions; suffering from chronological health problems and seemed to be hard of hearing and lastly, that a very docile and simple fellow, who remained always preoccupied with his own health or his family matters.

The contention of the learned counsel for the applicant is that there is nothing substantial in the personal file of the applicant to show that the opinion formed by the reporting officer is an objective assessment of his performance and work watched during the period under review by the reporting officer. The reviewing officer did not attach any importance to the detailed representation running in pages, submitted against the above remarks of the reporting officer

and by a cryptic non speaking order, the representation of the applicant has been rejected. The learned counsel for the applicant has also referred to the fact that the reporting officer has not followed the own instructions which lay down the rules and procedures to be observed in giving remarks to the subordinate officials and he referred to para (iv) at p-7 of the OM No.51/14/60-Estt.(A) dt. 31.10.1961 as well as the OM dt. 9.1.1984 where the reporting officer and the reviewing officer in a case have to indicate in the report about the efforts, reforms made as well as the guidance, admonition and warning issued to the delinquent. The departmental file was got summoned and a perusal of the same goes to show that there is no communication during the period under review to the applicant informing him about his shortcomings or in any way intimating him deficiency in his performance either regarding his reaching not in time in the office or not typing what has been dictated to him. These instructions, of course, should have been observed, but they cannot be said to have a mandatory nature. A similar matter came up before the Hon'ble Supreme Court in E.G. Lamboodari vs. Union of India, reported in AIR 1991 SC p-1221. In that case also, though there was a warning issued to the delinquent, but there are also verbal admonition given from time to time regarding the faults of the delinquent reported upon. Taking the shelter of the above law, the learned counsel for the respondents pointed out that no malice has been alleged against the reporting officer and also that he has not been impleaded as respondent in this case.

The learned counsel for the respondents also referred to the authority of a Division Bench of Punjab and Haryana High Court in the case of Amrit Singh Vs. DIG, Police, reported in 1989 SLR p-169 where the Hon'ble Judges observed that superior officer can make remarks on the basis of his observations which he has made during the period he has watched the work of the official. The learned counsel for the applicant, however, referred to the Constitution Bench decision of the Hon'ble Supreme Court in S.N. Mukerjee Vs. Union of India, reported in SLJ 1991 (1) SC p-1 on the principles of natural justice that even a quasi judicial authority should give a speaking and reasoned order and should detail the same so that it may appear that there is proper application of mind to the facts considered. Though the order has been passed by the Appellate Authority ~~rejecting the~~ rejecting the representation, but at the same time ~~in view of~~ the law laid down in the recent decision of E.G. Lamboodari (supra), the reasons thereof need not be given specifically in the rejection order and the same can be placed before the Court at the time of hearing. I have gone through the same from the departmental file and I do find that though much was expected from the Appellate Authority, yet it cannot be said that there was no proper application of mind.

Now coming to the main issue in this case, the adverse remarks referred to above regarding the applicant not being punctual, there is nothing to substantiate the same and

a person cannot be condemned without giving him a chance to him as in the period under review from April, 1989 to January, 1990 as how many days the applicant was late arrival, cannot be judged and guessed from this remark. At what occasions, the reporting officer has communicated his displeasure or warned the applicant, is also not made out either from the personal file or from the reports given to the applicant. In view of this, a general instance of unpunctuality cannot be accepted, not that due weight is not given to the remarks given by the reporting officer, but because of the fact that it remains unsubstantiated.

As regards the applicant's often typing out the material not dictated to him, this is an opinion expressed by the reporting officer and this opinion cannot be interfered with at this stage as the Tribunal cannot reserve the function of the Appellate Authority. It is common feature that if a dictation is given and correct words are not typed, then subsequently what was given in dictation cannot be recollected and what has been typed out, does not make any sense. This remark by the reporting officer, therefore, is based on his personal observation which he has collected during the course he dealt with the applicant and gave him dictation at various occasions. This remark, therefore, cannot be interfered with. I have considered the aspect that there is no communication to the applicant about this fact also, but in order not to make a

worker unwilling, often sometimes a conniving attitude has to be adopted so that the work may be taken smoothly from the concerned official. It is because of this fact as I find that not communicating this fault to the applicant will not undue the report given by the reporting officer for the period under review.

Regarding the remark of chronological health problem and that the applicant seems to be hard of hearing, I find that these remarks are totally uncalled for. Chronic by itself means ready to burst or an aggravated form of an ailment. If a person is appearing, sitting and working, that cannot be classified in the category the reporting officer has done the health of the applicant. Similarly the reporting officer cannot reserve the opinion of an expert in giving the remark 'hard of hearing' to the applicant. The learned counsel for the applicant during the course of hearing has also referred to a certificate <sup>the applicant</sup> he has obtained from All India Medical Sciences that his hearing apparatus is not defective. This remark, therefore, is totally uncalled for. Similarly the remark that the applicant is very docile and simple fellow, who remains preoccupied with his family matters does not make any sense unless the applicant has been <sup>told</sup> <sub>about</sub> his day dreaming or that he was not attentive to work and lost in his own affairs. There is no report that the applicant has not been performing his duties properly. On the other hand, his working as well as dealing with the matters required to be done by a Stenographer have been commented as good, satisfactory and fair. When the reporting officer judges him

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in that category of grading, it cannot be said that the applicant was not attentive to the work assigned to him.

Giving all consideration to the facts and the law cited and going through all the relevant records placed on the file along with the pleadings of the parties, I am of the view that the present application has to be partly allowed.

The remark given to the applicant that he has typed material other than what dictated shall remain as it is, but the other remarks given to the applicant in Annexure A2 shall be removed from the A.C.R. and the impugned order as well as the appellate order to the extent are set aside. The respondents are directed to make necessary entries in the A.C.R. within a period of three months from the date of communication of this order. In the circumstances, the parties shall bear their own costs.

*J. P. Sharma*  
(J.P. SHARMA) 11/11/92  
MEMBER (J)