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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.
* * * *

Date of Decision: 06.08.92.

OA 1174/92

JASWANT SINGH VERMA

... APPLICANT.

Vs.

UNION OF INDIA & ANR.

... RESPONDENTS.

CORAM:

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

For the Applicant

... SHRI B.K. BATRA.

For the Respondents

... SHRI ROMESH GAUTAM.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporters or not? *Yes*

JUDGEMENT (ORAL)

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

The applicant has assailed the order of non selection dated 29.10.90 where juniors have been empanelled ignoring the applicant who also appeared in the selection for the post of Depot Store Keeper-II in the grade of 1600-2660. The applicant has prayed for quashing of this order as well as the adverse remarks communicated to the applicant by the letter dated 5.7.90 (Annexure A-4). He has also prayed that he should be declared to have been selected for the said promotion and be paid salary etc. and other consequential benefits.

The facts of the case are that the applicant joined as LDC on 31.5.65. He was promoted on adhoc

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basis as Ward Keeper and passed the selection in 1982 to become regular on the post. The post of Deputy Store Keeper Grade-III and that of Ward Keeper merged together w.e.f. 1.1.86 and the next promotion to the post is Deputy Store Keeper Grade-II. It is a selection post. The department held the selection notified on 12.4.90 but only viva voce test was held in the case of the applicant fixed on 10th and 11th July, 1990. The grievance of the applicant is that only 5 days before the said selection on 5.7.90 he was communicated adverse remarks which is filed as Annexure A-4, page 14 of the paper book and reads as follows:-

"The following remarks recorded in your Confdl. Report for the year ending March'90 are brought to you notice in the hope that you will effect improvement in the directions indicated.

If you wish to make any representation, you may do so in writing within a month on receipt of this letter, if no representation is received within the stipulated time, it will be assumed that you have accepted the adverse remarks in your Confdl. Report.

1. Does the promptly produce papers when required: not so quick.
2. Has his work been satisfactory?: UN-SATISFACTORY.
3. Grading: BELOW AVERAGE."

The applicant represented against these adverse remarks to Deputy Controller of Stores, who by the order dated 17.9.90 rejected the representation of the applicant. As a consequence of this adverse entry the applicant also could not clear the selection for the

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post of DSKP-II. The applicant, therefore, filed this application for the relief referred to above.

The respondents contested the application and denied the various averments made by the applicant in the application stating that the applicant has also been earlier found on fault and a recovery earlier fixed about 52000/- , reduced to 12000/- on account of a disciplinary proceedings against the applicant was communicated sometimes in June, 1989 and April, 1990. It is further stated that the work and conduct of the applicant was watched and he was also informed in writing about the performance for further improvement by the letters dated 31.4.89 (Annexure R-1), 4.7.89 (R-2), 25.7.89 (R-3), 17.2.90 (R-4) and 30.3.90 (R-5). It is stated that since the applicant did not clear the selection so he could not be empanelled. The application is devoid of merit and needs dismissal.

I have heard the learned counsel for the applicant as well as for the respondents. Taking challenge to the adverse remarks for the year ending March, 90, the learned counsel referred to the instructions of the Railway Board wherein it has been observed that the Reporting Officer and Reviewing Officer should with due consideration comment on the performance of the official under their supervision. The

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learned counsel has also referred to para 8 of the instructions RB 83/87 where it is laid down that assessment should be confined to the appraisee's performance during the period only under reort. The learned counsel contended that only to defeat the selection he has been communicated adverse remarks only a few days before. Further, the noting in the adverse remarks does not reflect the actual performance of the applicant. The Tribunal cannot sit as an Appellate Authority to judge the wisdom of the Reporting Officer nor can substitute itself in the same frame of mind to judge the performance of an official of a period much before the matter came for adjudication. It is expected that the officers or the authorities who are to work in a perticular manner should discharge the function sincerely without any bias. If it is not so, then an effected person has to plead malafide or malice in fact or malice in law against such a Reporting Officer. That officer also has to be impleaded by name so that he cannot be condemned unheard. That has not been done in the case. The only aspersions in giving the adverse remarks as projected by the learned counsel is that events of much earlier date have been taken into account and comments have been made on such acts which are not as a part of duty of the applicant. Though none of the parties has given chart of the duties to be performed by the applicant as DSKP but at the same time the

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designation goes to show that there must be dealing with materials which are stored and would be having the charge of receiving such articles and issuing them at the occasions when it is required. The annexures to the counter referred to above R-1 to R-5 go to show that the applicant has been informed about not performing his duties so efficiently as it is expected by him.

The learned counsel has also assailed the order of rejection of the representation on the ground that it is not a speaking order. In fact, adverse remarks or annual remarks are not punishment orders and they are actually given by those who had occasion to watch the work and in case they speak ill of the commented officer such officer is informed to make improveament to the liking of superiors. He is not to undergo any penalty or punishment by virtue of adverse remarks. In this way it is not expected that the administrative order should be in such a case a speaking one. By giving this observation I am having in my mind that on the basis of these remarks depends the future career of the concerned person but that cannot be said to be a punishment to be effected in future. If the rejectionn order has not dealt with various contentions raised in the representation then the judicial authority can take note of those averments in that representation.

I do not find that the rejection of the representation was based not on merit but on extreneous, irrelevant or biased consideration. When the entry of the adverse remarks cannot be faulted now we have to see whether the applicant could have been selected in the main selection or not ? It is not disputed that it is a selection post. Which means that the best out of the lot irrespective of seniority has to be empanelled on the basis of merit cum fitness. The learned counsel has referred to certain irrelevant data and matters having been placed before the DPC. However, it cannot be questioned that the whole performance of an official is to be judged though DPC should consider only the entries of 5 years or subsequent to the date of an earlier promotion given to such an incumbent. In this case, the applicant was regularised in 1982 and so entries beyond that would have been considered. However, there is an adverse entry of March, 90 so that by itself would create any impression in the mind of the reasonable person that selection of such a person may not be fit qua other persons who do not have any such adverse remarks. The matter would have been different had the selection being advertised before March, 90. The entry relates to the period from April, 89 to March, 90. The selection has been advertised in April, 90 and various communications to the applicant regarding his short comings have been of the period from April, 89 till

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March, 90. So, the DPC cannot ignore the adverse remarks given by the Reporting Officer before the selection was held.

The learned counsel also referred to the fact that the remarks communicated were only before selection and when the selection was held the adverse remarks had not become final as a representation against the same was pending. The learned counsel has also referred to the case of Gurudayal Singh Fiji Vs. State of Punjab 1979(3)SLR 518/ and Brij Mohan Lal Chopra Vs. State of Punjab 1987(2)SCC 198. In the recent Judgement of the Hon'ble Supreme Court in B.N. Dass Vs. Chief Medical Officer 1992(1)ATJ 455 it has been held that even un-communicated remarks or the remarks against which the representation are pending can be considered. It is because of the fact that if it is taken as preposition of reasoning that final remarks are to be considered, then finality to such remarks can be achieved after it is finally judged administratively as well as judicially by the highest authorities and by the time it is so judged, then the person may either superannuate or will continue to stagnate in the post. The Hon'ble Supreme Court has relied on the earlier decision UOI Vs. M.E. Reddy 1980 (1)SCR 736. Thus, the non consideration of the representation before selection will not in any way be fruitful in the case of the applicant. Taking as

such this contention of the learned counsel, the representation against adverse remarks has been since rejected and it has also been upheld judicially by observations made in the earlier part of the judgement, so, now the applicant can have no grudge as a person with an adverse comment on his performance cannot be given a promotion post rather as a reward.

In view of this fact, I find that the present application does not merit any consideration of the matter and is dismissed leaving the parties to bear their own costs.

Jomane.
6.8.92

(J.P. SHARMA)
MEMBER (J)
06.08.92