

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 358/1992

(2A)

New Delhi this the 11th Day of April 1997

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)

Smt. Laxmi Pal,
wife of Shri H.K.Pal,
Resident of RZG-79/2 Mandir Marg,
Mahavir Enclave, Palam Road,
New Delhi-110 045. Applicant

(By Advocate: Shri A.K.Behra)

Vs

1. The Secretary,
Union Public Service Commission,
Dholpur House, Shahajhan Road,
New Delhi.

2. Shri S.S. Nair,
Section Officer,
E-XIX, Room No. 312,
U.P.S.C., Respondents
New Delhi

(By Advocate: Proxy Counsel Shri Harveer Singh for
Mrs. Pratima K. Gupta)

O R D E R

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)

The applicant in this case joined Government service as Lower Division Clerk on 14.4.1969 after qualifying the Clerks Grade Examination ^{conducted} by the Union Public Service Commission in the year 1968. Thereafter, the petitioner was promoted as Upper Division Clerk in the year 1979 and the applicant joined UPSC after being duly selected on a regular basis on 27.3.1987 under the Zonal Scheme. The petitioner submits that on the basis of a single incidence, adverse remarks have been entered in the Confidential Reports of the petitioner by the Reporting Officer, Respondent No. 2 and on the basis of the said remarks the adverse entries have been communicated to her by an order dated 17.7.1990.

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Representation filed by her against the said order communicating the adverse remarks was also disposed of an order dated 31.1.1991. The petitioner is challenging both these orders in this O.A.

2. The contention of the petitioner is that during her 22 years of service, this is the only incidence where adverse remarks have been communicated and this does not commensurate with her performance. The incident referred to originated from a difference of opinion she had with the Reporting Officer and the Reporting Officer has used his power to write the C.R. as a weapon to punish her rather than to exercise the said power for the purpose of improvement of the career advancement of his subordinate

3. The petitioner also argued at length regarding the merit of the entry and justification she had which were substantially the same as that she had presented to the respondents in her representation which has been disposed of, by the second impugned order viz., one dated 31.1.1991.

4. The respondents on the other hand filed their reply and stated that the circumstances in which the said adverse entries were made were justifying in the circumstances of the case and admitted that during the years prior to the said eventful year nor thereafter, any adverse remarks have found place in her record.

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5. I have perused the pleadings and heard the counsels for both the parties. The ground alleged against the impugned orders dated 17.7.1990 viz., that the said entry do not give any details which enables the petitioner to file a proper representation could not be substantiated nor could the petitioner establish malafide against the Reporting Officer, nor that the Reviewing Officer have reported and concurred with entry in a mechanical manner. We were not impressed by these grounds since no substantial in road has been made against the impugned order dated 17.7.1990

6. The representation filed by the petitioner is in fact a detailed one, and by the impugned order dated 31.1.1991 disposed of the same and the counsel for the petitioner alleges that the said disposal of the representation is not in accordance with the guidelines at page 37 of the paper book which, have force of law. The said guidelines are reproduced herebelow:

- i) All representations against adverse remarks should be examined by an Authority superior to the Reviewing Officer, in consultation, if necessary, with the Reporting and the reviewing officers. The said superior Authority shall be regarded as the Competent Authority to deal with such representations".
- ii) If the Competent Authority finds that:
 - a) the remarks were justified and the representation is frivolous, a note will be made in the Confidential Report of the Government servant that he did not take the correction in good spirit;
 - b) there is not sufficient ground for interference, the representation should be rejected and the Government servant informed accordingly;

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- c) the remarks should be toned down, he will make the necessary entry separately with proper attestation at the appropriate place of the report (on no account will corrections be made in the earlier entries themselves), and
- d) the adverse remarks was inspired by malice or is entirely incorrect or unfounded, and therefore, deserves expunction, he should score through the remark, paste it over, or otherwise obliterate it, and also make a dated entry, under his signature, stating that he had done so, under intimation to the concerned Head of the Department of Office, if he himself does not occupy that position.

7. We have perused the impugned order dated 31.1.1991 and we find that the said order is not in accordance with the guidelines, which have the force of law prescribed in the circumstances. The order dated 31.1.1991 is reproduced herebelow.

"Memorandum

With reference to her representation dated 31.8.1990 in connection with adverse remarks in her CR for the period 26.7.89 to 6.11.89, Smt. Laxmi Pal, Assistant is hereby informed that her representation has been thoroughly examined by the competent authority and the following modifications have been made in her CR in Column Nos. 6,8 and 10 in Part III of the CR:-

Col. 6

The sentence - "she has written 'Nature of work as the reasons for transfer in her application which corroborated this fact" has been expunged. Rest of the remarks still stands.

Col. 8

In place of earlier remarks in this Col. the following has been recorded: "The Officer has been found to be not amenable to discipline and there is considerable scope for improvement in her overall approach to work and behaviour."

Col. 10.

The earlier remarks in this Col. has been expunged and the following has been recorded:

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"There is scope for improvement in her relations with fellow employees, including her superiors."

All other adverse remarks made in Col. Nos. 1,3,4,7,12 and 14 of Part III of the CR for the period stated as above have been justified by the Competent Authority and, therefore, stand unchanged."

8. In the light of the guideline cited above, the order passed on the representation of the petitioner on 31.9.1991 is quashed and the respondents are directed to pass a fresh order, strictly within the guidelines extracted above. The respondents shall pass such an order within two months from today and communicate the same to the petitioner. The petitioner will have the liberty to assail the said order in an appropriate forum in an appropriate manner.

9. With these directions the OA is partly allowed. No order as to costs.

(Dr. Jose P. Verghese)
Vice Chairman (J)

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