

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.1632/2004

New Delhi, this the 16th day of February, 2005

HON'BLE SHRI M.K. MISRA, MEMBER (A)

V.K. Naithani
S/o Shri S.P. Naithani
Aged about 52,
Resident of 52-B, KJ Apartments,
Sector-53, NOIDA.

And employed as
Assistant Director,
Aviation Research Centre,
Block V (East),
R.K. Puram, New Delhi.

....Applicant.

(Applicant in person)

Versus

1. The Cabinet Secretary,
Rashtrapati Bhavan,
New Delhi.
2. The Director General (Security)
Aviation Research Centre,
Block V, East R.K. Puram,
New Delhi.
3. The Special Secretary,
Aviation Research Centre
Block V, East R.K. Puram,
New Delhi.

(By Advocate : Shri R.N. Singh for R. V. Sinha)Respondents

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The applicant – Shri V.K. Naithani joined Aviation Research Centre (ARC) in 1977 as a direct recruit. He got adverse remarks in his Annual Confidential Report (ACR) for the period 2001-02. Against the adverse remarks, the applicant filed this OA seeking relief in the following manner:-

“(a) Quash Memo. No.DD (By/ACRs/2002-116
dated 6.5.01 of DD (B) communicating adverse
remarks as well as below benchmark entries

made in all the columns in the ACR of the Applicant for the year 2001-02.

- (b) Direct the Respondents to upgrade the ACR of the Applicant for the period 2001-02 suitable, taking into account the Grading of the Applicant during last 5 years prior to period of year 2001 as the foundation of new grading; and upgrade entries made in various columns of ACR also accordingly.
- (c) Grant exemplary cost of this application to the Applicant for having caused to the Applicant and his family harassment, mental tension, damage to social image and financial loss by not adhering to the directives of DOP&T and numerous judgments pronounced by the Hon'ble Supreme Court and other Hon'ble Tribunals in this regard; and not taking decision as per rules/guidelines already available with the office which forced the Applicant to take legal recourse.
- (d) Grant any other relief as may deem fit and proper under circumstances."

2. Briefly the facts of the case are that the applicant was posted at ARC Station at Doom Dooma (Assam) as Field Officer w.e.f. 17.8.1999 till 26.2.2002. At present he is posted in Delhi. The adverse entry in his ACR for the year 2001-02 was communicated to him vide Memo dated 16.5.2002 (Annexure A-1) which reads as under:-

"Involvement in financial irregularities – in one of his representations the officer himself has accepted that he had mis-used Govt. funds.

Consumption of alcohol by the officer appears to be on the higher side. As per the record of the officers Mess Bar, the average consumption alcohol (Rum) by the officer is approximately 4.7 (Large Peg) per day.

Heavy drinking habit clubbed with getting involved in financial irregularities is very dangerous to a Security Organisation"

3. The applicant appeared in person. He vehemently contended that the adverse remarks in his ACR were biased and in violation of



the instructions of the DOP&T. He further contended that the inquiry officer while making inquiry under CCS (CCA) Rules, 1965 gave the report to the disciplinary authority in which he was absolved from all the charges. He again submitted that he was victimized on account of the fact that in the year 1999 he was not given promotion. Therefore, he sought such relief from this Tribunal by way of direction to the respondents for promotion to the applicant. Therefore, the respondents became prejudice and biased and awarded the adverse entry to the applicant. The applicant again contended that against the adverse remarks, he submitted a representation to the competent authority, which did not expunge the adverse remarks from his ACR and such authority confirmed the view taken by the reporting/reviewing officer. Applicant also resubmitted another representation, which was also rejected by the respondents. The applicant quoted the instructions of the DOP&T in respect of writing of ACR and communication of adverse remarks. Another representation dated 26.12.2002 was submitted before the D.G. (Security) and the same was sent back to the applicant with the remarks that since the applicant had not sent the representation through proper channel, therefore, it required to be sent as per rules to the higher authority. The applicant averred that he was never communicated about his deficiencies before giving adverse remarks in the ACR which is a clear cut violation of the rules prescribed in respect of ACR, i.e., the person should be given an opportunity for improving and in this case, no opportunity was provided to the applicant for improvement in the performance. The applicant also approached through representation dated 17.11.2003 to the Cabinet Secretary and it was communicated to him that since there is no

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provision for an appeal against the adverse remarks in the ACR, therefore, no action was taken on that representation. The applicant also quoted the instructions of the Central Vigilance Commission (CVC) in respect of inquiry under CCS (CCA) Rules, 1965, which prescribe the time limit for holding inquiry and awarding the verdict against the delinquent employee. The adverse remark in the ACR was awarded to him because at Doom Dooma, he could not become one of the parties of some illegal activities of the respondents. He submitted that the disciplinary inquiry under Rule 14 of the CCS (CCA) Rules, 1965 was held on similar charges for financial irregularities which is of the same nature as is reflected in his ACR and since the inquiry officer did not find him guilty, therefore, the adverse remarks regarding financial irregularities is unwarranted and should be expunged by the respondents.

4. Regarding the adverse remark on account of excess consumption of liquor, the applicant submitted that another employee Shri N.K. Sharma, who consumed more liquor (1714) than him (528) and no action was taken against him by the respondents (Page 53 of the paper book), in view of this, this remark should also be expunged by the respondents.

5. The learned counsel for the respondents averred that the adverse entry in the ACR of the applicant for the year 2001-02 was awarded because he employed casual labourers without the proper sanction and this created great financial irregularities in the organization. As per record, he was found consuming excess alcohol on his own account than the prescribed limit. Therefore, entry in this respect was also made in his ACR. The same was communicated to him vide Memo dated 6.5.2002 (Annexure R-1). After receiving the

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communication, the applicant submitted his representation dated 30.5.2002 to the competent authority for expunction of the adverse remarks. The same was considered by the competent authority and a reply was sent to the applicant communicating him that his request for expunction has not been exceeded to. Another representation was submitted by the applicant directly to the competent authority, without through proper channel, therefore, the same was returned to him with the advice to send the same through proper channel. Later on the applicant sent a representation dated 14.8.2002, which was addressed to Special Secretary, ARC, but the same was rejected and a proper reply was sent to the applicant.

6. Learned counsel for the respondents vehemently argued that the applicant submitted various representations before various authorities to circumvent the provision of Section 21 of the Administrative Tribunals Act, 1985, which deals with the period of limitation. The cause of action arose on 6.5.2002 when the adverse entry was communicated to him and the limitation period should start from that date. Because the applicant filed the OA on 6.8.2004, i.e., after period of one year expired as prescribed under Section 21 of the Administrative Tribunals Act, 1985, thus OA is not maintainable. It was also submitted by the respondents that regarding the financial irregularities, the applicant was issued a Memo vide letter dated 5.10.2001 and in his reply dated 6.10.2001 to that Memo, the applicant had himself admitted the fact of diversion of fund incurring expenditure without the approval of the competent authority. His performance was also brought to the notice of the applicant by the superior authority through DO letter dated 30.3.2001. The learned counsel also submitted that the biased

attitude on the part of the respondents on account of the case filed in the Tribunal by the applicant is misconceived and imaginary because the adverse remarks were given on the basis of the financial irregularities and excess consumption of alcohol which is a matter of record. The disciplinary action was also initiated for misconduct of the applicant because he allowed unauthorized persons for tea plucking on Defence land at Doom Dooma through the local contractor for personal gains. Regarding report of the inquiry officer, as per prescribed rules, the opinion/advice of the CVC is warranted. Therefore, on submission of the inquiry report before the CVC, the CVC pointed out some technical defects in the inquiry report and suggested that *de nova* inquiry should be conducted in the case of the applicant by the inquiry officer. Therefore, the findings of the inquiry officer are not to be treated as concluded one. Thus the adverse entries were awarded to the applicant on the basis of objective evidence. The learned counsel further averred that it is not necessary to mix up the case of the disciplinary inquiry with that of adverse remarks in his ACR as both are dealt with under different sets of rules prescribed from time to time.

7. I have heard the learned counsel for the respondents as well as the applicant in person at great length and perused the material on record. It is an admitted fact that the adverse remarks for the year 2001-02 were communicated to the applicant. It is also admitted fact that his representation for expunction of adverse remarks to the higher authority was also considered and was rejected with due consideration and with a speaking order. It is observed from the inquiry report that in para 19 of that report, it has been mentioned that the part of Article-I to the extent relating to misappropriation of

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Government money for utilizing it for purposes other than what it has been sanctioned by the competent authority stands established. The part of Article-I relating to the exact numbers of Casual Labourer engaged and the exact numbers of man-days claimed for payment could not be established in the absence of authenticated evidence. In para 20, the inquiry office came to the conclusion that regarding illegal tea plucking by the unauthorized persons in connivance of the applicant, the same has not been established.

8. It is an admitted fact that this inquiry officer report was not accepted by the CVC and the CVC suggested a fresh inquiry be made in this case because the charges could not be proved on account of technical deficiencies. Therefore, that required further evidence by the inquiry officer before coming to any conclusion. It is also observed that the DOP&T instructions in OM dated 11.1.2002 are of advisory nature and in order to reduce the service litigation. Further instructions of DOP&T are procedural in nature and they are for the guidance to the reporting and reviewing officer while writing the ACRs of their subordinates. In the present case, there are charges against the applicant in the nature of financial irregularities and excess consumption of alcohol and both are the matter of record and the adverse entries in the ACR of 2001-02 have been awarded to the applicant on the basis of the record. It is also seen that before issuing of chargesheet to the applicant or writing of his aforesaid ACR, the applicant was communicated about his conduct with regard to financial irregularities and excess consumption of alcohol. The case quoted by the applicant of Shri N.K. Sharma who had more/excess consumption of alcohol than the applicant would not give any support to the applicant's case because

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one wrong cannot allow another wrong to be committed by the delinquent employee. The applicant also quoted various cases of the Apex Court in respect of the ACR but they are applicable only to those cases where ACR was not written objectively. In the case of the applicant, there is definite evidence of serious nature at least in the case of the financial irregularities, employment of casual labourers and diversion of Govt. fund from one head to another head without proper permission of the competent authority. In such a serious matter, I do not think it proper and appropriate to interfere with the assessment of the reporting/ reviewing officer while awarding adverse remarks to the applicant.

9. The objection raised by the learned counsel for the respondents regarding limitation under Section 21 of the Administrative Tribunals Act, 1985, it is observed that the delay is reasonable because the applicant wanted to exhaust all the remedies available to him and thereafter after exhausting all the remedies available to him, he made a journey to this Tribunal through the present OA. I, therefore, condone the delay and the OA is maintainable.

10. The offshoot of the above discussion is that the OA is bereft of any merit and hence, it is dismissed. No order as to costs.


 (M.K. MISRA)
 MEMBER (A)

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