IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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OA 569/92 01.05.1992

SHRI AMITAV DAS GUPTA ...APPLICANT

VS.

UNION OF INDIA & ORS. ...RESPONDENTS

CORAM :

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

FOR THE APPLICANT ...SH.G.K. AGGARWAL

FOR THE RESPONDENTS ...SH.J.C. MADAN, PROXY COUNSEL FOR SH.P.P. KHURANA

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes

2. To be referred to the Reporter or not? Yes

JUDGEMENT (ORAL)

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

The applicant, Junior Scientific Officer in the Defence Institute of Physiology and Allied Science (DIPAS) under DRDO has assailed the award of remarks to him for the year 1989. The applicant was given remark by the assessing officer in February, 1990 which the applicant has reproduced verbetent in para 4.11 at p-4 of the application. A perusal of the assessment made by the Reporting Officer goes to show anything which may be styled as adverse with the functioning of the applicant for the period under review. This remark was not, however agreed to fully by the Reviewing Officier and a

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noting was made in the ACR two days after, i.e., 27.2.1990 wherein it has been recorded that the involvement of the applicant in research endeavours is limited. It was also mentioned that certain cases are pending regarding his stagnation before the Central Administrative Tribunal. The Accepting Officer accepted the remarks of 28.2.1990, but he reduced the ranking of the applicant from Very Good to Good. The applicant was furnished these remarks sometimes in May, 1990 against which he made a request that whole of the remarks given to him for the period under review be furnished; and after receiving the same, he preferred a representation in September, 1990 which the applicant has filed as Annexure A2. In this application, the applicant has assailed the adverse remarks communicated to him by the Memo dt.1.8.1990 (Annexure A1).

He prayed that the said OM dt.1.8.1990 containing adverse remark in the ACR of the applicant for the period 1989 be declared as if it does not exist.

The respondents contested the application and filed the counter denying the various averments made by the applicant meeting parawise reply and praying that the application is without any substance and be dismissed.

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I have heard the learned counsel for the parties at length. The preliminary objection by the respondents' counsel is about limitation contending that the present application is beyond the limitation provided under Section 21(1) of the Administrative Tribunals Act, 1985 wherein the applicant can come within one and a half years at the most to assail any order or to get his grievances redressed. In the present case, the adverse remarks were communicated to the applicant in May, 1990 and he desired that whole of remarks be furnished to him which was done in August, 1990. He made a representation in September, 1990. The controversy arises hereinafter. The learned counsel for the applicant stated that he was not communicated the result of the representation preferred by him in September, 1990, while the respondents on verification in the counter stated as well as placed before the Bench the record that the applicant was informed about the rejection of the representation through Joint Director (Health). The respondents also filed annexure to the counter as Exhibit 1 dt.26.10.1990. The learned counsel for the applicant has referred to para 3 of the application regarding limitation and also referred to para 6 of the application wherein it is stated that the applicant's representation dt.1.9.1990 has not been till date replied. In the counter the respondents have categorically stated in reply to para 6

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that the contents of that para are denied and the decision of the competent authority was communicated to the applicant vide order dt.26.10.1990. It goes to show from the record that the applicant has not filed any rejoinder nor denied this statement of facts on verification from the respondents. The contention of the learned counse, therefore, that he was not communicated the result of the rejection of the representation is not substantiated by any denial on his part to the counter or by any other such document which may convince that the applicant was not informed about the rejection of the representation against the adverse remarks.

The law as given out in Order 6 of the CPC clearly lays down that when any fact is averred or alleged in the plaint, it has to be denied specifically in the written statement of reply. The basic denial or denial of a fact in the written statement not meted suitably by the applicant or plaintiff byi rejoinder will throw thie ball in the court of the plaintiff to prove the fact that the allegations made in reply are untrue. In view of this fact, the present application which has been filed in March, 1992 does not fall in limitation with the provisions of Section 21 (1) of the Administrative Tribunals Act, 1985.

While the judgement was being dictated, the learned counsel for the applicant, Shri G.K.Aggarwal desired that now

he may be allowed to file the rejoinder. However, it is an after thought. This oral request of Shri Aggarwal, therefore, cannot be accepted at this stage. He also prayed after the aforesaid order that he may be allowed to file an application for condonation of delay. When he has argued on the point that the application is within time, there is no question for him now to regret and say that his application was barred by time and so he may be given time to move orally or in writing for condonation of delay. This request, therefore, also cannot be accepted.

However, since the matter has also been heard and since he is a Scientist, I have gone through the record besides the pleadings of the parties. Every person has a right to get the reason of his wrong doings, not to the liking of superiors, or to know his shortcomings so that he may improve. This right of that person is also subject to the right of the superior to have his own assessment regarding the competency, efficiency, efficacy of performance of such a person. On its own, nobody ever knows his defects and if he knows it, he never highlights them. The resume submitted by a person never reflects his shortcomings. It is a fact that

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Assessing Officer always remains in close touch with the person under review, but sometimes this close touch may not be able toi project the actual performance of the officer, so a right has been given to another high officer to review the matter before the assessment is finally accepted by the controlling authority. It is not necessary to give any reasoning for an opinion formed about a person. What the Reviewing Officer has opined is that the involvement in research endeavour is limited. This observation of the Reviewing Officer is his own opinion about such a person. The Reviewing Officer is not at all prejudiced against the applicant because he has not said anything adversely what has been commented by the Reporting Officer. He has simply added his own opinion that what he thinks about the technical performance of the person under consideration is that besides what has been said by the Reporting Officer, is involvement in research and labour is limited. The scope to judge the capability of a Scientist may differ from person to person and from intelligence to intelligence. A higher officer may not find himself full in agreement with an officer of lower rung of the cadre about assessing his subordinate and it is true in this case because the accepting authorityi has further amended grading of the officer from Very Good to Good. Actually these higher officers cannot be said to be in a way playing with the career of the applicant. They have said what they felt.

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However, the Court or the Tribunal have limited scope to interfere regarding the expression of opinion of the performance of a person formed by an officer, who is having its supervisory authority over a technical work and to my mind, the scope is little, almost nill. This Court, however, has ample power to see that the remark is not out of any malafide. The personal views of the higher officers are given by them after seeing the performance of the applicant for the period under review. A Court cannot substitute itself for its own opinion to rebut the opinion formed by the officers in a bonafide manner.

The matter has also considered by the competent authority and the competent authrority in its wisdom did not interfere with the award of the remarks to the applicant for the period under review. In the recent case of compulsory retirement while observing on the remarks recorded, the Hon'ble Court in the case of Baikunth Nath Vs. Chief DMO Banipada and Ors., 1992 Judgement Today Volume II p-1, it is held that Supreme Court will not sit as an appellate court but may interfere if orders are passed malafide, based on no evidence and are arbitrary in the sense that no reasonable person can form the requisite opinion.

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In view of the above facts, I find that the application is hopelessly barred by time and is also totally devoid of merit and the same is , therefore, dismissed as such leaving the parties to bear their own costs.

(J.P.SHARMA)
MEMBER (J)
01.05.1992