

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD

Dated : Allahabad this the 18th day of July, 1996.

Coram : Hon'ble Mr. T. L. Verma, Member-J
Hon'ble Mr. D. S. Bawej, Member-A

Original Application No. 782 of 1986

Ram Swaroop Kureel, son of Sri Lalita Prasad,
Resident of 366-D, Labour Colony, Purana Kanpur,
Kanpur 208 002. applicant.

(through Advocate Sri N.K.Nair)
Versus

1. Union of India through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. The Engineer-in-Chief (E-in-C), Army Headquarters Kashmir House, DHQ PO New Delhi.
3. The Chief Engineer, Central Command (CE CC), Lucknow Cantt. Lucknow 226002.
4. The Commander Works Engineer (CWE), No.1, Wheeler Barracks Kanpur Cantt., Kanpur-208004.
5. The Garrison Engineer Electrical)Mechanical) GE E/M)
Chakeri, Kanpur 208008.

... Respondents

(Through Advocate Sri N. B. Singh).

DR D E R
(By Hon. Mr. T.L.Verma, JM)

This application under Section 19 of the Administrative Tribunals Act, 1985 has been filed for quashing the adverse remarks recorded in the Annual Confidential Report of the applicant for the year 1985 communicated by letter dated 27.12.1985 and for issuing a direction to the respondents to promote the applicant as Store Keeper Grade I with

effect from the date, his juniors have been promoted to that grade vide promotion order dated 1.11.1985 with all consequential benefits.

2. The applicant, who belongs to Scheduled Caste, was appointed as Store Keeper Grade II in the office of the Sub-Divisional Officer, Military Engineering Services in February, 1966. He joined the said post on 25.3.1963. He became eligible for promotion to the post of Store Keeper Grade I on his clearing the departmental examination vide GEE/M Chakeri Kanpur Part-II Order Serial No.2 dated 14.1.1985 (Annexure-1). The applicant claims that his work and conduct was found to be satisfactory by all concern till that date in as much as no adverse remark, reflecting that he was not fit for promotion, was communicated to him. In August, 1985 Store Keepers Grade-II were considered for promotion to Store Keeper Grade I and a number of juniors, in supersession of the applicant, were promoted as Store Keeper Grade I. The supersession of the applicant by his juniors, it is stated, is arbitrary and violative of principles of Articles 14 and 16 of the Constitution of India.

3. The further case of the applicant is that in 1985, the applicant while working under Sri K.L.Sharma Garrison Engineer E/M detected that four supply orders at exorbitantly high rates executed under orders of the said Sri K.L.Sharma. He brought the same to the notice of higher authorities by his letter dated 5.7.1985 (Annexure-5) addressed to C.W.E.Kanpur with a copy thereof to Sri K.L.Sharma, Garrison Engineer (E/M) Chakeri, Kanpur. The applicant contends that the above action of his annoyed the said Sri K.L.Sharma in as much as he threatened the applicant that he will ~~spoil~~ his career. It is further contended that after the letter of the applicant was received by Sri Sharma, and other

authorities, ~~spate~~ of memos, were issued to him for ~~the~~ imaginary and cooked up latches on the part of the applicant, calling upon him to show cause as to why disciplinary action be not taken against him and also advising him to improve his conduct. It is stated that after manufacturing false material against the applicant, ~~he was finally superseded and endorsed~~ ^{and} ~~he was finally superseded and endorsed~~ adverse entries were in his A.C.R. and he was also superseded in the matter of promotion to Store Keeper Grade-I. Hence this application for the reliefs mentioned above.

4. The respondents have resisted the claim of the applicant. In the counter-affidavit filed on behalf of the respondents, it has been stated that the applicant has unnecessarily exaggerated ^{the} matter and has made deliberate attempt to malign the image of the Garrison Engineer (Respondent No.5) by making baseless allegations. The shortcomings pointed out in the memos, issued to the applicant, it is stated are correct and were communicated to the applicant to give him chance to make up his deficiency. The Annual Confidential Report is based on objective assessment of the performance of the applicant and as such does not warrant interference by this Tribunal. The further contention of the respondents is that the applicant was considered for promotion by the Departmental Promotion Committee and he was found unfit for promotion. The applicant, therefore, has no cause of action for filing this application.

5. We have heard the learned counsel for the parties and perused the record. The following remarks recorded in the A.C.R. of the applicant in 1985 are adverse in nature :-

(a) Integrity lacking. The individual was warned in writing for passing some undesirable information to the Test Audit authorities.

(b) He has a general tendency to come late. He has a tendency to approach senior officers directly. He is not very prompt in his work. An average SK Grade II who cannot be relied upon and has a tendency of making complaint of his dept. to other outsider agencies. Fitness for promotion to higher grade in his turn not yet fit."

6. The contention of the applicant is that the adverse remarks ^{were} ~~acted~~ by malafide, on the part of the administration whose displeasure he incurred by complaining against Sri K.L.Sharma alleging that he had made local purchases at exorbitantly high rates. In order to test the veracity of the applicants allegation that the remarks ¹ which are adverse in nature, have been given out of malice, we called A.C.R. dossier of the applicant. We have perused the A.C.R. remarks of the applicant from 1980 to 1984. We find that in the A.C.R. for 1984 no adverse remark on the integrity of the applicant has been recorded. As a matter of fact, except remark ~~that~~ "he possesses wrong habit of approaching senior officers directly", there is no other remark which may be treated as adverse. In 1984 he has been found to be fit for promotion to the

higher grade. The remarks for the year 1983 indicate that he has been assessed as "below average" Store Keeper" and that ~~thinks~~ he needs persuasion to complete the documents! He was, however, ^{keen} assessed as not fit for promotion in 1983 ~~.....~~. In 1982 also there is no adverse remark on his integrity. He was assessed as an average Store Keeper. His over all performance has been found to be satisfactory in 1981. In 1980 he has been assessed as smart and good Store Keeper and was also recommended for promotion subject to passing departmental examination.

7. In support of the remark regarding his habit of late coming, the respondents have annexed memos issued to the applicant ⁱⁿ 1982 and 1984 advising him to be punctual and come to office in time. The applicant, it would thus appear had been receiving memos for his habit of coming late to office from before. Therefore, we see no malafide in the respondents issuing memos even after the complaint of the applicant to the higher authorities regarding purchase of material in exorbitantly high rates. The Reporting Officer in his general remark for the year 1984 has observed that he needs persuasion to complete documents and partially shares responsibility. This remark also in our opinion, cannot be said to be malafide or motivated.

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8. The assessment of the applicant as an average Store Keeper in the impugned remarks also cannot be said to be for extraneous consideration because the ^{trend of} general assessment of all the Reporting Officers of the applicant prior to 1985 also was the same. The remark that the applicant has tendency of making complaint of his department to other outsider agencies is concerned, we find that no such complaint was ever made against the applicant in the past. The respondents have also not filed any document to substantiate this allegation. In the format of the A.C.R. it has been stated that the applicant had passed some undesirable information to Test Audit authorities. There is no material either in A.C.R. or the A.C.R. dossier to show what information actually was passed on by the applicant to the Test Audit authorities and ^{or} ^A that the same was privileged. Therefore, it is difficult to hold that this remark is objective and is based on material.

9. The applicant alleges that the aforesaid adverse remarks are malafide on the part of Sri K.L. Sharma, D.E. E/M(II) Kanpur Division because the applicant had complained against purchases made by him in exorbitantly high rates. The applicant had sent such

a letter to the Chief Commander of Works with a copy to Sri K. L. Sharma , has not been denied. The respondents in their counter-affidavit have ~~rather~~ tried to defend the local purchases made. The following circumstances indicate that sending ~~the~~ aforesaid letter did create some reaction as a result spate of memos were issued in quick ~~succession~~ ~~and~~ ~~series~~ ~~of~~ ~~memos~~ ~~issued~~ ~~in~~ ~~one~~ ~~single~~ ~~session~~ to the applicant. ~~to the applicant~~. The first memo was issued on 6.7.85 (Annexure-6) informing the applicant that ~~he~~ ~~had~~ ~~left~~ ~~the~~ ~~area~~ ~~without~~ ~~informing~~ ~~his~~ ~~Superiors~~ and that he was in habit of coming late and was warned to improve his working failing which necessary action will be taken against him. Immediately thereafter another memo dated 12.7.1985 (Annexure-7) was issued stating that he was found absent from duty from 13.00 to 13.55 hours on 11.7.1985 without information to his superior officer and he was called upon to explain as to why disciplinary action should not be taken against him. Then on 18.7.85 a memo was issued for the alleged failure of the applicant to put up the baby indent ledger duly updated within a stipulated period and was called upon to explain why disciplinary action for disobedience of orders be not initiated against him. After that on 3.9.85, again a memo stating that the applicant was absent from the area during 9.30 to 12.30 hours ~~from on 2.9.1985. The issued~~ ~~a memo was issued~~ Again on 4.9.1985 ~~indicating~~ ~~him~~ ~~the applicant~~ ~~to explain~~ ~~the~~ ~~lapses~~ on his part, and calling upon ~~the applicant~~ to explain ~~the~~ ~~lapses~~ why disciplinary action should not be taken against him. On 25.9.1985, the applicant was again called upon to explain why he did not comply with the order to put up the details of books alongwith ledgers.

On 28.9.1985, another memo was issued to the applicant warning him for his ~~x~~ lapses. ~~One of the~~ One of the lapses detailed in para 'C' of the letter is that the

applicant passed on some information to the Test Audit Authorities just to tarnish the image of the Division and that the act was unbecoming on the part of the Government servant and goes to substantiate the case of doubtful integrity. The applicant submitted reply to all the memos issued and served upon him. We are not aware as to what orders were actually passed by the authorities on the explanations submitted by the applicant. One thing, however, is clear that it was only after the letter dated 5.7.1985 was sent by the applicant complaining that Shri K.L. Sharma D.E.(E/M) had made local purchases on exorbitantly high rates, Memos started flowing ^{in quick succession} compared to the memos issued in 1982 and 1984 to the applicant for maintaining punctuality. For convenient of reference para (c) of letter dated 28 September, 1985 is extracted below :-

"That you have passed on some informations to the Test Audit Authorities just to tarnish the image of the divisions. This act of yours is unbecoming on the part of a Govt. servant and goes to substantiate the case of doubtful integrity."

10.8 The Test Audit Department is also a Government Department, therefore, passing on some information by the applicant to the said department, ~~therefore~~, cannot be said to be unauthorised unless it is shown that the ~~conceal~~ information alleged to have been passed, was confidential or that the information alleged to have been passed, was false. The respondents have ~~as~~ failed to bring any

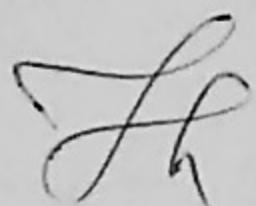
material on record to show as to what information, the applicant is alleged to have passed to the Test Audit Authorities and how the same has resulted in tarnishing the image of the department. In any view of the matter, the allegation made in para (c) of the memo dated 28.9.1985, if true, make out a case of misconduct. The respondents would have been justified in appending the said remark only after giving the applicant an opportunity by serving the charge memo on him and holding ~~the~~ disciplinary ^{enquiry} proceeding ^{proceeding} ~~for~~ ^{alleged} misconduct. This, admittedly, has not been done. That apart, the remarks are vague and general in nature and are not supported by ~~transible~~ material. The Courts of the Tribunals ordinarily do not go into the merit of the Annual Confidential Report and quash the same on the ground that there was no factual basis for recording the same. But, in the facts and circumstances of the case, we are constrained to say that we are not satisfied that the adverse remarks are out come of objective assessment. These remarks, therefore, deserve to be expunged.

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11. The promotions from ~~the~~ ^{to 1/4} post of Store Keeper Grade II to Store Keeper Grade-I was considered in August,

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1985. The A.C.R. upto 1984 only in the normal course should have been taken into account for considering the fitness or otherwise of the applicant for promotion to the post of Store Keeper Grade-I. The respondents have in their counter-affidavit stated that the A.C.R. upto 1984 only were taken into account in order to verify the above averments. We had called for the D.P.C. proceedings in which the promotions were considered. The proceedings of the C.P.C. have been filed. The proceedings filed contain only the recommendation made and the seniority list of Store Keeper Grade II. From the recommendation of the D.P.C. it appears that the applicant alongwith others were considered for promotion to the post of Store Keeper Grade I but, he has been assessed as not yet fit. The D.P.C. proceedings file also contains the copies of Confidential reports of the applicant from 1982 to 1985.



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12. The A.C.Rs. are generally recorded at the end of the year. C.Rs. recorded in 1985 in the normal course could have been used in 1986. Therefore, the remarks of 1985 in the A.C.R. of the applicant could not have been taken into account in 1985. The other reason for barring use of remarks recorded in 1985, is that the representation submitted by the applicant for expunction of the remarks **had not been decided till the date, this application was filed in 1986.** It is well settled that the adverse remarks, representation for expunction of which is pending, are not to be taken into account for determining suitability or otherwise of the Government employee for promotion. Since the D.P.C. proceedings do not disclose specifically that remarks recorded for the year 1985 have not been taken into account for determining suitability of the applicant for promotion, we are unable to accept the contention of the respondents that the 1985 remarks were not considered while deciding the promotion of the applicant.

13. In the facts and circumstances discussed above, we find and hold that the adverse remarks i.e. "Integrity is lacking. The individual was warned and had a tendency of making complaint of his department to other outsider agencies deserved to be expunged.

14. In the facts and circumstances of the case discussed above, we allow this application and expunge the remark as indicated in the preceding paragraphs and direct the respondents to hold review D.P.C. and reconsider the promotion of the applicant from Store

Keeper Grade II to Stoer Keeper Grade I after expunging the adverse remarks recorded on the work and conduct of the applicant for the year 1985. This direction should be complied with within a period of three months from the date of communication of this order. There will be no order as to costs.

S. B. Singh
Member-A

(pandey)

J. Kumar
Member-J