

32

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A./T.A. NO. 969/93 /19 Decided on : 13-11-95

Shri K. Diesh ... Applicant(s)

(By Shri L.K. Bhushan Advocate)

versus

U.O.I. & Another ... Respondent(s)

(By Shri P.H. Ramchandani Advocate)

CORAM

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI

1. To be referred to the Reporter or not ? yes

2. Whether to be circulated to other Benches
of the Tribunal ? 1

K. MUTHUKUMAR
MEMBER (A)

(32)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 969 of 1993

New Delhi this the 13th day of November, 1995

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Shri Krishan Diesh
R/o 6/2 Shanti Niketan,
New Delhi-110021.

..Applicant

By Advocate Shri L.K. Bhushan

Versus

1. U.O.I. through
Secretary,
Department of Posts,
Ministry of Communications,
Dak Bhavan,
Government of India,
Parliament Street,
New Delhi.

2. Shri Kailash Prakash
Retired Secretary,
Department of Posts,
C-II/79, Bapa Nagar,
Zakir Hussain Marg,
New Delhi.

..Respondents

By Advocate Shri P.H. Ramchandani

ORDER

By this application, the applicant seeks an order of the Tribunal to quash the adverse entries recorded by the reviewing authority in the Confidential Report (CR for short) of the applicant for the period from 1.4.90 to 31.12.90. By a separate amendment application which was allowed, the period referred to above was changed to 1.4.90 to 31.12.90 to correct a typographical error. He has also prayed for placing on record the remarks recorded by Shri S.B. Lal, the then Chairman of Expert Committee on Postal

63

Excellence in the C.R. dossier of the applicant for the period 1987-88, 1988-89 and 1989-90. The brief facts in this case can be summarised as follows.

2. The applicant belongs to the Indian Postal Service Group 'A' of 1962 batch. The respondents set up a high powered committee in 1987 with the applicant as a Member-Secretary of the Committee. The applicant was also appointed at that time as Deputy Director General (Training and Establishment) (DDG for short) in January, 1987 and was required to work as a member of the aforesaid Expert Committee in addition to his own duties as DDG. The applicant claims that he had worked almost the whole time or major part of his time as Member-Secretary of the Expert Committee as the said work of the Member-Secretary was quite demanding. The work and performance of the applicant during the above period, according to the applicant, was to be assessed by the Chairman, Expert Committee. The applicant avers that the then Secretary to the Department of Posts gave an assurance to the applicant that the assessment made by the Chairman would be included in the Confidential Reports for the work during the aforesaid period for the Committee. On the other hand, the applicant is aggrieved that (the then Member (Personnel) Sh. Kailash Prakash, who later on became Secretary in the Department of Posts was hostile and inimical to the applicant from the time he joined the Department, and had recorded his CR for the period 1.4.90 to 31.12.90 and that he had recorded these remarks after he was relieved from the said post of Secretary, in a vindictive manner. On the basis of the representation of the applicant to the aforesaid

(B5)

remarks communicated to him, the President expunged/modifid the adverse entries communicated to the applicant by their letter dated 24.9.92. The applicant made a further representation to the President by his letter dated 31.12.92 regarding the adverse entries which were not allowed by the respondents on the ground that the adverse entries in the ACR were examined by the appropriate authority and the second representation was not permissible as per existing rules. The applicant has, therefore, filed this application under Section 19 of the Administrative Tribunals Act, 1985.

3. The main grounds advanced in this application are as follows:-

(1) The reviewing authority who has recorded adverse comments was hostile to the applicant from the time the applicant joined the department and worked under the reviewing authority when he was the then Member (Personnel). The reviewing authority, namely, Shri Kailash Prakash was also prejudiced due to the fact that certain vigilance enquiries against him have been received by the Central Vigilance Commissioner and the applicant happened to be at time working as Director (Vigilance). Although he was not involved in any investigation at that time or any subsequent investigation against Shri Kailash Prakash during the period of 2 years including the period in which such adverse entries were made in the CRs by the reviewing authority, the applicant happened to be the President of the Indian Postal Services Association and in that capacity had to bring to the notice of Shri Kailash Prakash, who was the Secretary to the Department many acts and instances of injustice and unfair treatment meted out to the Postal

Service Officer, and this was considered by Shri Kailash Prakash as personal affront against him. In view of these facts, the applicant alleges that the reviewing authority, namely, Shri Kailash Prakash was biased against him and, therefore, recorded adverse comments in his character roll for the aforesaid period.

(2) The applicant had worked as a full time Member-Secretary of the Expert Committee and, therefore, the comments of the Chairman of the Expert Committee regarding his performance were directed to be placed on record by the Chairman himself in his demi official letter to the then Secretary of the Department. It is averred in the application that the then Secretary, Department of Posts had informed the Expert Committee that the applicant was holding the post of Deputy Director General (T&E) and, therefore, his character roll had to be initiated by the controlling authority in the department. It was, however, conveyed to Shri Lal that the comments made by him in the applicant's C.R. written by him could be fully reflected in the CR written by the concerned controlling authority in the department.

(3) Although certain adverse remarks in the CRs recorded by the reviewing authority had been expunged the remarks not expunged and left in the C.R. to remain, still constituted an adverse reflection on the working and performance of the applicant and the respondents had not taken all the facts brought out in the representation into account. The applicant contends that the expunging has been done in such a fashion that it is arbitrary and shows failure to appreciate the effect of such a modification which is worse than or as bad as the expunged remarks.

(3A)

(4) The next ground is that there had been procedural lapses in the matter of communicating adverse remarks and the adverse remarks recorded were in clear violation of the instructions of the Department of Personnel & Training which required sufficient opportunity to be given to the affected officer before recording any adverse remark. It is alleged that the respondents had not followed the instructions of Department of Personnel in the writing of Confidential Reports and, therefore, the procedural irregularisites had adversely prejudiced his case.

(5) The other ground on which the application has been moved is the arbitrary nature of the rejection of the applicant's second representation. The applicant submits that this representation was necessitated due to the error committed by the appropriate authority which had expunged some parts of the remarks leaving the other on the record while both the portions formed part of one thought and one remark only. Therefore, there is nothing in the rules which would go against the consideration of the representation when errors in the decision are pointed out and review is sought on the basis of correcting those errors.

(6) The reporting officer had recorded complimentary remarks and the reviewing officer had failed to indicate any ground for differing with the reporting officer or to cite any instances to support his adverse comments in his review remarks.

(7) The entire remarks of Shri Kailash Prakash had been recorded without assiging any reason and without producing any material in support of such assessment

62

whereas, the working of the applicant prior to the aforesaid period of these remarks was rated very high by the Chairman of the Expert Committee under whom he had directly worked for the past three years. The adverse remarks were recorded in a mala fide and arbitrary manner to deprive the applicant of his promotion to the post of Senior DDG in the pay scale of Rs.7300-7600 (equivalent grade of Additional Secertary) for which the applicant would be due for consideration by the DPC which was expected to meet soon.

4. The applicant had impleaded Shri Kailash Prakash as respondent No.2. No separate reply had, however, been filed by him, and he had also retired by the time the application was filed.

5. The official respondent has contested the petition and has strongly denied any malice or mala fide on the part of the respondent No.2, Shri Kailash Prakash, the then Secretary to the Government of India, Department of Posts, in recording the adverse entries in the C.R. of the applicant for the period from 1.4.90 to 31.12.91. It is also averred that the first representation had been given due consideration by the appropriate authority and a reply was also given to the applicant and the second representation on the same matter was not permissible as per the existing instructions. The contention of the applicant that the concerned authorities violated the principles of legality and justice in expunging part of the adverse remarks is also denied as incorrect as the order dated 22.4.92 had been issued strictly in accordance with the Government of India instructions in the matter. It is also further contended on behalf of the

respondents that the applicant has not explained the reasons why the order dated 24.9.92 should be considerd as illegal. The respondent has further averred that the respondent No.2 had nothing to feel inimical or to become hostile to the applicant in view of the fact that the actions of the applicant as President of Indian Postal Services Association in bringing the problems faced by the service officers to the notice of the respondent No.2 was a routine affair in the normal functioning of the Department and there was nothing for the respondent No.2 to consider this as personal affront or to nurture any hostility towards the applicant. It is also contended on behalf of the respondents that the assessment of the performance of the applicant was taken in totality including his assignment as Member-Secretary of the High Powered Committee. The respondents have also denied that the applicant was exclusively working as Member-Secretary. In fact, he was required to work as Member-Secretary in addition to his duties as DDG (Training and Establishment) and, therefore, have averred that initiation of confidential report by the competent authority is quite regular and correct. Regaring the unexpunged portion of the remarks, the respondent contends that these unexpunged portions do not convey any negative sense as pleaded by the applicant nor is there any arbitrariness or lack of logic. He has also denied that in communicating the adverse remarks, the proper procedure has not been followed. So, in short, the respondent has denied any bias or malice by the reviewing officer in recording his remarks and has submitted that the representation has been duly

considered by the competent authority and adverse remarks have been expunged and what remains, could not be construed as the negative remarks or negative assessment. In the light of this denial, the respondent has contended that the application lacks merit and is devoid of legal force.

6. I have heard the learned counsel for the

parties and have carefully perused the records.

7. At the outset it is necessary to refer to the

sequence of events commencing from the recording of the adverse remarks to the disposal of the representation against such remarks. The adverse remarks related to the period from 1.4.90 to 31.12.90. The respondents have produced the originals of the Annual Confidential Report dossier of the applicant during the time of hearing. From this it is seen on the relevant ACR for the aforesaid period, the reporting officer had recorded his remarks on 31.12.90 and the reviewing authority whose remarks are under challenge in this application had recorded his remarks on 6.6.1991. The remarks were, however, communicated to the applicant by the respondents letter dated 25.3.92, Annexure A-1 to the application, i.e., almost after 9 months. The applicant was directed to submit his representation within one month, which he did, and his representation was disposed of by the respondents' letter dated 24.9.92. It is alleged by the applicant in para 4.13 of the application that the reviewing officer had recorded his remarks in a vindictive manner after being relieved of his post as Secretary to the Department. In the said paragraph, the applicant has submitted that Shri Kailash Prakash,

W

the then Secretary to the Government of India, Department of Posts, was summarily relieved of his post during 1991. Although no date was specified in this paragraph, in the rejoinder to the counter-reply to the said para, the applicant has submitted that the respondent No.2, Shri Kailash Prakash was relieved of his post in December, 1991 and, therefore, the remarks recorded by him could be communicated to the applicant only in March, 1992. This contention is not tenable. From the record it is seen that the said remarks had been recorded on 6.6.91. Although there was delay in the communication of the adverse remarks, the allegation that the department waited for the communication of the adverse remarks till respondent No.2 was relieved in December, 1991 is not established. The possibility of administrative delays in such communication cannot also be ruled out. As per the guidelines, the adverse remarks should normally be communicated within one month of the completion of the report which was made on 22.6.1991. There is nothing on record to suggest that the respondents had deliberately communicated the remarks after the reviewing officer was relieved of his post. The ground alleged that the reviewing officer was personally prejudiced against the applicant because of the reviewing officer's misconceived belief that the applicant was responsible for the reviewing officer's removal and for the proposed vigilance enquiry against him 2 years back, is not adequately supported by any evidence or by specific instances of malice or bias against the applicant. Even in the letter of respondent No.2 filed by the applicant

142

alongwith the rejoinder, this prejudice or bias is not evident and this letter was of an advisory and counselling nature while seeking certain clarifications from him on the work entrusted to him. Courts or Tribunals should not normally interfere with the recording of the adverse remarks by the superior officer unless allegations of bias, prejudice or mala fide are properly established. While considering his representation against these adverse remarks, the competent authority which in this case is the President, has expunged certain adverse entries as recorded by the reviewing officer and did not find it necessary to expunge certain other remarks. Since no malice or mala fide is clearly shown against the reviewing officer and no reasoning is shown as to why the decision of the competent authority in disposing of the representation was prejudicial and suffers from any mala fide, the action of the respondents in retaining certain remarks after expunging certain other remarks cannot be faulted. The learned counsel for the applicant argued that certain remarks which are adverse remarks which are retained, have no logic to remain to the extent that these remarks are retained as a continuation of such of those remarks which are expunged or the retained remarks are self-contradictory and lacking in logic. The learned counsel for the respondents, however, contends that the retained remarks cannot be considered illogical and at best it could be considered as a sort of down grading which is a subjective assessment of the reviewing authority which by itself could not make it illogical or illegal. I am inclined to agree with this contention.

8. On a perusal of the actual remarks in the confidential report, as retained by the competent authority after considering the representation of the applicant against original adverse remarks, I am of the considered view that the competent authority while considering the representation of the applicant against the adverse remarks had not found adequate grounds to expunge these retained remarks also. The toning-down of the report of the reviewing officer by the remarks of the reviewing authority which had been found to be justified by the competent authority, who had considered the representation, cannot be called in question unless some mala fide against the competent authority is attributed. The applicant has not raised any allegation of mala fide against the competent authority. There is also no merit in the applicant's contention that the respondents have denied him the right of second representation. There is no provision for second representation, particularly when the competent authority, who is the President in this case, has disposed of the representation after due consideration, even though the applicant may ^{not} be satisfied with this disposal.

9. The learned counsel for the respondents has rightly contended that even in the first representation against the adverse remarks, the applicant had not alleged any mala fide or bias against reviewing authority except to say that the reviewing authority, namely, Shri Kailash Prakash had a standing dislike against the applicant. This allegation is too general and is not supported by any credible reasoning or detail. The learned counsel for the applicant contends that considering his first representation against adverse remarks the respondents have simply communicated the retention of certain adverse remarks without giving any reasons and, therefore, such a reply on the representation without any reasoning cannot be sustained and he has cited the decision in Krishnadas vs. Collector Central Board of Customs and Excise in SLJ 1992(2) Vol.44 page 76. I find in that case the Tribunal came to the conclusion that the disposal order of the

representation against the adverse remarks did not indicate that the points raised in his representation was considered. In the present case, however, the communication of the representation submitted by the applicant has been carefully considered by the President, who is the competent authority. It is stated "the competent authority is pleased to exonerate/modify the adverse entries to the extent indicated below." By this, it is evident that the expunging of certain remarks and retention of certain remarks have been given due consideration by the competent authority while considering the representation of the applicant. Absence of any detailed reasoning for retaining certain remarks or for that matter expunging certain remarks does not, by itself, vitiate the disposal order. In the decision of the Supreme Court in *Union of India & Others Vs. E.G. Nambudiri*, AIR 1991 SC 1216, their Lordships observed as follows:

" if the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons. In the absence of any statutory or administrative provision requiring the competent authority to record reasons or to communicate reasons, no exception can be taken to the order rejecting representation merely on the ground of absence of reasons. No order of an administrative authority communicating its decision is rendered illegal on the ground of absence *ex facie* of reasons *ex facie* and it is not open to the court to interfere with such orders merely on the ground of absence of any reasons. However, it does not mean that the administrative authority is at liberty to pass orders without there being any reasons for the same. In governmental functioning before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. the reasons contained in the file enable the competent authority to formulate its opinion. If the order as communicated to the Government servant rejecting the representation does not contain any reasons, the order cannot be held to be bad in law. If such an order is challenged in a court of law it is always open to the competent authority to place the reasons before

(45)

the court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence aliunde before the court to justify its action."

In the instant case, the respondents have categorically averred that the competent authority after full consideration of the representation and after fully applying his mind had expunged certain portion of the adverse remarks and, therefore, there was no error of fact or error in judgment. Although the applicant has denied these averments, the applicant has not specifically shown how there was no consideration by the competent authority while retaining certain remarks nor has he attributed any mala fide or bias in the consideration of his representation by the competent authority. The applicant had prayed for the screening of the relevant record to examine whether the ACRs written by the Chairman of the Expert Committee were fully incorporated in the ACRs of the applicant.

10. I have perused the ACR folder particularly on this point and I have found that the letter written by the Chairman of the Expert Committee to the Secretary to the Government of India, Department of Posts containing the remarks on the performance of the applicant as Member-Secretary of the Expert Committee from September, 1987 to October, 1989 has been placed in original in the CR Dossier and has also been reflected in the confidential report of the applicant for the year ending 1989-90 duly reviewed by the reviewing authority, Secretary, to the Government of India and also accepted by the next appellate authority i.e the Minister of Communications on 23.5.90 and 4.8.90 respectively and, therefore, the apprehension of the applicant that the appraisal of

W

his performance by the Chairman of the Expert Committee has not been reflected by the respondents in the CR of the applicant during the relevant period is found to be totally misplaced. Another contention of the learned counsel for the applicant was that the adverse remarks should have been communicated to the applicant within one month as per the mandatory instructions and the delay in the communication had not enabled him to represent ^{to} the Minister, who is the competent authority for suitable modification or rectification. It is true that there had been delay but it cannot be said that any statutory instructions have been violated. The prescription of one month is intended to serve more as a guideline. In any case, the representation against these adverse remarks was stated to have been duly considered by the competent authority and, therefore, there had been neither denial of opportunity for representation nor lack of consideration. The counsel for the applicant strongly urged that the prayer in the application is very simple to the extent that what is retained by the competent authority continues to be adverse and deserves to be expunged. The respondents on the other hand maintained that retained remarks at best would have the effect of toning down the overall assessment of the applicant to some extent and that too for the relevant period. The learned counsel for the respondents also stated that the applicant had not suffered in any manner as a result of these remarks which had been retained, as the applicant has been promoted to the grade of Sr.DDG/Chief Postmaster General (CPMG) in the scale of Rs. 7300-7600. The learned counsel for the respondents after verification

WAT

from the respondents, produced during arguments the relevant minutes of the Departmental Promotion Committee and also the assessment of the DPC in respect of the applicant and also the other eligible officers. The learned counsel for the respondents has also produced a copy of the orders of posting of the applicant on promotion to the grade of DDG/CPMG of the Indian Postal Service, posting him as CPMG, M.P., Bhopal by the order of the respondents dated 28.12.93. Therefore, the learned counsel for the respondents contends that the applicant has not suffered in any manner as a result of this down grading of the entries in the CR after due consideration by the competent authority, namely, the President. The learned counsel for the applicant on the other hand contends that although the applicant has been promoted, the continued retention of these remarks in the CR is likely to affect his future promotion inasmuch as these promotions ^{are} on the basis of the selection and should also satisfy the bench mark of grading as "very good".

10. I have considered this matter. The assessment of the applicant by the Departmental Promotion Committee clearly shows that the applicant has been assessed as "very good". The remarks which are retained in the CR for the period from 1.4.90 to 31.12.90 do not seem to have in any way influenced the deliberations of the Departmental Promotion Committee even for the promotion to the grade of Sr. DDG/CPMG in the grade of Rs.7300-7600. This promotion is also based purely on selection and on the basis of the applicant's fulfilling the bench mark prescribed for purposes of promotion. Considering this, the

Apprehension of the applicant that the retention of these remarks is likely to affect future assessment seems to be misplaced. Besides subsequent promotion to a higher selection post on the recommendations of a duly constituted Selection Committee has, in effect, washed off the remarks retained in the CR relating to earlier period as was held in O.P. Jain Vs. The High Court of Judicature for Rajasthan, All India Services Law Journal, Vol.41 1991(3) page 193. The Learned Judge observed as follows:

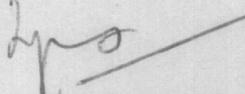
" Be that as it may, it cannot be disputed that the complaints made to the committee, as regards the period when the petitioner worked as Civil Judge, Pratapgarh from 8.8.1967 to 1.10.1971 stand washed off because thereafter, the petitioner was promoted not only as Additional District Judge or the District Judge but was even granted selection grade of the District Judge retrospectively with effect from 1.6.1983 vide order dated 4.2.1984. That even washed off all the adverse remarks which might have been made as regards the period during which the petitioner worked as Judge Labour, Industry and ACL cases, Kota from 2.7.1988 to 1.9.1981. The petitioner, however, worked as District Judge Kota from 7.5.1984 to 28.9.1985. Any adverse committee which might have been made against him as regards this period also stand washed off on account of his selection as Member Board of Revenue for Rajasthan at Ajmer by a High Court Committee in year 1986 and later on account of his confirmation in the selection grade of the District Judge vide order dated 5.4.1989. Certain authorities have been cited in support of this argument but I need not refer to them because it is the well settled position of law that inspite of the adverse remarks if the Petitioner is found fit for further promotion or is appointed on an important post by due selection by a high power court committee or is confirmed on a particular post it would mean that all his earlier adverse entries relating to a period prior to that stand washed off".

The future promotion would, no doubt, depend on his future performance and the assessment of the Departmental Promotion Committee subsequent to his promotion. When the remarks from 1.4.90 to 31.12.90 report had not affected the promotion of the applicant

(W)

to the grade of Senior DDG/CPMG, there can be no basis for the apprehension that the same remarks are likely to affect the assessment for the next higher promotion, other things being equal.

11. In the light of the above discussion, I find that no case has been made out by the applicant for interference by the Tribunal. The application is accordingly dismissed but without any order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)

RKS