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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

* * *

Date of Decision: 7.8.92

DA 2887/91

K.L. GUPTA

.... APPLICANT.

VS.

UNION OF INDIA & ORS. RESPONDENTS.

CORAM:

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

For the applicant

... Ms. Neelam Rathore,
proxy counsel for
Shri Arvind Kumar.

For the Respondents

... Shri M.L. Verma.

1. Whether Reporters of local papers may yes
be allowed to see the judgement ?

2. To be referred to the Reporters or not ? yes

JUDGEMENT

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

The applicant is an IAS Officer of 1964 batch and is aggrieved by the Annual Remarks for the period from 1.4.85 to 4.12.85 which was communicated to the applicant by the letter dated 17.7.89. The applicant made representation and his representation was rejected by the order dated 4.9.89. The applicant made Review Petitions and finally a Memorial to the President on

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6.2.91 which was also rejected by the order dated 3.7.91. In this application, the applicant has assailed the said rejection of the Memorial dated 3.7.91.

2. The applicant has claimed the relief that the adverse remarks contained in ACR of the applicant for the period from 1.4.85 to 4.12.85 be expunged and the order dated 3.7.91 be also quashed.

3. The facts are that the applicant belongs to 1964 batch of IAS Officer and was allotted to West Bengal cadre. The applicant was appointed as Chief Vigilance Officer, Western Coal Fields Ltd, (in short WCL), Nagpur by the letter dated 12/13.9.84. He assumed the charge at Nagpur on 5.11.84. At that time, the applicant made a representation to the Department of Coal for his transfer to BCCL, Dhunbad. The applicant however worked at Nagpur from November, 1984 to December, 1985 with full interest and towards improvement of the performance of the Company. The applicant on his own request was reverted to the cadre of West Bengal when he was communicated adverse remarks aforesaid under Rule 8 read with Rule 2(c)(i) of the All India Services (Confidential Rolls) Rules, 1970. The substance of that remark is given below :-

"Shri Gupta's performance in WCL was far from satisfactory. He was not at all interested in working in WCL - even after being advised atleast twice to attend to his work seriously and devotedly. The reports about his work in WCL

were very disquieting as he had built up a number of contacts with undesirable contractors and others. Under the circumstances, he was far from fit to work as CVO in a public sector undertaking and had to be reverted prematurely to his parent cadre."

The applicant made representations, review petitions etc. and finally a Memorial to the President but the same has been rejected. Hence the applicant has filed this application before the Tribunal for the relief mentioned above.

4. The respondents contested this application taking the preliminary objection that the application is barred by time. It is further stated that the Memorial to the President does not extant period of limitation (Section 20(3) of the Administrative Tribunals Act, 1985). This point has been argued by both the parties and has been taken as preliminary point. The provision for submission of Memorial to the President is laid down under the AIS (D & A) Rules and sub-section 3 of Section 20 of the A.T. Act, 1985 clearly states that such a submission shall be deemed to be one of the remedies which are available. A perusal of the said AIS (D & A) Rules goes to show that the applicant could make a submission to the President in the forum of Memorial and since that Memorial has been rejected by the President on 3.7.91 and as such the application is within time.

5. On merit, the learned counsel for the applicant argued that there is a delay in communicating adverse remarks. The adverse remarks should have been communicated to the applicant ordinarily within two months but it has been done by the letter dated 17.7.89. However, this is an administrative requirement and the adverse remarks cannot be expunged only on this ground. A perusal of the departmental file goes to show that the annual remarks for the period from 1.4.85 to 4.12.85 was given to the applicant by Secretary to the Govt., Ministry of Energy, Deptt. of Coal on 6.2.86. This remarks was accepted as late as on 21.6.89 by the Union Minister of Energy. In view of this fact, the delay in accepting the remarks cannot be said to be within the control of the Deptt. concerned. Only when the accepting authority has seen the said annual remarks and endorsed the same, the same could be communicated to the applicant. Thus, the late communication of the adverse remarks cannot be said to be on account of any fault on the part of the department concerned.

6. The other point taken by the learned counsel for the applicant is that the CR for the period from April, 85 to December, 85 could have been recorded by the Secretary only when there was no annual remark of that period by the Reporting Officer. It appears from the

departmental file that the Reporting Officer of the applicant Shri T.V. Lakshmanan, CMD/WCD, who superannuated on 31.8.85 has already given the annual remarks on 31.8.85 for the period from November, 1984 to March, 1985. Shri T.V. Lakshmanan has also given the annual remarks for the period from April, 85 to August, 85 on 31.8.85 when the Reporting Officer has assessed him 'Very Good' in a general assessment and also given the remarks that the applicant has not been reprimanded during this period and the integrity has also been satisfied as 'Good'. So there cannot be another Reporting Officer for the period from April, 85 to August, 85. It appears that the Secretary Shri S.V. Lal, Ministry of Energy, Deptt. of Coal was un-aware of this earlier annual remarks given for the period from April, 85 to August, 85. Thus, remarks given by the Secretary for the period from April, 85 to August, 85 has to be seen in the light of the ^{remarks given by} then Reporting Officer Shri T.V. Lakshmanan. Further, in the remarks given by the Secretary, Coal, it is not mentioned that Shri Lakshmanan submitted special report dated 28.8.85 on the performance of Shri K.L. Gupta in the WCL. This report is attached with the annual remarks. A perusal of the secret report said to be given by Shri T.V. Lakshmanan and the entry made in the annual remarks go to show that the Secretary Coal has only expressed the opinion of Shri Lakshmanan in the annual

remarks. The Secretary, Coal, has not given any of his personal opinion regarding the working of the applicant. He has only mentioned that "He was far from fit to work as CVO in a Public Sector Undertaking." Regarding integrity also it is mentioned in the annual remarks that it is not beyond doubt. However, the entry regarding integrity is not in conformity with the Note 2 below the form which says that if there is any doubt or suspicion, the column should be left blank and action be taken by appending the secret note and that should be followed up. This entry of integrity 'not beyond doubt' has also to be seen in the light of the note appended to the form.

7. The case of the applicant is that due to some family problems he wanted his posting near Patna and he has also made certain representations before joining at Nagpur. The applicant, by the letter dated 12/13.9.84 represented that he should be posted as CVO either in Central Coalfields Ltd. (CCL) Ranchi or Bharat Coking Coal Ltd. (BCCCL) Dhunbad under Coal India Ltd. However, this request of the applicant was not accepted. Though Shri R.P. Khanna, the then Central Vigilance Commissioner, Govt. of India, recommended the posting of the applicant at CCL Ranchi. It is argued by the learned counsel that due to this fact Shri S.V. Lal, Secretary, Coal, got agitated and without any basis and without substantiating he has been given adverse remarks for the said

period. Though, Shri Lal has not been impleaded as a party in this case yet the fact remains that the applicant was not willing to join at Nagpur and represented for his posting at Ranchi or Dhanbad. It is a fact that the Tribunal cannot sit as an Appellate Authority over the decision of the Competent Authority and the matter of award of annual remarks is prerogative because the Tribunal cannot re-appraise and assess the applicant's work and conduct during the relevant period. This is a subjective assessment of the Competent Authority and the same is not open the objective test of the court.

8. The Department of Personnel has laid down certain guidelines for the award of the annual remarks. In fact, if the integrity of a person is not beyond doubt then there should be specific instances or there must be something on the record to justify that the applicant is not working with integrity in the discharge of his official duties. The secret note of Shri T.V. Lakshmanan only goes to show that the applicant has developed certain contacts with undesirable contractors. There was no other source of information available with the Secretary Coal regarding the unsound integrity of the applicant. The same Shri T.V. Lakshmanan before his retirement on 31.8.85 has certified the integrity of the applicant as 'Good'. Not only this, before laying charge of CMD

Shri T.V. Lakshmanan has written a D.O. dated 31.8.85 to the applicant. Para 2 of that said D.O. is reproduced below :-

"Before I part with you, it is my duty to acknowledge gratefully the consistent and generous assistance and co-operation that I have always received from you in the discharge of my duties. If my work in this Company can claim any merit at all, I must gratefully pass on the credit for this work to the invaluable assistance that I always received from you."

The reference has already been made to the annual remarks given by Shri T.V. Lakshmanan to the applicant before his retirement in which he also certified the integrity of the applicant as 'Good'. Thus, what is to be seen is that from 1.9.85 to 4.12.85 i.e. for a period of three months the applicant has acted in a manner which could show that he was not having integrity beyond doubt. In the remarks given by the Secretary, he has not mentioned any specific thing. He only depended on the afersaid ^{which} secret note/stands diluted in the light of the D.O. dated 31.8.85 referred to above and the annual remarks author of that note given by L to Shri Gupta for the period from April, 85 to August, 85.

9. The annual remarks should not be given so lightly or without any basis. It is not that the appraisal of the work of the applicant for that period is being reviewed but it is that there is no substance on record to justify those remarks. Shri T.V. Lakshmanan, during the period he watched the work of the applicant had

never communicated any counselling or other note regarding the discharge of the duties in a particular manner by the applicant. In the absence of non-communication/by Shri T.V. Lakshmanan to the applicant it cannot be said that the applicant was ever told to ^{un-}prove his ways or to give better performance by devoting seriously to the discharge of the duties. There is nothing on the personal file of the applicant also that the Secretary Coal ever informed the applicant orally or ⁱⁿwriting with respect to his discharge of duties.

10. Even the Reviewing Authority/Accepting Authority Service (Confidential Roll) did not adhere to the rules of All India/ Rules, 1970. The entry which was given in February, 1986 by Shri Lal was reviewed/accepted sometimes in June, 1989. There was no proper application of mind by the Accepting Authority and his signatures appears to have been obtained in a routine manner. Thus, the acceptance of the said annual remarks is also not by proper application of mind.

11. It is also to be seen that Shri T.V. Lakshmanan has also given good remarks to the applicant for the period from November, 1984 till March, 1985. Both these remarks by Shri T.V. Lakshmanan cannot be lightly ignored.

12. In such a situation, the background of the whole case has to be judged on the basis of the record. The

applicant has given in the prescribed proforma the out turn of his work for the period under review. In the ACR there is no comment on the out turn given by the applicant regarding his assessment of work. Shri Lal has not cared to give proper assessment of the applicant and the column of general assessment does not deal with every aspect, which should have been dealt with while assessing the officer.

13. The applicant has made representation against the adverse remarks but these too have been rejected in a mechanical manner. It is not necessary to deal and go in deeper detail on the various correspondence entered into while disposing of these representations of the applicant but it appears from the personal file of the applicant that the points raised by the applicant in the representation have not been effectively dealt with while disposing of the representations. From the personal file of the applicant it appears that there was a proposal to revert the applicant to his cadre to the State of West Bengal, the matter was going on since August, 1985. Thus, the opinion formed by the Secretary Coal cannot be said to be an independent opinion or a ^{official} opinion of his personal knowledge regarding the work as ^{DO} of the applicant. His opinion was gathered from the secret note of Shri T.V. Lakshmanan cannot be given

any weight in view of the fact, mentioned above.

14. In view of the above facts, the present application is allowed. The entry of the adverse remarks given to the applicant for the period from 1.4.85 to 4.12.85 by Shri S.V. Lal, Secretary, is quashed ~~unless~~ the rejection order of the various representations and the impugned order of rejection of Memorial dated 3.7.91.

The application is allowed leaving the parties to bear their own costs.

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