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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No.271 of 1987

Suresh Chandra Sharma Applicant

Versus

Union of India & Others Respondents.

Hon.Ajay Johri, A.M.

This application, filed under Section 19 of the Administrative Tribunals Act XIII of 1985, is against the memorandum dated 19.6.86 issued by the respondent communicating adverse remarks entered in the Confidential Report for the year 1985 on the applicant Dr. S.C.Sharma an Ecologist working in the Forest Research Institute, Dehradun and against a memorandum dated 23.2.1987 rejecting the representation made by the applicant against the adverse remarks on 17.7.86.

3/ 2 . The applicant had joined as an Ecologist in the Forest Research Institute, Dehradun in January, 1980. The post is in Group 'A' Central Civil Service and ^{3/} he is still working on the same post. He was conveyed adverse remarks in the Confidential Report for the period 1.1.85 to 31.12.85. The Confidential Report for this period was initiated in two parts - one for the

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period 12.1.85 to 26.6.85 and the other for the period 27.6.85 to 31.12.85 as the Reporting Officers were different in these two periods. The applicant was appointed as a ~~setter~~ of a question paper for the final examination of the I.F.S. probationers in December, 1984. He did the needful and also examined the answer books pertaining to the probationers of 1983-85 course. In March, 1985 he was again asked to set question paper for a supplementary examination of 14 probationers and 4 Foreign Trainees who could not qualify in the main examination. He set the question paper and also evaluated the Answer Books. According to him since he had set the question paper and evaluated the Answer Books in both the main and supplementary examinations the entry made in his service record by respondent No.5 was unjust and unfair. The entry which he has referred to was against the column -

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" Do you agree with the resume of work as indicated by the Officer in Part II of the report and in particular regarding the special achievements, if any, mentioned by the Officer ? If not, indicate briefly the reasons for disagreeing with it and the extent of your disagreement."

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~~against basis from the sentence~~ read as follows :-

"I agree. He was also appointed as Examiner for I.F.S. Probationer's examination. He declined to work as Examiner for I.F.S. Probationer's Supplementary Examination although directed by P.R.I."

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3. While challenging this adverse remark the applicant has said that the Reporting Officer was required only to reply the questionnaire and since he replied in affirmative no further comment was warranted against this item hence the remarks entered were superfluous and uncalled for.

4. Similarly against item No.2 i.e. Power of Expression (on paper and in discussion), the remarks made by the Reporting Officer, respondent No.5 were " Good on Paper but average in discussions. At times talks arrogantly." The applicant has challenged the second sentence of these remarks as being superfluous. ^{3/} According to him this remark was to communicate that there had been several occasions on which discussions between the applicant and the respondent No.5 took place but the Reporting Officer has failed to quote even a single instance in the support of the remarks. According to the applicant there has been no discussion at all between the applicant and the respondent No.5 and since no mention of any corrective steps has been mentioned by him, respondent No.5 has not followed the procedure laid down by the Govt. of India in the matter of writing Confidential Reports.

5. Similarly against item No.3 i.e. Has the Officer been reprimanded for indifferent work or for other causes during the period under report? If so, brief particulars should be given the entry,

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the entry

"He was verbally cautioned for declining to act as examiner for I.F.S. Probationer's supplementary examination." have been challenged by the applicant stating that there was no cautioning or warning given to him verbally for declining to act as the examiner. He has mentioned that he had as a matter of fact not declined for setting and evaluating papers for the main examination and the supplementary examination as supported by the correspondence placed from Annexure A7 to Annexure A.14.

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6. On receipt of the adverse remarks the applicant had requested for grant of some ^{34 more} ~~less~~ time to submit his representation but his request was rejected, ~~and~~ therefore he had to submit his representation on whatever information and material was in his knowledge. According to him, respondent No.4 who was the Reporting Officer was not in any case involved in the matter of examinership and the entire correspondence in this regard was held between Forest Director of Education or Director, I.F.C. and the applicant. He has therefore alleged that since no opportunity was given to him to remove or correct his faults and objective assessment was not made of his work, the assessment by the respondent No.5 was unfair and unjust. The Confidential Report was also initiated

after a long lapse of time (i.e. about 7 - 8 months) and the adverse remarks were communicated also late. He has further alleged that the Reviewing Officer and the Counter-signing Officer i.e. respondent No.3 & 2 have also discharged their functioning mechanically. He has therefore sought relief for ~~the~~ expunging of the remarks communicated to him for the year 1985 as also the order rejecting his representation.

7. In their written statement, on behalf of the Union of India, it has been said that for the period 12.1.85 to 26.6.85 respondent No.5 held an additional charge of the Director of Silviculture Research and was rightly the Reporting Officer of the applicant. While for the period 27.6.85 to 31.12.85, the Confidential Report was initiated by respondent No.4 who was at that time the Director and both the Confidential Reports were reviewed by the President, F.R.I. and counter-signed by the Inspector General of Forests i.e. respondent No.3 and 2 respectively. According to the written statement the applicant has not disclosed full facts. He was appointed as an examiner and paper setter for the final examination, for supplementary examination and the second supplementary examination. It was the second supplementary examination for which he had declined to set papers and insisted that he did not feel it

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necessary to hold the second re-examination. He was therefore called for discussion in the Director, Forest & Education's chamber and was cautioned for his refusal and again requested for setting the papers as approved by the President, Forest Research Institute. But he replied arrogantly that a written request be made to him. So he was again addressed by the Director and requested to set the paper. He did not set the paper. Therefore he failed to comply with the instructions to set the question paper for the second supplementary examination. It has further been said that the adverse remarks recorded are based on overall assessment of the work during the period under report and only ^{the} factual position was reflected in the remarks. The performance of the officer is not judged only on research work done but it is overall assessment and it was not open to him to defy the order of his superiors. It has further been said in the written statement that the setting ~~of~~ of question paper for probationers is a part of duty of all officers working at the Institution ^{and it is their duty} ~~and instruction~~ the work should be assigned to carry out the ~~and~~ ^{of} In regard to the Confidential Report it has been said that the instructions laid down have been properly followed.

8. In his replication the applicant has said that the adverse remarks pertained to the supplementary

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examination. Therefore the reply given does not relate to the adverse entries which is the subject matter of the petition and are irrelevant and to justify their point of view a new case has been carved out by the respondents. He has denied that he had showed any arrogance.

9. I have heard the learned counsel for both parties. The emphasis laid in the contentions raised by the learned counsel for the applicant was that against the item where the adverse entries had been made such entries are not required or indicated to be made. He further contended that the applicant had acted as the examiner and the paper setter for the supplementary examination and he never declined for the same. His case was also prejudiced because he was not allowed to make representation against the adverse entries and the order rejecting his representation is a non speaking order. It was also contended that the concerned persons have not filed the reply but the written statement has been sworn in by the Registrar who will not have personal knowledge of the facts of the case because the reports were written by respondent No.4 & 5 and they were countersigned by respondent No.3 and reviewed by respondent No.2. So no value can be attached to the written statement and since the concerned persons have not filed the reply what has been said in the application has to be taken as correct. According to

the learned counsel for the applicant, the entries were also not made within the stipulated period and no warning was given to the applicant before making the entries. On behalf of the respondents the learned counsel while opposing the application submitted that the applicant had refused to set papers. It was his duty and his representations have been rejected by the competent authority. The Registrar who has signed the written statement has also no personal grudge against the applicant and therefore it cannot be said that there would be an error of what he has said on the basis of the records. Nothing else was pressed before me. I have also gone through the various documents and the petition as well as the reply.

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10. A Confidential Report is intended to be a general assessment of work. It should not contain any specific instance upon which assessments are made and reasonable opportunity has to be given to the concerned officer to represent against the adverse remarks made in the report. Their purpose is to determine the relevant merit amongst employees at the time of promotion. It is also well established practice that adverse remarks if made in a report have

to precede suitable warning to the employee before they are made so that he may have a chance to improve himself. This would not mean that any reasonable opportunity would be necessary before they are recorded. ^{to be} They are also communicated timely and if an employee makes a representation the same has to be considered. It is only thereafter that the adverse entry becomes final. In the applicant's case it is not a ~~situation where~~ ³⁴ he has denied any promotion. His grievance is that he had not refused acting as a paper setter and examiner for a supplementary examination but he has been taken up for that act. A perusal of the whole sequence goes to indicate that the applicant did refuse to set paper for the second supplementary examination and on being repeatedly told to set the paper he remained adament ³⁴ ~~in~~ ³⁴ his attitude and refused to set the paper inspite of his having been personally called ³⁴ ~~in~~ ³⁴ told by the concerned officers in this connection. In the written statement it has been said that the applicant behaved arrogantly and refused to set the paper and wanted an order in writing which was also given to him and which he failed to obey inspite of the order being in writing. In the case of adverse entries, it is for the departmental authorities to consider the representation and take a decision and courts do not normally interfere in the matter. We cannot judge whether the performance or

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behaviour of a person has been satisfactory or not. It is only the immediate superior officer or the reviewing and countersigning officers who can do so and who can also modify or reject the report written by the Reporting Officer. What can be corrected by the Courts is that an adverse entry should not be taken into consideration until it has become final and if it has been taken into consideration when it should not have been ~~for any~~ ³¹ order issued after taking them into consideration ~~when they should not have been so taken~~ ³¹ would be liable to judicial scrutiny.

11. Adverse entries which are made without justification and without giving reasonable opportunity ³¹ in result ~~leads~~ ³¹ demoralization of service but Courts can give very little relief in such cases, it is for the executive to devise effective means to mitigate the hardship. There should be no misuse of powers by superiors who may not be well disposed of against the officers reported upon. A disgruntle bureaucracy also ~~leads~~ ^{caused} to insufficiency. It is denied that the applicant was not given reasonable opportunity. What appears to be is that in the letter communicating the adverse remarks the word 'second' Supplementary Examination' was not mentioned and therefore the applicant has

taken umbrage of the fact that he had already set paper for the supplementary examinations and hence the entry was uncalled for. There is no doubt that against the Column where the entry has been made, the entry is superfluous but at the same time it is also relevant that such an incident had taken place and the applicant had been adamant in carrying out the legitimate orders of his superiors and even when he was told to set the paper in a personnel interview he refused to take verbal instructions. This only goes to show the attitude of the applicant towards his superiors and towards the institution which he is supposed to be serving. I rejected the contention that being only an Incharge of the Research he was not required to set a paper or act as an examiner. He had to carry out this task if the same was assigned to him and there was nothing illegal or wrong in the respondents' action in making him to do so. His refusal naturally affected the programme of examinations and delayed matters unnecessarily for which he ~~had~~ ^{it appears to have} been rightly taken up.

12. The contention raised that the adverse remarks were not communicated within the stipulated period can also not be accepted as a ground for expunging the remarks. Instructions on the subject of writing Confidential Reports and communicating adverse remarks

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are only in the nature of guidelines. No fatal harm will be done if they are not complied with or if there is delay in their compliance as long as the delay does not result in any evil consequence having been generated for the concerned person. The mere ~~or incidence~~ ^{or cause} of a little delay in communicating the remarks or of making entry at a place where it should not be ^{or made} does not, in any case, give a better right to the applicant to seek for the expunging of the remarks on this ground. I therefore feel that the application is devoid of all force and the learned counsel has been unsuccessful in making out a case of mala fide. ^{or malice} There are feeble material vaguely referred for building of a case of prejudice and mala fide.

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13. In regard to the writing of Confidential Reports, I would like to refer to the Hon'ble Supreme Court's observation in 1984(1) SLR 470. Amar Kant Chaudhary Vs. State of Bihar & Others in the hope that the respondents will ^{also} take necessary action to devise effective means to avoid demoralization in service resulting from adverse Confidential Reports :-

" Before concluding we wish to state that the Central Government and the State Governments should now examine whether the present system of maintenance of Confidential Rolls should be continued. Under the present system, entries are first made in the Confidential Roll of an officer behind his back and then he is given an opportunity to make a representation. ⁱⁿ

against any entry that may have been made against him by communicating the adverse entry after considerable delay. Any representation made by him would be considered by a higher authority or the State Government or the Central Government, as the case may be, some years later, as it has happened in this case, by which time any evidence that may be there to show that the entries made were baseless may have vanished. The predicament in which the officer against whom adverse remarks are made is then placed can easily be visualised. Even the authority which has got to pass orders on the representation of the officer will find it difficult to deal with the matter satisfactorily after a long interval of time. In the meanwhile the officer concerned would have missed many opportunities which would have advanced his prospects in the service. In order to avoid such a contingency, the Government may consider the introduction of a system in which the officer who has to make entries in the Confidential Roll may be required to record his remarks in the presence of the officer against whom remarks are proposed to be made after giving him an opportunity to explain any circumstance that may appear to be against him with the right to make representation to higher authorities against any adverse remarks. This course may obviate many times totally baseless remarks being made in the Confidential Roll and would minimise the unnecessary suffering to which the officer concerned will be exposed. Another system which may be introduced is to ask the officer who records the confidential remarks to serve a copy of such remarks on the officer concerned before the Confidential Roll is submitted to the higher authorities so that

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his representation against the remarks may also reach the higher authority shortly after the Confidential Roll is received. This would curtail the delay in taking action on the representation. Suspensions, adverse remarks in Confidential Rolls and frequent transfers from one place to another are ordered or made many a time without justification and without giving a reasonable opportunity to the officer concerned and such action surely result in the demoralization of the services. Courts can give very little relief in such cases. The Executive itself should, therefore, devise effective means to mitigate the hardship caused to the officer who are subjected to such treatment. These questions require to be examined afresh in the light of the experience gained in recent years and solutions should be found to eliminate as far as possible complaints against misuse of these powers by official superiors who may not be well disposed towards the officer against whom such action is taken. It is needless to state that a non-disgruntled bureaucracy adds to the efficiency administration.

3/ In conclusion, I find no merit in the application. Accordingly 3/
14. ~~for the above application~~ I reject the application with costs on parties.

BGR/STK/B
Member (A)

Dated the 31st Aug., 1988.

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