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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 379/92

DECIDED ON : 13-8-1992

R. Radhakrishnan

... Applicant

-VERSUS-

Union of India & Anr.

... Respondents

CORAM : THE HON'BLE MR. T. S. DEROI, MEMBER (J)
THE HON'BLE MR. P. C. JAIN, MEMBER (A)

Shri R. Devarajswamy, Counsel for Applicant

Shri N. S. Mehta, Sr. Standing Counsel for
the Respondents

JUDGMENT

Hon'ble Shri P. C. Jain, Member (A) :-

The applicant who is posted as Deputy Director (Supplies) in the Directorate General of Supplies and Disposal, New Delhi, has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985, praying for quashing the impugned order dated 29.11.1990, for a direction to the respondents to remove from his A.C.R. the copy of the aforesaid impugned order and that no reference should be made to the said recordable warning in the papers to be placed before any OPC, Appointment Committee of the Cabinet or in any other manner having bearing on the career/service prospects of the applicant.

2. The respondents have contested the O.A. by filing a reply to which a rejoinder has also been filed by the applicant. As the pleadings in this case were complete, the case is being disposed of, with the consent of both parties, at the admission stage itself. Accordingly, we have perused the material on record and also heard the learned counsel for the parties.

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3. Briefly stated, the relevant facts are that by means of the following confidential D.O. letter dated 22.3.1990 (Annexure A-1) the applicant was asked to furnish his reply within 15 days from the receipt of the letter :-

"Dear Shri Radhakrishnan,

The scrutiny of Purchase file pertaining to contract No. Plg-1/689 dt. 2.7.83 placed on M/s MU Metalley Casting Works, Calcutta indicates that a FIR was to be lodged against the said firm for having obtained 95% payment by fraudulent means against the contract as per decision dt. 1.5.88 with the approval of the then D.G. However, the FIR appears to have been lodged on 26.6.89 on the basis of the documents all of which were available as far back as on 6.6.88. It is also observed that the then Section Officer had also put up the draft FIR on 6.10.88 and you failed to take appropriate action to file the FIR which resulted in abnormal delay in filing the FIR in question. I request you to clarify as to why you failed to take timely action to file the FIR against the defaulter firm, more so when the matter had been brought to your notice more than once. I request you to furnish your reply within 15 days from the date of receipt of this letter. In case you desire to pursue the relevant purchase file, you may contact the Vigilance Section on any working day during office hours.

With regards,

Yours sincerely,
sd/-
(C. L. Suman)"

He gave his reply by his confidential D.O. letter dated 29.3.1990 (Annexure A-2). Thereafter, the impugned order dated 29.11.1990 was issued by which, on reaching the conclusion that there had been a lapse on the part of the applicant for not taking timely action for lodging the FIR, a recordable warning was decided to be administered to him for the lapses mentioned in the order and it was ordered accordingly. It was further stated that a copy of this order is being placed in his C.R. dossier. This order has been issued "by order and in the name of the President." He filed a representation which was rejected vide memorandum

dated 10.12.1991. It is the order by which he has been awarded a recordable warning which has also been placed in his C.R. dossier, and by which the applicant is aggrieved in this case.

4. The main ground urged before us by the learned counsel for the applicant is that a recordable warning amounts to a penalty of censure and as such procedure prescribed in Rule 16 of the C.C.S. (C.C.A.) Rules, 1965, should have been followed which has not been done in this case, as penalty of 'censure' is one of the minor penalties prescribed in Rule 11 of the aforesaid Rules. In this connection, the applicant has relied on a judgment of the Delhi High Court in the case of (1) Madhan Singh vs. Union of India & Ors. : 1969 SLR 24; (2) on a judgment of a ~~Delhi~~ Bench of the Tribunal in the case of V. K. Gupta vs. Union of India & Anr. : SLJ 1989 (1) (CAT) 526; and (3) on a judgment of the Calcutta Bench of the Tribunal in the case of Brijendra Kumar Sharma vs. Union of India & Ors. : ATJ 1991 (1) 247. In the case of Madhan Singh (supra), the Delhi High Court observed that a warning placed on the C.R. dossier "was intended to be taken into consideration for assessing the official career of the petitioner and is likely to effect the same adversely since the Memorandum itself states that a copy of that communication has been placed in the character roll of the petitioner. Under these circumstances, in my opinion notwithstanding the word 'warning' used in the said Memorandum, that Memorandum really imposed penalty of censure on the petitioner based on the finding that he was guilty of misconduct....." Following that judgment, a ~~Delhi~~ Bench of the Tribunal in the case of V. K. Gupta (supra) held that a Recordable warning tantamounts to censure and cannot be awarded through an administrative memo as contemplated in Rule 11 of the CCS (CCA) Rules, as admitted by the respondents, outside Rule 16.

of the CCS (CCA) Rules. Following these two cases the Calcutta Bench of the Central Administrative Tribunal in the case of Brijendra Kumar Sharma (supra) also held as below :-

"We are, therefore, of the opinion that the action of the respondents in awarding this warning to the applicant without holding a proper enquiry and without following the principles of natural justice cannot be sustained and must be set aside."

5. In view of the position of law laid down in the aforesaid cases and as we find that the case before us is fully covered by the aforescribed judgments, we allow this O.A., set aside and quash the impugned order dated 29.11.1990 as prayed for, and also direct that the aforesaid order shall be removed from the C.R. dossier of the applicant. We, however, make it clear that the respondents will be at liberty to initiate action on the same charge in accordance with the procedure prescribed in Rule 16 of the C.C.S. (C.C.A.) Rules, 1965, if they so wish.

No costs.

(L.C. 13/8/92
(P. C. JAIN)
MEMBER (A)

(T. S. Oberoi)
MEMBER (J)
Dated 13.8.92