

Central Administrative Tribunal
Principal Bench

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(2X)

O.A. No. 1199/1992

New Delhi, this the 8th day of June, 1995.

Hon'ble Shri J.P. Sharma, Member (Judicial)
Hon'ble Shri B.K. Singh, Member (Administrative)

Gauri Shankar Sharma,
s/o Shri Late Gaja Dhar Krashad Sharma,
R/o 6, Shanti Nagar, Mathura (U.P.)

Office Address:-

Working as Assistant Account Officer,
at Area Accounts Office (C.D.A. Central
Command) Agra under Controller General
of Defence Accounts, R.K. Puram, New Delhi.....Applicant.

(By Advocate Shri D.P. Vinashi)

Versus

Union of India through

1. Financial Advisor, Ministry of Defence,
Govt. of India (Finance Division),
Govt. of India, New Delhi.
2. Controller General,
Defence Accounts (Govt. of India),
West Block-V, R.K. Puram,
New Delhi.
3. Controller of Defence Accounts,
Central Command, Meerut (U.P.) . . . Respondents

(By Advocate Shri P.H.Ramchandani)

Judgement

by Hon'ble Shri J.P. Sharma, Member (J)

The applicant has been working as Ass'tt.

Accounts Officer in Area Accounts Office (C.D.A.)

Agra under the organization of the Controller of

General Accounts at that time Shri R.K. Chawla was

Joint Controller, Defence Accounts (C.G.A.) at New Delhi.

25

The applicant was also elected the President of the Association at Meerut under the organization of C. G.D.A. The applicant had to raise certain vital issues relating to welfare of the staff and as such had to confront certain concerned officers. In this application the applicant has assailed the adverse remarks appearing in the confidential report of the applicant for the period from 21.9.87 to 31.12.1987 which was written by Shri R.S. Bali, Accounts Officer who was reporting officer at that time. The reporting officer has written that the applicant has to be constantly prompted and supervised. It is also mentioned that the applicant lacks interest on the task allotted to him with the result the work of group allotted to him is not properly supervised. On overall assessment, the applicant has been adjudged as an average S.O.(A). It is further mentioned that the applicant lacks keenness and willingness to undertake greater responsibilities. Besides the above, it is stated that the applicant is quarrelsome and does not maintain good relations with his sub-ordinates and fellow employees. These remarks were accepted by the accepting officer. The applicant made certain representations. The representation dated 24.4.1989 was considered by the Secretary(Defence Accounts) and F.A. but the same has been rejected as conveyed by the order dated 21.5.1990 to the applicant by Accounts Officer (Admn.).

The applicant filed this original application in March, 1992 and he prayed for the grant of the reliefs

26

that the aforesaid adverse remarks be expunged from the character roll of the applicant as well as the order rejecting the representation conveyed by the order dated 21/29-5-1990 be quashed.

The other grievance of the applicant is that the applicant be promoted as Accounts Officer from the date to which the applicant is due for promotion and prayed for quashing the order dated 18/3/1991 vide which the applicant was informed that his case was considered by D.P.C. but was not found fit for promotion to the post of Accounts Officer.

The applicant has alleged that Shri R.S.Pali, Accounts Officer was harbouring certain malice against him and because of this though he was the work incharge of the applicant only for a period of three months reported ^{against} ~~adverse~~ ^{performance} the applicant while the applicant was holding the charge of two groups during the period from 21.9.1987 to 31.12.1987 and these two groups were supervised by two different Accounts Officers. The applicant had already made a request to D.G.D.A. Incharge of Central Command, Agra vide his application dated 5.2.1988 that he had certain apprehensions that the C.R. to be written by Shri R.S.Pali in his case may not be the correct expression of his opinion and may ~~spoil~~ the same. The applicant has served throughout most part of the year under review under Shri R.D.Shotriya Accounts Officer, Central Command, Agra and that he may be asked to write his C.R. for that period also.

27

The report from 23.2.1987 to 18/9/1987 was given by Shri R.D. Shrotriya which was not adverse but he too gave him average assessment. This report was given on 19th July, 1988. Shri R.K. Chawla has also counter signed this report and in the earlier report Shri R.S. Pali as reporting officer has given the average report.

Since the application was barred by time, a Misc. petition has also been moved under section 21 sub-clause (3) of C.A.T. Act for condonation of delay.

The respondents have stated in their reply that A.C.Rs/M.T.C.Rs are written as per the instructions issued by the Govt. from time to time and his request that the A.C.R. should not be written by Shri R.S. Pali was rejected and the decision was conveyed to him by a letter dated 29th March, 1988. The other representation dated 6.5.1988 was also rejected by the order dated 1.9.1988.

Regarding the promotion, it is stated that the applicant came in the zone of consideration of promotion to the post of Accounts Officer in the year 1990 and he was considered alongwith others by the D.P.C. held on 22nd August, 1990 and was not found fit for promotion to the Accounts Officer's grade. His appeal dated 6/12/90 against supersession in promotion was considered and he was informed by the letter dated 11.2.1991 that he was not found fit for promotion to AO's grade.

28

Subsequently, D.P.C. was held on 22.10.1991 in which the applicant was again considered but was not found fit for promotion to the A.O's grade. The contention of the applicant that his name was not considered at the instance of Shri Chawla is totally incorrect and malicious and is denied. Shri Chawla harboured no prejudice against the applicant. ACR of the applicant from the year 1985-90 were considered by the D.P.C. held during 1990. It was again considered by D.P.C. in 1991 based on the A.C.Rs for the year 1986-1991. The applicant also filed the rejoinder re-iterating the facts already stated in the original application.

We heard the learned counsel for the applicant and perused the record. The contention of the applicant that the adverse remarks were given by Shri R.S. Pali out of malice as he was prejudiced against him and that his promotion was withheld because Shri R.K. Chawla was one of the members of the D.P.C. cannot be considered in the absence of their non-implication in this case as the applicant has alleged malice against these officers then these two officers namely Shri R.S. Pali and Shri R.K. Chawla should have been made parties so that they could have explained as to whether the allegations levelled by the applicant against both these officers are acceptable in the circumstances of the case. The A.C.R. for three months given by Shri R.S. Pali is earlier to the representation made by the applicant on 5.2.1988. We have summoned

(29)

the A.C.R. for the particular year and we have seen that the reporting officer has given his report on 1.2.88. The reviewing officers has given his report observing that the applicant should take more interest in work and have good relations with his sub-ordinates. The report was accepted as adverse on 15.7.1988. Thus the bias alleged by the applicant against both the officers namely Shri R. S. Pali and Shri Chawla cannot be accepted.

The other grievance of the applicant is that the applicant was not conveyed during the course of his working any Memos or warning or advice and as such the comments given by the reporting officer cannot be based on any substantial evidence or fact. In this connection, we have seen the record and subsequent reports given to the applicant. He was awarded the penalty of censure. He was also kept under observation sometimes in 1992. The performance of the applicant has mostly been reported to be average. The adverse report by the reporting officer is with regard to certain factual position which has been observed by him and cannot be assessed at this point of time in judicial review. Representation against the same has promptly considered and the applicant has been informed about its rejection. If the malice part of the allegation made by the applicant is not established then it cannot be said that the applicant has not been assessed with regard to his performance during the year under review. It is immaterial whether Shri Shrotriya has not given any adverse entry to the applicant.

30

but he has also placed the applicant an average during the year under review. It cannot, therefore, be said that the adverse remarks given to the applicant was based on extreaneous consideration or that the applicant was an office bearer of the Union and so he was not liked by the high officers and to damage his career he has been adversely commented upon. Itfact, it is stated that the relations of the applicant with thebrother officials has not been cordial. The applicant was free to submit to the respondents alongwith his representation on adverse remarks atleast regarding the fact that there is no complain against his ^{ristic} behavior towards his colleagues. Regarding the remarks that the applicant has to be promoted that the supervision was lacking is the judgement of the reporting officer and the reporting officer Shri Pali has also given him a gradeing which cannot be said to be adverse. His integrity was certified. So on the whole it cannot be said that the remarks given to the applicant in the A.C.R. of the year ending 31st December, 1987 was motivated or given with the prejudicial mind. The applicant has no case in that regard.

As regards the consideration of the applicant for the post of Accounts Officer by D.P.C., he has been promoted in the DPC of 1993 as Accounts Officer. However, the D.P.C. has duly considered him in the earlier years when his promotion was due. The Tribunal cannot substitute itself as a Selection Body and can only see whether he has been rightly considered by D.P.C. when thepromotion was due.

(31)

We have found that the entries given to the applicant were only average and only for one or two years it has been beyond average and good or very good. These assessment made by the D.P.C. on the basis of the performance of the applicant cannot be said to be in any way, not as per the norms laid down by D.O.R&T in its guidelines for evaluating the performance for promotion.

The learned counsel also placed reliance on the two reported cases i.e. Amarkant Vs. State of Bihar 1984(1) SLR 470 SC and this Hon'ble Tribunal's judgement in O.A. No. 868 of 1986 dated 30.1.1987 in K.K.Khullar V/s. H.R.D., but the facts of the cases do not help the applicant.

The application is, therefore, dismissed as devoid of merits leaving the parties to bear their own costs.


(B.K.SINGH)
MEMBER(A)


(J.P.SHARMA)
MEMBER(J)

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