

Central Administrative Tribunal  
Principal Bench

O.A. 1409/93

New Delhi this the 26th day of August, 1999

Hon'ble Shri S.R. Adige, Vice Chairman(A).  
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Y.P. Dhingra,  
Chargeman Grade-I,  
Senior Quality Assurance Estt.  
(Electronics),  
19/13, National Stadium,  
New Delhi-110001.  
R/o A-1/63-B, Paschim Vihar,  
New Delhi.

... Applicant.

By Advocate Shri M.C. Dhingra.

Versus

1. Union of India,  
through Secretary Defence Production,  
Ministry of Defence,  
South Block, DHQ P.O.  
New Delhi-110011.
2. Director General of Quality Assurance (DGQA),  
Govt. of India,  
Ministry of Defence Production,  
Room No. 234, South Block, DHQ PO,  
New Delhi-110011.
3. Director (Adm-10),  
Director General of Quality Assurance (Adm-10),  
Ministry of Defence, 'H' Block, DHQ PO,  
New Delhi-110011.
4. Director (Electronics),  
Director of Quality Assurance (Electronics),  
Ministry of Defence,  
'G' Block, DHQ PO,  
New Delhi-110011.
5. Controller,  
Controllerate of Quality Assurance (Electronics),  
Ministry of Defence (DHQA),  
J.C. Nagar PO,  
Bangalore-560006.
6. Col. Q.M.U. Siddiqui,  
Senior Quality Assurance Officer,  
Senior Quality Assurance Estt. (Electronics),  
Ministry of Defence (DGQA),  
19/13, National Stadium,  
New Delhi-110001.
7. Shri S.C. Bhatia,  
Senior Scientific Officer-I,  
Functioning as Quality Assurance Officer,  
Office of SQAE (L),  
19/13, National Stadium,  
New Delhi-110001.

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8. Shri G.C. Dutta,  
SQAE(L), Calcutta.
  9. Shri A.K. Dutta, C/M-I,  
SQAE (L), Calcutta.
  10. Shri T.S. Lamba, C/M-I,  
SQAE L&s, Chandigarh.
  11. Kum. Roopali Bhattacharji, C/M-I,  
CQAR, Bangalore.
  12. T.B. Balasanjeeva Murthy, C/M-1,  
CQAL, Bangalore.
  13. B.S. Ananda Rao, C/M-I,  
CQA AVL, Avadi.
  14. V.C. Shanmugam, C/M-I,  
CQA AVL, Avadi.
  15. D. Babu, C/M-1,  
CQAL, Bangalore.
  16. G. Krishna Prasad, C/M-I,  
CQAL, Bangalore.
  17. M. Muniyappa, C/M-I,  
SQAEL, Bangalore.
  18. P. Somanna, C/M-I,  
CQAL, Bangalore.
- ... Respondents.

(Sr. No. 8 to 18 all through Director (Electronics), Directorate of Quality Assurance (Electronics), Ministry of Defence, 'G' Block, DHQ PO, New Delhi-110001).

By Advocate Shri V.S.R. Krishna.

O R D E R

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

The applicant has filed this application seeking a number of reliefs but during the hearing Shri M.C. Dhingra, learned counsel for the applicant, has submitted that the applicant is only pressing certain reliefs related to expunging of adverse entries contained in the Annual Confidential Report (ACR) of 1992 and for a direction to the respondents to hold a review DPC to consider his case for promotion from Chargeman-I to Assistant Foreman with effect from the date his juniors were promoted.

2. The applicant has submitted that Respondent No. 6, Col. Q.M.U. Siddiqui, was inimical towards him and he was victimised by him and he had also given adverse remarks in his ACR of 1992. His contention is that Respondent No. 7, Shri S.C. Bhatia, was not competent to record the adverse entries as the applicant had not worked under him for the required period but had actually worked from 1.1.1992 to 5.8.1992 under Shri P.P. Rattan, Senior Scientific Officer-II who alone was competent to observe his performance during the major part of the year. Between 6.8.1992 and 8.10.1992 the applicant states that he had worked under Shri S.C. Bhatia and from 9.10.1992 to 31.12.1992 he had served under Lt. Col. R.K. Singhla. According to him, the only competent person to write his ACR was Shri P.P. Rattan and not Shri S.C. Bhatia. The adverse remarks in applicant's ACR for the year 1992 were conveyed to the applicant by letter dated 26.2.1993 which read as follows:

"NGO has not been exploited to his potential due to irregular attendance. He has been warned in writing for unauthorised absence from duty".

3. The learned counsel for the applicant has very vehemently submitted that the applicant has not been communicated any warning in writing as mentioned in the above letter on the basis of which the adverse entries have been made. His contention is that in the absence of such warning letters as mentioned in the letter dated 26.2.1993, the adverse entries in the ACR of the applicant for the year 1992 have to be quashed and set aside. He has also submitted that the respondents had failed to provide the electricity in the Environmental Lab, from June, 1986 and during his reported period from January, 1992 to October, 1992 he had remained idle and thereafter he was put in

another office. Since he was having some heart problems which necessitated him to undergo heart surgery, he had applied for leave which was later regularised in 1996. The applicant has also submitted that he had not been allowed to appear in the departmental examination because of the adverse entry in the ACR although his name had been recommended along with other eligible candidates. According to the learned counsel for the applicant, because of many infirmities in the adverse ACR of 1992, the application should be allowed with a direction to the respondents not to give effect to the letter dated 25.6.1993, with a further direction to consider the case of the applicant for promotion from the post of Chargeman-I to Assistant Foreman when his juniors were promoted. (A)

4. We have perused the reply filed by the respondents and heard Shri V.S.R. Krishna, learned counsel. They have stated that the applicant's name had been considered by the DPC meeting held on 1.3.1993 for promotion to the grade of Assistant Foreman, but he was not recommended for inclusion in the promotion panel. They have submitted that the applicant was habitual absentee from duty unauthorisedly without obtaining prior permission or leave. Learned counsel has submitted that a number of letters had been written to the applicant in which it was pointed out that he had remained absent from duty unauthorisedly and he was asked to file his reply by certain dates failing which disciplinary action will be taken against him. Some of these letters dated 1.6.1992 and 30.10.1992 have been placed on record.

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5. The learned counsel has submitted that it can be seen from the records that the applicant's attendance in October, 1992 was very irregular and he had been asked to give his explanation failing which ex parte disciplinary action shall be taken against him. They have contended that Shri S.C. Bhatia, was competent to initiate the ACR of the applicant as he was fully acquainted with his work for more than three months i.e. during the period from 6.8.1992 to 31.10.1992 and again from 1.12.1992 to 31.12.1992. Learned counsel has also submitted that the applicant has nowhere submitted in the O.A. that the DPC had taken into account the adverse remarks in the ACR which was communicated to the applicant by letter dated 26.2.1993. He has also submitted that the allegations of mala fide alleged against Col. Siddiqui and Shri Bhatia, have not been proved. He has submitted that the remarks given in the ACR of 1992 are self explanatory on the basis of the attendance record. He has submitted that under the Leave Rules, it was for the applicant to obtain prior permission of the competent authority to avail leave and he cannot just assume that it will be sanctioned. They have also submitted that the contention of the applicant that no power connection was provided for the Environmental Lab. since June 1986 has no relevance with the remarks given in his ACR of 1992. According to them, the Limited Departmental Examination was held as scheduled on 12.11.1992. In the circumstances of the case, learned counsel has submitted that there is no infirmity in the adverse remarks given in the applicant's ACR of 1992 and the DPC which met on 1.3.1993 had not found him fit for promotion. He was also not eligible to appear in the Limited Departmental Examination held in March, 1993.

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6. We have considered the relevant documents on record and the submissions made by the learned counsel for the parties.

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7. We are unable to agree with the contentions of the learned counsel for the applicant that the letter dated 26.2.1993 conveying to the applicant the adverse entries in his ACR of 1992 should be quashed because he had not been warned previously in writing for his unauthorised absence from duty. From the documents placed on record as Annexures to the reply filed by the respondents, for example Annexures R-7 and R-9, the respondents had called for an explanation from the applicant by a particular date, failing which he had been informed that ex parte disciplinary action will be taken against him. These letters have been issued in which it has been stated that the applicant has been absent from duty without prior permission for various periods mentioned therein. In the circumstances, the contention of the applicant that he had not received any warning letters in writing for his unauthorised absence from duty in time, prior to the receipt of the letter dated 26.2.1993 cannot be accepted. Although in the aforesaid annexures dated 1.6.1992 and 30.10.1992, the word "warning" as such has not been used, however, we are unable to agree with the learned counsel for the applicant that these cannot be considered as warning in writing for his unauthorised absence from duty, as it has been clearly stated that ex parte disciplinary action will be taken against him for his absence from duty. So on this ground, we do not find any justification to quash the adverse entries in applicant's ACR for 1992.

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8. Regarding the allegations of mala fides alleged by the applicant against Col. Siddiqui and Shri Bhatia, we find that this ground has not been proved by any document on record. It has been held by the Supreme Court that the burden of proof of mala fides is heavy on the person who alleges it and such allegations are often more easily made than made out and the very seriousness of such allegations demand proof of a high order of credibility (See Royappa vs. State of Tamil Nadu, AIR 1974 SC 555 and N.K. Singh Vs. Union of India and Ors., 1994 (28) ATC 246). The respondents have also denied these allegations and we do not find that the allegations of bias alleged against these officers can be held to be proved in the circumstances of the case. The adverse entry in the ACR which has been challenged in this O.A. which has been communicated to the applicant is that "the NGO has not been exploited to his potential due to irregular attendance. He has been warned in writing for unauthorised absence from duty". On the question of warning having been given in writing to him for his unauthorised absence from duty we have already dealt with the issue above. The remark that the applicant has not been exploited to his potential due to his irregular attendance, when read in the context of his long absences from duty which might have been because of his ill health, cannot be held to be a biased remark justifying any interference in the matter. This ACR cannot also be termed as harassment or victimisation of the applicant by the respondents as contended by him. The annexures given by the respondents to their reply, for example R-4 and R-5, indicate that the applicant had been absent on a number of occasions for which he had been asked to submit his leave applications and asked <sup>13</sup>~~to~~ to explain as to why disciplinary action should not be initiated against him for his

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unauthorised absence from duty. Therefore, we do not find any substance in the grounds taken by the learned counsel for the applicant that the adverse entry in his ACR of 1992 has been motivated by ill-will and mala fides on the part of the senior officers against the applicant. Therefore, this ground also fails. (21)

9. Another ground taken by the applicant is that Shri S.C. Bhatia was not the competent authority to initiate his ACR of the applicant but we find that since the applicant had worked with him for more than three months during the relevant period, there is no infirmity on this ground also.

10. The contention of the learned counsel for the applicant that there was no power connection in the Environmental Laboratory and as such he was not able to work to his capacity has to be read in the context of the impugned adverse ACR remarks communicated to him. The applicant has not denied the fact that he has not been very regular in attendance in office, which can also justify the remark that he has not been exploited to his potential. Therefore, this ground taken by the learned counsel for the applicant is not tenable and is rejected. We have also considered the other contentions of the learned counsel for the applicant, but we do not find any of the grounds justification for quashing ~~of~~ the adverse entries in the ACR of 1992. The consequential relief for holding a review DPC also fails.

11. For the reasons given above, O.A. fails and is accordingly dismissed. No order as to costs.

  
(Smt. Lakshmi Swaminathan)  
Member(J)

  
(S.R. Adige)  
Vice Chairman(A)

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