

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

C.A. C.1307/1991

DATE OF DECISION : 13.04.92

Shri Girdhar Gopal Singhal

...Applicant

Vs.

Union of India & Ors.

...Respondents

CORAM

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

For the Applicant

...In Person

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?

Yr.

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

The applicant, Senior Auditor in the Office of CGDA (PD), Meerut assailed the order of respondent No.2, Controller General of Defence Accounts dt.7.3.1990 (Annexure A1) whereby the applicant was informed that his representation to expunge the adverse remarks in the ACR of 1985 was considered by CGDA, New Delhi and rejected.

2. The applicant has prayed for quashing the impugned order dt.7.3.1990. The applicant was serving as Auditor and

...2...

for the year 1985 while he was posted in CDA, Western Command, Chandigarh, was given an adverse remark for the period ending 31.12.1985. The Reporting Officer of the applicant was Section Officer as well as Accounts Officer and the Reviewing Officer was DCDA. The Section Officer has reported in part-III in Column 14(iv) regarding promptness in disposal of work and graded him slow and tends to delay after cutting the words reasonably prompt. Similarly in Column 19 whether the official has been reprimanded for any different work or for other cases during the period under report, it is stated that he has been issued recorded warning for his carelessness in disposal of bills vide letter dt.3.3.1986. The entry has been given by the reporting officer on 5.3.1986 and the other reporting officer, Accounts Officer in Part-III A agreed with the reporting officer and has given the remark that he is unreliable and careless worker. He has already been issued recorded warning for lack of work on 3.3.1986. The reviewing officer on 27.3.1986 added one more adverse remark after agreeing with the Accounts Officer that "He is not amenable to correction." It is against this remark that the application has been given. The case of the applicant is that the reporting officer-Accounts Officer and reviewing officer acted mala fide. The recorded warning dt.3.3.1986

XO

does not pertain to the year for which ACR for 1985 is purported to have been written. It is also stated that the ACR has been written after the recorded warning of 3.3.1986, i.e., on 5.3.1986. The Accounts Officer while giving the remark, disagrees with the Section Officer-reporting officer and the remark in Column 'b.14(iv) has not been agreed to where the Section Officer has given the remark slow and tends to delay. It is further urged that the remarks offered by the Accounts Officer and reviewing officer such as unreliable, careless, irresponsible, not amenable to corrective action were not supported with any objective material.

3. The respondents contested the application. The applicant made a representation against the adverse remarks on 2.9.1986 addressed to CDA which was rejected by the letter dt.11.11.1986. The applicant made a further representation dt.11.10.1988, the copy of which reportedly submitted by him on 20.5.1987 and the applicant was informed accordingly on 24.1.1989. The applicant made another representation on 27.5.1989. The applicant made another appeal on 11.1.1990 addressed to CGA, New Delhi and the same was considered at their end even though it was barred by time, but rejected on merits vide order dt.5.7.1990 and communicated to the applicant by the order dt.16.7.1990 and acknowledged by



him on 16.8.1990. It is also stated that the recorded warning pertained to the period under review.

4. I have heard the applicant in person and the learned counsel for the respondents at length and have gone through the record of the case. The applicant has referred to the CM No.21011/3/Sl-Estt.(A) DB&AR dt.5.5.1981 on the subject of mentioning warning/reprimands in ACRs and it is laid down that if at the end of the year, the reporting authority, while writing the confidential report of the officer may decide not to make a reference in the confidential report of the warning/displeasure/reprimand, if in the opinion of that authority, the performance of the officer reported on after the issue of the warning or displeasure or reprimand, if any, has improved and has been found satisfactory. The applicant has also referred to the dismissal of representation against the adverse entries whether speaking order is necessary and in this connection referred to the authorities-Sinapani De's case (AIR 1967 SC 1229) and Keraipak's case (AIR 1970 SC p-150), where it is held that where an authority makes any exercise of quasi judicial function, it must record a reason in support of the order it makes. The representation of the applicant has been rejected without commenting on the various pleas taken

in the representation. A perusal of the adverse remarks for the year 1985 which has been also annexed by the respondents in the counter as Annexure R2, shows that earlier the applicant was given by the Section Officer in Column 14(iv) "Reasonably Prompt" and this has been cut down and over it is written "Slow and tends to delay". So this appears to be an after thought because when once an opinion was formed, then how it was changed, is not evident. Part-III which has been assessed by the reporting officer has 20 columns. The reporting officer in column No.11 has given the remark, "Paid adequate attention to the work and mostly graded him in various columns as Good and very Good". The quality of work, capacity of examining cases, quality of noting and drafting, amenable to discipline, punctuality and integrity, all have been commented favourably. Thus how this 'Reasonably prompt' word has been cut down and substituted by the words 'slow and tends to delay' does not sound to be reasonable. Further the reporting officer has forgotten that the entry is for the period ending 31st December, 1985 and in column No.19, a reference has been made of a recorded warning given on 3.3.1986 only two days before giving the annual report. Similarly the Accounts Officer, who gave

13

the remark on 10.3.1986 did not go through the remarks properly and when he disagrees with the remarks of the reporting officer, he has not shown the sphere of disagreement and only added that he is unreliable and careless worker.

This is not supported by any communication addressed to the applicant during the period under review or any warning or advice given by him. Similarly the reviewing officer adds further that the applicant is not amenable to correction while the Section Officer under whom the applicant works has given him the entry amenable to discipline. Thus all the three officer, i.e., the reporting officer namely, Section Officer, the second reporting officer, i.e., the Accounts Officer and the reviewing officer have given varying assessment of the applicant for the period under review. The representation which was made by the applicant has been considered cursorily.

The respondents have filed the photostat copy of the order dt. 11.11.1986 (Annexure R5) where it is only mentioned that the competent authority has considered the representation and rejected the same. However, the competent authority did not consider that how three persons have given varying assessment and actually the Section Officer under whom the applicant works has assessed him Good and Very Good in various respects.

1e

W

5. Normally it is the assessment of the officers who have seen the work of the concerned official. But when the performance has been reviewed by various supervising officers in a different manner and also assessed differently, then there should be some reason to come to a unanimity about the performance of the officer in that particular period. It was for the competent authority or the appellate authority to visualise every aspect of the matter and may even remand the matter or interview the applicant and give its decision on the various pleas raised by the applicant in the representation against the said entry. In fact, if the assessment of the Section Officer is taken into consideration, then there is no adverse entry against the applicant because the recorded warning has been issued in March, 1986, three months after the period under assessment and that cannot be retrospectively considered for the period under review. The Accounts Officer without any reason disagrees with the report of the reporting officer without asking for any clarification and further adds remarks contradictory to the remarks given by the Section Officer. Thus such an adverse remark cannot stand.

5

6. In view of the above facts and discussion, the adverse entries given to the applicant for the year 1985 along with the various orders rejecting the representation of the

...8...

applicant including the order dt. 9.7.1990 are quashed and set aside and the particular adverse remarks shall not be considered adverse to the applicant and entry be made in the service record to this effect. In the circumstances, the application is allowed leaving the parties to bear their own costs.

J. P. Sharma
(J. P. SHARMA) 13.4.92
MEMBER (J)

AKS