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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 135/93
T.A. No.

199

DATE OF DECISION 2-5-97

<u>Smt. Shanti Sugandh</u>	Petitioner
<u>Shri B.S. Mainee</u>	Advocate for the Petitioner(s)
Versus	
<u>Genl. Manager (NR) and ors</u>	Respondent
<u>None for the respondents</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble

1. To be referred to the Reporter or not? *yes*
2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A. No. 135/93

New Delhi this the 2 ~~nd~~ day of May, 1997

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Smt. Shanti Sugandh,
Sr. Clerk, Works Branch
Northern Railway, Baroda House,
New Delhi.
C/O Shri B.S. Mainee,
Advocate,
240, Jagriti Enclave,
Delhi.

... Applicant

(By Advocate Shri B.S. Mainee)

Vs.

Union of India : Through :

1. The General Manager,
Northern Railway, Baroda House,
New Delhi.
2. The Chief Engineer,
Northern Railway (HQ),
Baroda House, New Delhi.

... Respondents

(None for the respondents)

ORDER

(Hon'ble Smt. Lakshmi Swaminathan, Member (J))

The applicant who was working under one Shri H.C. Mukherjee, AE in the DOB Section of the Works Branch is aggrieved by the communication of adverse remarks in her ACR for the period ending 31.3.1991 by order dated 11.10.1991, and the order dated 2.12.1991 by which her representation was rejected.

2. I have heard Shri B.S. Mainee, learned counsel for the applicant and perused the records. On the last date of hearing on 23.4.1997, the learned counsel for the respondents did not appear, although he had been heard earlier. I have also carefully considered the pleadings and the records produced earlier by the respondents.

3. The main grievance is that the adverse remarks had been written by Shri Mukherjee, in view of the fact that she had filed another original application

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(A)

No. 2751/90 in which certain directions had been given in her favour directing the respondents to allow the applicant to perform her duties and pay her salary and other allowances. Shri Mainee, learned counsel has submitted that he apprehends that the adverse ACR of the applicant for the period ending 31.3.1991 had been written by Shri Mukherjee as he was not well disposed towards her. The other ground taken by the learned counsel was that since the applicant had also served for 16 years without any adverse remarks on her work, the impugned order issued by the respondents, based on the adverse entries made against her, was illegal. Lastly, the ground taken by the learned counsel was that the impugned order of 11.10.1991 merely conveyed the adverse entries in her ACR whereas according to the Railway Board's instruction the adverse or critical remarks together with the substance of the favourable remarks should have been communicated, which the respondents have failed to do. He further submits that the adverse entries without being supported by any/reasons cannot stand. He relies on the following judgments:-

- (1) Shri Ashok Kumar V. State of UP & Ors.
(SLJ 1988(3) CAT Page 391)
- (2) Shri Krishan Lal Sharma V UOI & Ors
(ATC 1987 (4) page 709)
- (3) Shri S.C.Vaish V.UOI & Ors.
(SLJ 1991(2) page 196)
- (4) Shri Ram Kishore Mehrishi V.UOI & Ors
(ALTJ 1990(1) page 156)

For the above Reasons the learned counsel has submitted that the impugned orders may be quashed/with all consequential benefits.

4. The respondents have filed their reply controverting the above facts. When the hearing was held on 2.4.97, the learned counsel for the respondents had produced/relevant ACR records from which it is seen that the allegation made by the applicant that Shri Mukherjee had written the above ACR is not correct. Therefore, the ground taken by the applicant that the ACR for the period ending 31.3.91 should be quashed on the ground that it had been written by Shri Mukherjee is without any basis and it is accordingly rejected.

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5. Although the learned counsel submitted that he would produce the relevant Railway Board Circular/instructions regarding writing of ACR, the same has not been done although several opportunities have been granted. However, the learned counsel for the applicant has produced an extract of the Railway Establishment Rules which is placed on record. It is seen that in the case of an adverse confidential report of any railway servant, not only the adverse remarks but also the substance of the favourable remarks should have been communicated to the concerned person. In the impugned order dated 11.10.91, the respondents have merely communicated the adverse remarks to the applicant on which she was informed that she could make a representation in writing. Apart from this, it is also seen that the adverse remarks are not supported by any detailed reasons or narration of the incidences on the basis of which the competent authority has come to the conclusion that the applicant was not well disciplined and was not upto the mark in her work.

6. However, it is seen from the representation made by the applicant on the impugned letter dated 11.10.1991 that she had not raised the above objections but had alleged that her confidential report for the period ending 1989-90 and 1990-91 have been spoilt purposely/intentionally/deliberately to harass her again and again by the officer of the DOB Section, namely, Shri Mukherjee. As already clarified above, based on the records that were shown by the respondents, the apprehension of the applicant that the adverse ACR for the period ending 31.3.91 had been written by Shri Mukherjee is unfounded. However, Shri Mainee, learned counsel for the applicant has tried to argue that even if Shri Mukherjee did not write the ACR for the period ending 31.3.91, he would have influenced the reporting and reviewing officers to write the adverse remarks against the applicant. This argument is not supported by any materials on record and for fetched and hence rejected.

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7. In the facts and circumstances of the case, it is seen that the respondents have not strictly complied with the method of communicating the adverse ACR remarks to the applicant to enable her to make a proper representation. In the circumstances the impugned orders dated 11.10.1991 and 2.12.1991 are quashed and set aside on the limited ground that the standing instructions for communicating the adverse ACR have not been complied with by the respondents. However, it is left open to the respondents to communicate the adverse entries together with the favourable remarks in detail for 1990-91 in accordance with the relevant rules and instructions and allow the applicant to make a representation. They shall thereafter pass an appropriate order in accordance with the rules/instructions, within three months from the date of receipt of a copy of this order.

Q.A is disposed of as above. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan) 2/5
Member (J)

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