

(TK)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

D.A.No.1682/1993

New Delhi, This the 03rd Day of August 1994

Hon'ble Shri P.T.Thiruvengadam, Member(A)

Shri H R Bashal
s/o Shri K R Bashal
A-57, Panchsheel Enclave
New Delhi 110 017.

Applicant

By Shri V S R Krishna, Advocate

Versus

Union of India: Through

1. The Secretary
Department of Telecommunication
Ministry of Communications
Sanchar Bhawan
20, Ashoka Road
New Delhi.
2. The Chairman
Telecom Commission
Sanchar Bhawan
New Delhi.
3. Shri H S Sodhi
The Then General Manager
Himachal Pradesh Telecom Circle
Shimla

...Respondents

By Shri N S Mehta, Advocate

ORDER (Oral)

Hon'ble Shri P.T.Thiruvengadam, Member(A)

1. The applicant has filed this DA for expunging the adverse remarks communicated to the applicant vide memo dated 21.9.88.

2. The impugned memo reads as under:-

"While you have earned a good/fair report on your work for the year 1987-88, remarks against some items had to be made as noted below. They are brought to your notice with a hope that you shall take them in right spirit and try to overcome the short-comings mentioned.

Part IV

General assessment. Please give an overall assessment of the officer with reference to his/her strength and short comings and also

Remarks

The officer is energetic and capable of putting in hard work, but has a tendency to become impulsive at times.

(15)

by drawing attention to the qualities if any not covered by the entries above.

He was punished with stoppage of increment for three years without cumulative effect vide DOD(Vig T) Memo No.8/26/84-Vig II dated 25.1.1988.

If you wish to make any representation against these remarks, you may please address the same to the competent authority and submit the same within one month of the receipt of this letter failing which it will be presumed that you do not desire to make any representation.

Two copies of this letter are enclosed. Kindly acknowledge receipt of these remarks on one copy in token of having received a copy of these remarks and return the same to the undersigned for record."

3. The learned counsel for the applicant assailed the impugned memo on a number of grounds. Certain malafides are attributed to the reporting officer and some incidents have been quoted in Para 4(v) and (v) of the DA. It is also alleged that the adverse entry had been written only by the reporting officer and the benefit of the consideration of the reviewing officer was not available in his case. Thus the reporting officer assumed to himself the powers of reviewing which has resulted in injustice to the applicant. It is added that there was no instances to substantiate the remarks that he becomes impulsive at times.

4. The learned counsel for the respondents refuted the charges of malafides. He also referred to the affidavit filed by respondent No.3 who was the reporting officer for the said CR. Respondent No.3 has discussed the various instances to bring out his case that there was no malafide. It is his case that the adverse remarks recorded in the ACR of the applicant for the year 87-88 were based on actual work and conduct of the officer as assessed by him.

5. As regards the grounds that there was no reviewing or countersigning officer in relation to the CR of 87-88 the respondents have stated in their reply that the concerned reviewing officer had retired by Feb 88. I have also seen the CR form wherein I find there is no provision for the third level, namely the accepting/countersigning level.

6. As regards the details of instances to support the remarks regarding the tendency to become impulsive no such details have been produced. The appeals and ~~memorial~~ against adverse remarks have been disposed of on the premise that the adverse remarks had been based purely on the personal observations of the reporting officer from time to time.

7. Having heard both the counsels I note that the alleged adverse remarks ^{are} ~~is~~ qualified by the remarks in the earlier portion which are ~~are~~ commending the performance of the applicant. It has been stated that the officer is intelligent and capable of putting in hard work. The observation regarding the tendency to become impulsive at times is purely a personal attribute. Though there is some force in the argument of the respondents that this shortcoming in his personal attribute was being brought to the notice of the applicant with a hope that he would take them in right spirit and overcome the shortcomings, yet I note that no specific instances has been kept on record to substantiate the above observation. Since the

remarks made purely relate to a personal characteristic and in the circumstances of the case it will serve the ends of the equity if a direction is given that the observation " has a tendency to become impulsive at times" should not be considered as adverse for the purpose of promotion.

8. The OA is disposed of accordingly. No costs.

P. J. Thiruengadam
378754
(P.T.Thiruengadam)
Member (A)

LCP