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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

1. O.A.No.727/93

With

2) O.A.No.163/94

New Delhi: this the 17th day of AUGUST 1999.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

HON'BLE MR. P. C. KANNAN, MEMBER (J)

Ms. S.K. Srivastava,
Ex. Junior Law Officer,
Indian Council of Agricultural,
Research,
Krishi Bhawan,
New Delhi - 110001

... Applicant.

(By Advocate: Shri B.B. Srivastava)

Versus

Union of India,
through
Director General,
Indian Council of Agricultural
Research, Krishi Bhawan,
New Delhi - 110001.

2. Shri B.N.Pd. Pathak,
Legal Adviser,
Indian Council of Agricultural
Research,
Krishi Bhawan,
New Delhi - 110001

.... Respondents.

(By Advocate: Ms. G. Goel).

ORDER

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

As these 2 OAs involve common questions of law and fact, they are being disposed of by this common order.

O.A.No.727/93

2. In this OA, applicant impugns certain adverse remarks recorded in her ACRs for the years

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1988-89 and 1989-90 when she worked as a Junior Law Officer in ICAR.

3. By Memo dated 13.11.90 (Annexure-A2) applicant was communicated adverse remarks in respect of 9 items for the year 1988-89. She represented against those remarks on 12.12.90 (Annexure-A4) as a result of which, by respondents' Memo dated 8.3.91 (Annexure-A6) adverse remarks in respect of items 4, 5, 7, 8 and 9 were fully expunged, but items 1, 2, 3 and 6 were not expunged.

4. Similarly by Memo dated 13.11.90 (Annexure-A3) she was communicated adverse remarks in respect of 11 items for the year 1989-90, but upon her representation dated 12.12.90 (Annexure-A5), respondents by Memo dated 8.3.91 (Annexure-A7) expunged the adverse remarks in respect of items 2, 4, 5, 6, 7, 8 and 9, but did not expunge those in respect of items 1, 2, 10 and 11.

5. Applicant filed a further representations for expunction of the remaining adverse remarks on 11.3.91 (Annexure-A8 and Annexure-A9) but the same were rejected by respondents' Memo dated 25.4.91 (page 18 of the OA), against which applicant has filed the present OA.

6. We have heard both sides. Applicant's counsel has also filed written arguments which are taken on record.

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7. The first ground taken is that Respondent No.1 has filed reply on behalf of Respondent No.2 also, but the reply has not been ratified by Respondent -2 against whom specific allegations of bias and malafide have been made, which has thus not been challenged by him. A perusal of the court record reveals that Respondent No.2 had filed an affidavit on 19.8.87 which is on record, in which he has ratified the contents of the reply filed by R-1, and prayed that the same be treated as his reply too. Hence this ground fails and AIR 1986 SC 872; AIR 1964 SC 693; AIR 1986 (2) CAT 549, and 1996(1) SLJ (CAT) 273 cited by applicant's counsel does not advance applicant's case.

8. The next ground taken is that the ACRs for the two years were written abnormally late and were communicated at one and the same time and were therefore not fair or objective, besides being violative of Govt. instructions. It is true that there has been some delay in the communication of the adverse remarks to applicant particularly in regard to the remarks relating to the year 1988-89 and in State of Haryana Vs. P.C. Ladhwa & another AIR 1987 SC 1201 relied upon by applicant's counsel, the Hon'ble Supreme Court has observed that the whole objective of making adverse remarks would be lost if the adverse remarks are communicated with inordinate delay, but delay in communication of adverse remarks would by itself not warrant their expunction, if there are other sound and good reasons to justify it, more so when the instructions for timely communication of adverse remarks are directory and

(6)

not mandatory. Hence Wadhwa's case (supra) is not sufficient authority to warrant expunction of the impugned adverse remarks. Furthermore merely because the adverse remarks for 1988-89 and 1989-90 were communicated to applicant by two Memos, both dated 13.11.90 does not make them subjective or unfair, in the absence of supportive material. Hence this ground also fails.

9. The next ground taken is that those remarks were communicated by Respondent No.2 himself and not by the reviewing officer and that too without being seen by the accepting authority i.e. D.S.I.CAR. What is relevant is not who communicated the adverse remarks, but whether the competent authority recorded the remarks as reporting authority; reviewing authority and accepting authority. Merely because Respondent No.2 as the reporting authority communicated the adverse remarks, does not make it illegal or invalid if the remarks recorded by the competent reporting authority were reviewed by the competent reviewing authority and accepted by the competent accepting authority. Applicant's counsel has asserted that the adverse remarks were not seen by the accepting authority, but applicant's counsel has not been able prima facie to discharge the burden of establishing this assertion, and during hearing he also did not press for summoning of the concerned ACRs to establish the same. Hence this ground also fails.

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10. The next ground taken is that the impugned adverse remarks were recorded out of grudge, malafide and malice, and were not based on any objective appreciation of applicant's work. In this connection it has also been contended that because some of the adverse remarks were expunged upon representations being filed by applicant for each of the two years, there were no reasons to permit the adverse remarks which were not expunged to continue, and those also should be expunged. Considerable emphasis was laid by applicant's counsel on the output of work claimed by his client during the two years in question. Certain rulings were also cited by him, which are reproduced in his written arguments on record.

11. In so far as bias and malafide on the part of Respondent No.2 towards applicant is concerned, applicant alleges that Respondent No.2 was prejudiced against her, firstly because she wanted to complete her LLM Course, which was not to his liking, he being only an LL.B and secondly because applicant was raising queries regarding the fees paid to Advocates engaged by ICAR in litigation before various Courts, to which also R-2 took serious objection.

12. The assertions/allegations have been vehemently denied in the reply of Respondent No.1, which, as per affidavit dated 19.7.97 of Respondent-2 is to be treated as his own reply. It has been stated therein that within 2 months of applicant's appointment as Jr. Law Officer on 21.4.88 on 2 years' probation she was

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remaining absent from her seat frequently; she was not paying proper attention to her work; she had made it a habit to proceed on leave without prior approval and whenever she had to attend any important case in court or to brief lawyers about a case, she would either remain unauthorisedly absent or would take leave. The reply states that in November, 1988, it was noted by the Under Secretary barely 8 months after she had joined service that she was very irregular and had been on leave/absent for nearly 4 months by that time, as a result of which work was badly suffering. Respondents state that she was given a Memo dated 3.9.90 (annexure-R1) to which her reply was unsatisfactory, and w.e.f. 11.9.90 she again started absenting herself without approval of competent authority. Further, during her absence, when her work was checked, as many as 30 files were found unattended, and in some cases the date of hearing/ appearance in Court had expired. Respondents have stated that out of 260 cases marked to her since 1.1.90 she disposed of only 77 cases, leaving 183 pending cases, and during the period she was on regular leave for 44 days; C L for 12 days and restricted holiday for 2 days. Again between 11.9.90 to 27.1.91 she was on leave for the following periods.

<u>IN 1990</u>	<u>IN 1991</u>
E.L. 5 days	5 days.
Extraordinary .107 days.	15 days.
Commuted	5 days.

After joining duty on 28.1.91 she again availed of

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all C.L. and R.H. due to her, and also 4 days' E.L. due to her for the year 1991 upto 2.4.91 after which she again started absenting herself without application or intimation till 15.4.91 and submitted application for leave only on joining.

13. Respondents state that she again stopped attending office w.e.f. 29.5.91 without any leave application nor intimation. In these circumstances she was given Memo dated 21.6.91 directing her to report for duty immediately and give explanation for unauthorised absence within 3 days. They state that she resumed duties on 28.6.91 and as an afterthought gave an explanation dated 1.7.91 stating that she had sent her application by post.

14. After joining her duties on 28.6.91 she again absented herself from 4.7.91 without leave application or intimation. Another Memo dated 19.7.91 (Ann-R-3) was issued to her upon which she joined duty on 22.7.91 and submitted a leave application with an M.C. of a private doctor. She thereafter again remained on leave from 29.7.91 to 30.8.91 during which period she was served with Memos dated 16.8.91 and 30.8.91. She thereafter rejoined on 3.9.91 but again absented herself w.e.f. 4.10.91 and rejoined on 14.10.91. Thereafter from 15.10.91 she again began absenting herself and rejoined only on 27.12.91 but again absented herself from 28.12.91 which eventually resulted in the termination of her services as a probationer on 20.1.92, which itself had to be extended because of her unsatisfactory record of service.

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15. Respondents have emphasised that applicant's case for confirmation or extension of probation was considered not by a single officer but by a duly constituted DPC consisting of very senior officials who after going through the relevant records had recommended extension of probation till 20.1.92, and thereafter the DPC again met for further consideration of applicant's case for clearance of probation or otherwise, but keeping in view her performance it was felt that she had not been able to complete the period of probation satisfactorily, and therefore her services were terminated w.e.f. 20.1.92 as per para 3 of the terms and conditions of her appointment.

16. In the reply, the allegations of malafide on the part of Respondent No.2 have also been vehemently denied. It is contended that ICAR is an autonomous body with its own panel of lawyers and its own fee schedule approved by the competent authority, and there was no question of a valid objection being raised on the fee bills of advocates which was claimed on the basis of ICAR's approved schedule. Thus, even if applicant did raise any objection, they were frivolous and in any case there was no question of Respondent No.2 getting annoyed about them. The objection that Respondent No.2 was annoyed with applicant's wanting to join LL.M course is also denied.

17. Applicant has filed rejoinder in which she has denied the averments made by respondents in their reply and has broadly reiterated the contents of her OA.

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18. We have considered the matter carefully. Admittedly applicant was appointed as Jr. Law Officer w.e.f. 21.1.88 on probation for 2 years. If, as applicant contends, she had completed her probation satisfactorily, she would have been confirmed after 2 years on 21.1.90. It must be remembered that confirmation of a probationer is not an automatic process, but is a positive act which respondents were required to perform in regard to the petitioner with due application of mind, after fully satisfying themselves that her work and conduct during the period of probation was satisfactory. Manifestly the fact that applicant was not confirmed upon the conclusion of her probation period on 21.1.90 but her probation was extended for a further period of two years, and finding that there was no improvement in her work and conduct, respondents were compelled to remove her from service at the end of her extended period of probation, makes it clear that the impugned adverse remarks were not unjustified. It must be remembered that the decision to remove applicant from service at the end of her extended period of probation was not based on the recommendation of a single officer but that of a properly constituted DPC consisting of experienced and senior officials who would be expected to her objective and dispassionate in their approach.

19. We are informed that applicant was separately assailed her removal from service at the end of her extended period of probation in OA No. 920/93 which in fact was earlier gagged with these two OAs, but upon applicant's counsel's prayer, was delinked from these two OAs which he wanted heard separately. Without

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prejudice to the merits of applicant's claims in OA No. 920/93, the position as it stands today is that applicant who joined service as Jr. Law Officer on 21.1.88 on 2 years' probation and would normally have been confirmed on 21.1.90 had her service been satisfactory, was not confirmed on that date. Instead her probation was extended by 2 years till 21.1.92² after assessment of her work and conduct by a regularly constituted DPC consisting of senior officers. It was hoped that during this period of extension of probation, applicant's performance would improve, but at the end of the period of extension of probation i.e. 21.1.92 when the DPC found no improvement in her work and conduct, they recommended termination of her service, which recommendation was accepted and applicant's service was terminated w.e.f. 21.1.92 for thoroughly unsatisfactory work and conduct.

20. There are also enough materials to indicate that applicant was issued memos from time to time to improve her performance and she therefore cannot claim that she was not put on notice.

21. In this view of the matter the OA warrants no interference and it fails.

OA No. 163/94 :

22. In this OA applicant impugns respondents' OM dated 13.8.91 (Annexure-A9) communicating adverse remarks in respect of applicant for the year 1990-91 under 9 items, and respondents' OM dated 17.1.92 (Annexure-A1) rejecting her representation dated 12.9.91 against the same.

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23. For the reasons already discussed in detail while dealing with OA No.727/93, this OA also fails.

24. In the result, OA No.727/93 as well as OA No.163/94 are dismissed. No costs.

25. Let copies of this order be placed in both OA case records.

P. C. Kannan
(P.C.KANNAN)
MEMBER(J).

S. R. Adige
(S.R.ADIGE)
VICE CHAIRMAN (A).

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