

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(35)

O.A. No. 2289/91

T.A. No.

Date of decision 2-9-98

Sh.M.S. Ashokan

... Petitioner

Applicant present in person.

... Advocate for the Petitioner(s)

VERSUS

UDI & Ors.

... Respondents

Shri P.H.Ramchandani, ... Advocate for the Respondents
Learned senior counsel.

CORAM

The Hon'ble Smt.Lakshmi Swaminathan, Member(J)

The Hon'ble Shri K.Muthukumar, Member(A)

1. To be referred to the Reporter or not?.

Yes

2. Whether it needs to be circulated to other Benches of the Tribunal?

No.

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)
Member(J)

Central Administrative Tribunal
Principal Bench

O.A. 2289/91

(36)

New Delhi this the 2nd day of September, 1998

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri K. Muthukumar, Member(A).

Shri M.S. Ashokan,
through its Secretary,
Ministry of Civil Supplies,
and Public Distribution,
Room No. 416 A, Krishi Bhawan,
New Delhi. Applicant.

Applicant in person.

Versus

1. Union of India, through
its Secretary,
Ministry of Civil Supplies,
and Public Distribution,
Krishi Bhawan,
New Delhi.
2. The Under Secretary,
Department of Civil Supplies,
Ministry of Civil Supplies,
and Public Distribution,
Krishi Bhawan,
New Delhi.
3. Shri Y.R. Rao,
Ex-Deputy Director (Reporting Officer),
Department of Civil Supplies,
Krishi Bhawan,
New Delhi.

at present Manager,
MCCE of India Ltd.,
3, Siri Institutional Area,
Hauz Khas,
New Delhi.

4. Shri M.K. Zutshi,
Joint Secretary, (Reviewing Officer),
Ministry of Civil Supplies
and Public Distribution,
Shastri Bhawan,
New Delhi. Respondents.

By Advocate Shri P.H. Ramchandani.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has filed this application under
Section 19 of the Administrative Tribunals Act, 1985
impugning the order dated 14.9.1990 by which he was

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communicated adverse remarks in his Annual Confidential Reports (ACRs) for the year from 23.8.1989 to 31.3.1990. The applicant also challenges the rejection of his representation by order dated 11.6.1991 and the order dated 13.6.1991 by which his probation period was extended by a year upto 22.8.1991.

2. The applicant was recruited directly as Assistant Director with the respondents by Notification dated 31.8.1989 w.e.f. 23.8.1989. Prior to this he was working as Programme Officer in National Cooperative Development Corporation (hereinafter referred to as 'NCDC'). The main grievance of the applicant is that he has not been properly assessed by the Reporting Officer, Shri Y.R. Rao Respondent 3 and the Reviewing Officer Shri M.K. Zutshi Respondent 4. The applicant has submitted that his relations with Respondent 3 were not good because the applicant had declined to do certain work of a personal nature which was ordered by him. In the case of Respondent 4, the applicant has submitted that his relationship with the wife of Respondent 4 was again strained due to certain personal reasons. The applicant has, therefore, alleged mala fide on behalf of Respondents 3 and 4 whom he says were responsible for giving him adverse entries in ACRs for the year 1989-90. He has submitted that when he was working with the NCDC, Respondent 3, Shri Rao, was also there who was his junior. A submission has also been made by the applicant that as he belongs to the SC community, these officers had spoilt his ACR for the year 1989-1990, as otherwise throughout his career his work has always been appreciated both in the NCDC and later with Respondents 1 and 2.

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3. The applicant has also filed MA 1534/97 seeking amendment of the O.A. This MA has also been taken up for consideration along with the O.A. The applicant has, inter alia, alleged that he in the course of his official duties exposed the active involvement of Respondents 3 and 4 in some corrupt practices indulged by them, as a result of which he was transferred to work with another officer. He has also alleged that his assessments have been obtained from one Shri R.S. Shastri who had supervised his performance only for two months and thirteen days. According to him, Respondent 3 was also allowed to write his ACR on 1.10.1990 without specifying the period for which he had assessed him in harsh language, using contrary statement to that of the comments recorded by him in ACR for the period 23.8.1989 to 31.3.1990. He has stated that certain documents have been taken forcibly from his table drawer which he could have used as supporting documents in the O.A., for which he had submitted a complaint letter dated 22.7.1991. He has also stated that from 1990-91 onwards, he has earned "Very Good" ACRs. He has also tried to support his allegations of mala fide against Respondents 3 and 4 by certain details he has given in the M.A. In the M.A. also, he has prayed that respondents may be directed to expunge all the adverse remarks made in the ACRs for the period from 23.8.1989 to 31.3.1990 and set aside the aforesaid impugned orders.

4. The applicant had been heard at length on 27.7.1998 when he had submitted that he has no objection if Shri P.H. Ramchandani, Sr. Counsel is heard later as he will be out of station for about 9 months. Accordingly, we have also heard the learned counsel for the respondents and perused the pleadings and documents on record. In the

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arguments, the applicant further stressed on the need to set aside the rejection of his representation against the adverse entries for the year 1989-90.

5. Reply has been filed by Respondents 1 and 2 on 14.1.1992. They have submitted that the representation made by the applicant against the adverse remarks was considered by the competent authority in consultation with the Reporting Officer as well as the Reviewing Officer. The concerned authority had informed that the applicant was warned on many occasions to be careful in handling the work and was also admonished for the delays in the submission of few files. The learned counsel for the respondents has also submitted that while giving his comments on the representation of the applicant against the adverse remarks, the Reporting Officer i.e. Respondent 3 and the Reviewing Officer i.e. Respondent 4 have clearly stated that their assessment of the performance of the applicant have been done objectively. He, therefore, submits that in view of these statements by both Respondents 3 and 4 which are available in the relevant files, there was no need for Respondents 3 and 4 to file separate replies against the allegations of bias and mala fide alleged against them by the applicant. In any case, the learned counsel has submitted that the comments/replies furnished by Respondents 3 and 4 are available in the official records which can be shown to us to substantiate the reply of Respondents 1 and 2 that there was no mala fide on the part of Respondents 3 and 4 in writing the adverse entries in the ACRs for the years 1988-89 and 1990. He has also submitted that Respondent 4 had also observed in the case of Shri Y.R. Rao i.e. Respondent 3, that he had not observed any caste bias in his working with

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(AO)

other SC members of the staff. In the circumstances, learned counsel has submitted that both the Reporting Officer as well as the Reviewing Officer have assessed the performance of the applicant fairly during the relevant period and as they had found several delays in submission of files and other shortcomings in his working, the assessment given in the ACRs was justified. Further, he has submitted that when the adverse remarks were communicated to the petitioner on 14.9.1990 and he made representation on it, that was also duly considered by the competent authority whose decision in such matters is final. In the circumstances, the learned counsel has submitted that the Tribunal should not interfere in the decisions of the competent authority conveyed to the applicant after considering his representations against the adverse remarks by memos dated 11.6.1991 and 4.2.1991. (Annexures A-(xiv) and (ix)).

6. We have also seen the respondents' reply filed to MA 1534/97. In brief, they have submitted that while the applicant in the O.A. has prayed for expunction of the adverse remarks for the year 1989-90, he cannot be permitted to widen the scope of reliefs claimed. They have also submitted that the assessment reports have been written by the concerned officers under whom the applicant had worked at that time and they have given a tabulation of this in paragraphs 5.2 and 5.4. In this reply also, the official respondents have denied the personal allegations made by the applicant against Respondents 3 and 4 as being totally false and without any substance. They have submitted that he had been shifted from one Section to another Section because he was not working well in any of the Sections. Shri P.H. Ramchandani, learned counsel has submitted that since the

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officers had assessed the work of the applicant objectively as mentioned by them in their comments made to the competent authority, there is merit in the application and the same should be dismissed.

7. We have considered the pleadings and submissions of the parties carefully.

3. By Memo dated 14.9.1990, the applicant was informed that in the ACR for the period from 23.8.1989 to 31.3.1990 certain adverse remarks have been recorded. Against this, he had made a representation which was considered by the competent authority who was the Secretary of the Department, in the memo dated 4.2.1991 which reads as follows:

"With reference to his representation dated 22.10.1990 against the adverse remarks in his Annual Confidential Report for the period 23.8.1989 to 31.3.1990, the undersigned is directed to convey Shri M.S. Ashokan, Asstt. Director that after due consideration, the Competent Authority has decided as follows:

i) Nature & Quality of work - "He had only attended to a very routine type of work. Thereafter, I don't fully agree his observations." This portion may be expunged.

ii) Communication Skill - "Very Ordinary" - This portion may be expunged.

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iii) Grading

"Below average" - May be
toned down to
"Approaching average".

Rest of the remarks may stand"

(Emphasis added)

9. From the above, it is seen that while the competent authority has expunged two of the adverse remarks in the ACRs which was originally given, in the third entry under "Grading" which was "Below average", it was toned down to "Approaching average". This remark of the competent authority that the grading may be toned down to "Approaching average" is vague and is capable of different meanings as "Average" could be approached from both above i.e. "Good" and below i.e. ^{from B} "Below Average". Considering that the competent authority concerned is the Secretary of the Department, we are unable to accept the vague grading as valid. Nothing has been shown to us that this kind of assessment is permissible under the Rules or instructions framed by the Government of India. This being the case, we are unable to accept the contention of the respondents that the competent authority has considered the representation made by the applicant in a proper perspective or passed a valid order in accordance with the relevant rules and Government of India instructions. Apart from this, from the table given in the reply filed by the respondents to MA 1534/97, it is seen that they have stated that the assessment reports were written by the officers with whom he had worked. One of these officers, Shri Shastri, has written the ACR of the applicant for the

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period from 31.7.1990 to 7.10.1990, which is a period of less than three months, which again does not appear to be in accordance with the relevant Rules and Instructions.

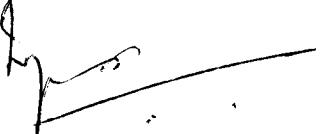
10. In this case, the applicant has made personal allegations of bias and mala fide against certain officers i.e. Respondents 3 and 4 in their personal capacities, while recording adverse entries in his Confidential Report. In the circumstances, therefore, it was open to them to file their replies controverting the personal allegations made against them which has not been done. It is settled law that when personal allegations are made against any officers working with the UOI/concerned Department, then those officers should be impleaded in the O.A., which the applicant has correctly done in the present case by impleading Respondents 3 and 4, who were the Reporting Officer and Reviewing Officer, respectively. However, they have not denied these allegations in the O.A. Respondents have also submitted that Respondent 3 retired from service sometimes in 1992 i.e. after the O.A. was filed in October, 1991 and Respondent 4 is still in service, though in a different Department. In the circumstances of the case, we are unable to agree with the contentions of the learned counsel for the respondents that since the comments of these officers are available in their official records where they have denied the allegations, which he could produce if necessary, accordingly they were not required to file their replies in the O.A.

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(A/X)

11. In the facts and circumstances of the case and for the reasons given above the application succeeds. The impugned orders dated 11.6.1991 and 13.6.1991 are quashed and set aside. The respondents shall accordingly expunge the remaining adverse remarks made in the applicants' ACR for the period from 23.8.1989 to 31.3.1990 and review the question of extension of his probation period in accordance with the relevant rules and Government Instructions. This shall be done expeditiously with intimation to the applicant.

No orders as to costs.


(K. Muthukumar)
Member(A)

"SRD"


(Smt. Lakshmi Swaminathan)

Member(J)