

7

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.745/1991

DATE OF DECISION 6.9.91

SHRI SULTAN KHAN

-- APPLICANT

VS

UNION OF INDIA & ORS.

-- RESPONDENTS

CORAM

HON'BLE SHRI D.K.CHAKRAVORTY, MEMBER (A)

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

FOR THE APPLICANT

-- SHRI R.C.VERMA

FOR THE RESPONDENTS

-- SHRI P.H.RAMCHANDANI

1. Whether Reporters of local papers may be allowed^{YK}
to see the Judgement?

2. To be referred to the Reporter or not? ^{JS}

(J U D G E M E N T)

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

The applicant, Asstt. Accounts Officer C.D.A., Meerut Cantt filed this application under Section 19 of Administrative Tribunals Act, 1985 aggrieved by the order dated 15th March, 1990 passed by Secretary, Ministry of Defence, denying promotion to the applicant on the basis of adverse remarks

In this application the applicant has claimed the following reliefs:-

- (a) to quash and modify the impugned order dated 15-3-1990 marked Annexure IV.
- (b) to issue suitable directions or orders to respondent to restore applicant's seniority in the cadre.

2. The brief facts of the case are that in July, 1985, while the applicant was serving in the office of S.L.A., A.F.M.S. Depot, Delhi Cantt one Shri Hari Shankar was officer in-charge of the applicant. He gave the A.C.R. for 1985 "Average" which was accepted by Shri Amar Chand, I.D.A.S. in June, 1986. On 8th January, 1986 the applicant arrived late in office on which said Shri Hari Shankar made a report of applicant of late arrival on that day. However, this late arrival was condoned by the Head Office vide memo dated 10th March, 1986 (Annexure II). However, in the A.C.R. for 1986 the point of late arrival has been made the weapon of attack and it has finally resulted in the denial of promotion as Accounts Officer to the applicant. The applicant was, however, given a warning later on to be more careful in future regarding punctuality. The reporting officer on the basis of the warning aforesaid assess the applicant as regular but not punctual. According to the applicant by virtue of this report, the promotion of the applicant was withheld till 1992 for the functional grade of A.A.O. The juniors to the applicant have been promoted as Account Officer w.e.f. 25th September, 1990. The

9

applicant made representation to Controller General Defence Accounts as well as to the Secretary, Ministry of Defence which were also rejected and the decision was conveyed to the applicant by the order dated 15-3-1990 (Annexure IV) which is challenged in this application.

3. The respondents contested the application and filed the reply stating therein that the applicant's adverse report was accepted not only on the remark given by the Reporting Officer regarding late coming but also on the remarks that the applicant was a slow worker.

It is further stated by the respondents that a number of instances such as lapses in scrutiny of G.P.F. bills, belated submission of A.C.Rs. delayed submission of reports for pricing of issue vouchers etc. were pointed out by the Reporting Officer. The A.C.R. of the applicant for the year 1985 was also accepted as 'Average'. It is stated by the respondent that the point regarding the prejudice of the Reporting Officer on the basis of religion is an after thought. It is further stated that the applicant attended the office late on a number of occasions even after the quoted incidence of late arrival of 8th January, 1986 for which his explanation was called. The applicant again repeated the same irregularity on 27th March, 1986. Thus according to the respondents the late coming was a routine practise of the applicant. The respondents have also stated that since the applicant

the basis of on adverse remarks in the latest A.C.R. for the year 1986 he did not qualify the criteria and the D.P.C. accordingly recommended him "not yet fit" for promotion for A.A.O. grade w.e.f. 1.4.1987. The applicant, according to the respondents, was not awarded any kind of punishment. The disposal of the representation of the applicant took long time only because the applicant himself made successive representation though his first representation dated 1-4-1987 was rejected on 27th March, 1988.

4. In view of the above facts the respondents stated that the application is devoid of merit and the applicant is not entitled to any relief.

5. We have heard the learned counsel of the parties and have gone through the record of the case. The applicant is aggrieved by the A.C.R. for the year ending 1986. The Confidential Report for the year ending 31.12.1986 has been filed by the respondents alongwith the reply which runs from pages 49 to 82 of the counter (Annexure-R 13). These remarks were communicated to the applicant in February, 1987. An appeal dated 1.4.1987 against the adverse remarks was addressed to Head Quarters

C.G.D.A.
Office viz. / New Delhi and it was rejected by the
order dt. 22.3.1988. Further, appeals dt. August, 88
and September, 88 were addressed to F.A.(D.S.) which
were rejected and communicated by the impugned order
dt. 15.3.1990 (Annexure-IV). The adverse remarks
relate only to the effect that the applicant was found
late in attendance during the surprise check carried
out by the reporting officer on 8.1.1986. The second
adverse entry against him is that the applicant is a slow
worker and in a number of instances such as lapses in scrutiny
of GPF bills; belated submission of ACR 1986; delayed submission
of report for pricing of Issue Vrs & omission in leave
statement of Shri D.K. Tiwari have been given. We have
considered minutely the arguments advanced by the learned counsel
Adverse remarks in Confidential Report do cause hardship
if
to a Government servant, and ~~the~~ adverse remarks were made
without justification and without paying heed to the
instructions regarding writing of Confidential Reports, it
is needless to emphasize that it will result in demoralisation
of services. The assessment of a Government servant for
the purpose of making entries in Confidential Reports cannot
be made arbitrarily. It is to be done taking into account
the quality of performance of the duties assigned to him and
by his conduct in general. The reporting officer,
the reviewing officer and the counter signing officer have to

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make assessment and write the entries with maximum degrees of objectivity and impartiality, or if it is done otherwise, it will prejudicially affect the officer reported upon and his career itself will be doomed. jeopardised.

6. In the instant case, during the relevant period, the reporting officer assessed the applicant's quality of work as slow. Regarding punctuality, the reporting officer has referred to the incidence of surprise check-up when the applicant is late. The reviewing officer opined that the applicant is regular, but not punctual. The reviewing officer also opined that the applicant was lacking in the proper performance of the duties and he was issued recorded warnings. The grievance of the applicant is that though he was late on 8.1.1986, but since his late coming was condoned by C.D.A. (W.C. Chandigarh) by the letter dt. 10.3.1986 (Annexure-II), then this fact should not have been mentioned adversely by the reporting officer. On the explanation called from the reporting officer on the representation against the adverse remark, it is revealed that the applicant himself attended the office late on a number of occasions. After 8.1.1986, he repeated the same irregularity on 27.3.1986 which was reported to the higher authorities on 11.4.1986. At the relevant time, the applicant was Incharge of the Office of SLA, AFMSD, Delhi Cantt

✓ It was reported that since the Incharge of the Office himself was attending office late, so the proper punctuality has not been maintained in the office.

7. Regarding the other adverse comment given by the reporting officer in column-4, part-3 of the Confidential Report (Annexure-R 13) that the applicant is slow in work/performance, can be confirmed from Annexure-B attached to the A.C.R. Annexure-B attached to the A.C.R. lists several instances of giving such a remark. In the appeal dt. 1.4.1987 (Annexure-R 3) preferred by the applicant against the aforesaid adverse remark, the applicant has not at all furnished any evidence. Rather he stated that no extra manpower was either called for or provided to him to speed up ~~for~~ work. In fact, 21 annexures have been enclosed by the reporting officer. It is not relevant to discuss all these enclosures, but a cursory reading of the same goes to show that all was not going well in the establishment of SLA, AFMSD, Delhi Cantt of which the applicant was the Incharge. The representation against the adverse remark has been duly considered by higher authorities. In our considered opinion, therefore, there is no justification to come to a finding that the adverse comment on the performance of the applicant was motivated by extrenuous consideration of religion or bias.

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8. The applicant has also prayed for the restoration of his seniority as the juniors to him have already been promoted. In this connection, the proceedings of the DPC were called for and the same have been perused by us. The DPC has considered the case of the applicant and recorded its findings that the applicant was not fit for promotion and at that time juniors to the applicant were promoted. So it is not a question of suppressing the seniority of the applicant, but it is a case where the applicant has been superceeded by those who were more competent and found fit for promotion, although they were junior to the applicant. This DPC was held in between January, 1988 to April, 1988 for promotion from S.Os.(A) to Assistant Accounts Officer (Group-B). Second time, the DPC was held on 16.2.1990 and the applicant was found fit and recommended for promotion to A.A.O.'s grade. Thus there is no force in the contention raised before us that the seniority of the applicant has been suppressed. The present application was filed by the applicant on 2.4.1991 when the applicant had already been promoted as Assistant Accounts Officer on the ^{16.2.1990} DPC held in February, 1990. The grievance of the applicant is against the Memo dt. 15.1.1991 (Annexure-V) wherein the applicant was informed that because of his delayed promotion to A.A.O.'s grade, he could not be considered for promotion to A.O.'s grade due to loss of

seniority in A.A.O.'s grade. Seniority normally is judged from the length of standing in a particular grade. Since the applicant was promoted in February, 1990 to the grade of A.A.O.(Group-B), so those who have already been promoted earlier in April, 1987 onwards shall be senior to the applicant as the applicant has already been considered and was not found fit when juniors to the applicant were promoted. The loss of seniority, if any, has been due to a contributing act of the applicant. Since the adverse remark for the year 1986 have been held to be rightly given to the applicant, so the question of loss of seniority cannot be again looked into on the basis of non-consideration of the applicant by the DPC held in 1988.

9. In view of the above discussion, we find that the application is devoid of merits and is, therefore, dismissed leaving the parties to bear their own costs.

(J.P. SHARMA)
MEMBER (J)

6/9/91

(D.K. CHAKRAVORTY)
MEMBER (A)

6/9/91