

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A. NO. 2357/91

DATE OF DECISION : 30.10.1992

Shri Lalit Bhatia

...Applicant.

vs.

Union of India & Ors.

...Respondents

CORAM

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

For the Applicant

...Shri V.P. Sharma, Counsel

For the Respondents

...Shri M.L. Verma, Counsel

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

JUDGEMENT

The applicant, an IPS officer is aggrieved by the order dt. 26.2.1988 (Annexure A1) by which an adverse report was made in the Annual Confidential Roll of the applicant for the period from 23.7.1986 to 18.3.1987. The applicant has prayed for the reliefs that the said adverse report be ordered to be expunged from the Annual Confidential Roll of the applicant.

2. The facts are :-

The applicant was posted in 1986 in CISF (Central Industrial Security Force) though the applicant belongs to Punjab state cadre of IPS officers. During this period, the applicant worked quite diligently to the satisfaction of his superior, but in his character roll certain remarks have been given which

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are communicated to the applicant by the impugned order. The applicant made representation against the impugned remarks. The applicant has stated that the said remarks are arbitrary and discriminatory and have been given in a mala fide manner.

3. The applicant has also moved an MP 415/92 for condonation of delay and after hearing the applicant, as no reply was filed by the respondents to the MP, the application for condonation of delay has been allowed and the benefit of limitation has been given to the applicant treating the application well within time, though it was filed on 7.10.1991 against the impugned order dt. 26.2.1988. The application was, therefore, admitted by the order dt. 3.4.1992 and the respondents were allowed further time to file the reply. The respondents did not file any reply. The matter was, therefore, listed before the Registry, but thereto the respondents did not file any reply to the OA. The arguments, therefore, were heard on the basis of the pleadings on 20.10.1992. During the course of hearing at earlier occasion, the learned counsel for the applicant has stated that the representation against the adverse remarks has since been disposed of and time was sought to amend the application, but the applicant did not get the application amended to make it upto date showing therein that the representation applicant had made against the adverse remarks has since been rejected. The representation to that adverse remarks is Annexure A-2 dt. 14.5.1988. Since the respondents did not file

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any reply, So the award of the adverse remarks has to be judged on the basis of averments made in the application itself. The said adverse remarks have been given to the applicant for the period from 23.7.1986 to 18.3.1987 by the Deputy Inspector General (Personnel). It has been reported that, "Routine tasks were invariably delayed and you lacked ability to inspire/motivate and obtain willing support of your men due to your conduct." Further it has also been reported, "Your inter personal relations and team work has been found to be of low order." Further it has also been reported, "You had average ability towards duty, appreciation of situations, attention to details and ability to withstand pressure/stresses. You had family problems and hence mostly irritating in temperament. The integrity in your case also could not be assessed as beyond doubt, although nothing specific was found during this period as your conduct in a previous assignment is being investigated by CBI. You could have proved to be a very bright officer had you not adopted erratic approach and abrasive conduct. You always felt that you have been persecuted by others, including senior officials and had a tendency to speak ill of the superior officers." The applicant in his exhaustive representation had commented on all these points. The learned counsel for the applicant argued that in January 1986 and March, 1986, the applicant has been addressed D.O. letters appreciating his work.

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However, this does not relate to the period under review, which is from July, 1986 to March, 1987. The learned counsel for the applicant has also referred to a complaint made to the Minister by the applicant on July 22, 1987 regarding some state of affairs in the CISF. This complaint has, however, nothing to do with the remarks of the reporting officer as it relates to certain acts of omission and commission, negligence and irregularity on the part of Shri O.P. Bali, DIG, Western Zone, Bombay. The learned counsel for the applicant has referred to another communication addressed by the applicant on 25.11.1987 to the Secretary, Home Ministry regarding bias attitude of Shri D.M. Mishra, Director General, CISF. This also has nothing to do with the said period as the adverse remarks are of the interior period. The learned counsel for the applicant argued that the respondents have violated the provisions of All India Services (Confidential Rolls) Rules, 1970 as amended from time to time. The contention of the learned counsel is that the defects pointed out in the report were never brought to the notice of the applicant in any communication or orally. Government of India instructions clearly stipulate that it is the duty of the reporting officer not to make an objective assessment of the subordinate's work and qualities, but also ^{tender} _{to him} at all times the necessary advice, guidance and assistance to correct his faults and deficiencies. The

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respondents have not put in an appearance nor filed any counter to the present application. The time for filing the counter had been given to the respondents. The service of notice on the respondents stood completed on 9.3.1992. Thus in the absence of any evidence from the side of the respondents that the applicant, during the period under report, was duly informed about his deficiencies and shortcomings, the statement made in the application and arguments of the learned counsel for the applicant in that regard have to be accepted.

4. The learned counsel for the applicant also argued that Shri D.M. Mishra, was the Director General, CISF, who has given the remarks for the period under review and just prior to the period under reference he has commended the work of the applicant in the D.O. letter dated March 25, 1986 (Annexure III). However, the applicant had pointed out certain shortcomings to the authorities regarding the work in CISF and in fact this made the matter prejudicial in the mind of the reporting officer. The applicant has also requested for the Government probe in the alleged irregularities regarding recruitment of Constables in the CISF and this also created a bias in the mind of the reporting officer. It is because of this fact that on the verge of retirement in 1988, the report under review has been given by the said Director General,

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CISF. Such report according to the learned counsel cannot be accepted to be an objective assessment of the applicant's work in an impartial manner.

5. I have considered the aspect in greater detail and I do find that the applicant had made certain allegations against the working in CISF which naturally would have created a bias in the mind of the Director General, Shri Mishra and giving this report to the applicant on the verge of ^{his} retirement cannot be said to be an exact, free and frank expression about the assessment of the work of the applicant. This is because of ^{the fact} ^{so} that the respondents have not come forward to point out the shortcomings, deficiencies and no other document or fact has been made available to substantiate the report of the Director General.

6. Though the Tribunal cannot sit as an Appellate Authority over the reports of the reporting officer and also cannot substitute its own wisdom or opinion of that period, but at the same time the remarks given to the employee should at least be substantiated or should show that a subjective assessment has been made of the work of the applicant. The applicant in the earlier period has also earned good remarks. The applicant's work has also been commended

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just earlier to the period under review by the same Director General. The applicant has also furnished documentary evidence to show that he had made a complaint to the Government regarding certain malfunctioning of the CISF.

7. In view of the above facts, the present application is, therefore, allowed and the adverse remarks for the period 23.7.1986 to 18.3.1987 communicated to the applicant by the order dt. 28.2.1988 is quashed and set aside and also the order rejecting the representation of the applicant against that. The said entries shall be made in the ACR of the applicant within a period of three months from the date of receipt of a copy of this judgement. In the circumstances, the parties shall bear their own costs.

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30.10.92
(J.P. SHARMA)
MEMBER (J)