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Central Administrative Tribunal
Principal Bench, New Delhi.

OA-75/2004

New Delhi this the 2nd day of September, 2005.

Hon'ble Shri Shanker Raju, Member(J)

R.K. Budhiraja,
S/o Sh. J.R.D. Budhiraja,
R/o P-28, Pratap Nagar,
Delhi-7.

Applicant

(Applicant in person)

Versus

1. Union of India through
its Secretary,
Ministry of Finance,
Department of Expenditure,
7th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.

2. The Controller of Accounts,
Ministry of Personnel,
Public Grievances & Pensions,
3rd Floor, B-Wing, Lok Nayak
Bhawan, Khan Market,
New Delhi.

.... Respondents

(through Sh. H.K. Gangwani, Advocate)

O R D E R

By virtue of this application, the applicant has impugned respondents' communication dated 13.11.2001 whereby adverse remarks recorded in the ACRs for the years 1996-97, 1999-2000 and 2000-2001 have been conveyed to him in wake of holding of DPC. Order dated 13.3.2003 is also assailed whereby his representation against adverse remarks was turned down. The applicant, on his transfer as an Auditor from Accounting Organisation of CBEC joined as PAO, Cabinet Affairs on 20.11.1995 and was further transferred to

IAW on 13.1.2000 and subsequently he returned to Food and Consumer Affairs w.e.f. 3.1.2001. While his promotion was withheld due to adverse remarks, the adverse remarks for 1996-1997 had been expunged but regarding others, he was conveyed the remarks, which, on representation, were turned down, giving rise to the present OA.

2. Applicant, who appeared in person, contended that in so far as remarks for the year 2000-2001 are concerned, he has not served any reporting officer for more than three months' and as such, the concerned authority was not competent to write his ACRs. For the adverse remarks pertaining to the period 1999-2000, it is stated that the act of disagreement by the reporting officer with respect to self-appraisal regarding non-contribution of the applicant pertaining to clearance of outstanding cheques amounting to Rs. 8,29,258/-, is mala fide on the part of the respondents and as alleged mere typing would not indicate that he has done what work.

3. It is contended that time limit to communicate adverse entry has not been adhered to which is one month as per G.I., D.P.&A.R. O.M. dated 30.1.1978. It is also stated that for writing the ACRs, self-appraisal is not necessary if the period under report is less than three months.

4. Applicant states that Sh. D.D. Kaushik was not his reporting officer, as such, remarks are unfounded and are liable to be set aside.

5. On the other hand, respondents' vide letter dated 20.6.2001 stated that Sh. D.D. Kaushik was transferred to the Internal Audit and had remained there till 18.6.2001. During this period not only for the period 1999-2000 he had seen the performance of the applicant for three months but also for the full year in 2000-2001, as such, the applicant, despite insistence and repeated directions,

has not submitted his self appraisal for the ACR for the period 2000-2001. Remarks entered in his ACRs are keeping in view his performance for the period during 2000 as he has been served with various memos.

6. Respondents have also produced the ACRs folder of the applicant for Court's perusal. At the outset, the decision of the Apex Court in **Swantantr Singh Vs. State of Haryana & Ors.** (1997(4)SCC 14) has been relied upon, wherein it has been held that:-

"6. It is sad but a bitter reality that corruption is corroding, like cancerous lymph nodes, the vital veins of the body politic, social fabric of efficiency in the public service and demoralizing the honest officers. The efficiency in public service would improve only when the public servant devotes his sincere attention and does the duty diligently, truthfully, honestly and devotes himself assiduously to the performance of the duties of his post. The reputation of being corrupt would gather thick and unchaseable clouds around the conduct of the officer and gain notoriety much faster than the smoke. Sometimes, there may not be concrete or material evidence to make it part of the record. It would, therefore, be impracticable for the reporting officer or the competent controlling officer writing the confidential report to give specific instances of shortfalls, supported by evidence, like the remarks made by the Superintendent of Police. More often, the corrupt officer manipulates in such a way and leaves no traceable evidence to be made part of the record for being cited as specific instance. It would, thus, appear that the order does not contain or the officer writing the report could not give particulars of the corrupt activities of the petitioner. He honestly assessed that the petitioner would prove himself to be an efficient officer, provided he controls his temptation for corruption. That would clearly indicate the fallibility of the petitioner, vis-à-vis the alleged acts of corruption. Under these circumstances, it cannot be said that the remarks made in the confidential report are vague without any particulars and, therefore, cannot be sustained. It is seen that the officers made the remarks on the basis of the reputation of the petitioner. It was, therefore, for him to improve his conduct, prove honesty and integrity in future in which event, obviously, the authority would appreciate and make necessary remarks for the subsequent period. The appellate authority duly considered and rejected the contention of the petitioner. Repeated representation could render little service. Rejection, therefore, is neither arbitrary nor illegal."

7. In **State of U.P. Vs. Yamuna Shanker Misra and Another** (1997(4)SCC 7), it is held that purpose of ACR is to accord an employee

an opportunity to improve his performance and for this an objectivity in writing of ACR is made by the reporting/reviewing officer. It is also held that when mala fides are alleged against the reporting/reviewing officer for want of his implication and is deprived of an opportunity to explain his conduct, mala fide cannot be established.

8. Having regard to the ratio laid down by the Apex Court and on perusal of the ACRs, I find that ACR for the period from 1.4.1999 to 31.3.2000 was written by Sh. D.D. Kaushik who joined on 1.1.2000 and remained there till 18.06.2001, as such he is competent to act as a reporting officer. As regards discrepancy in Clauses 1 and 3(b), the disagreement has been arrived at on a verbal consideration and moreover other remarks entered are on the basis of the work and performance of the applicant. As such, I do not find any mala fide or discrepancy in the remarks, which are based on the performance of the applicant.

9. Regarding ACR for the period 1.4.2000 to 31.12.2000 applicant had worked under D.D. Kaushik who was posted in the department where the applicant had been working and as he had not submitted his self-appraisal, despite reporting officer had watched his performance for more than three months, the same is attributable to him. The remarks entered are on the basis of the performance of the applicant for which he had been accorded opportunities to improve. Despite this, as the applicant had not improved, the remarks are justified.

10. In the matter of ACR, I cannot sit as an Appellate Authority in a judicial review, only legal implications are to be considered and directions and orders passed by the Government on writing the ACRs are only

directory in nature. The delay in communicating the ACR has not caused prejudice to the applicant as before his promotion DPC was held. He has been conveyed the remarks and as the same have not been expunged, respondents have committed no illegality.

11. The fairness of the department is apparent from the fact that the ACR for the period 1996-97, which was not based on objectivity, was expunged.

12. In the result, I find no infirmity in the ACR of the applicant. Therefore, Original Application, being devoid of merit, is accordingly dismissed. No costs.

S. Raju
(Shanker Raju)
Member(J)

/v/v/