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Reserved

Central Administrative Tribunal, Allahabad.

Registration O.A.No.821 of 1987

R.K.Singh

...

Applicant

Vs.

State of U.P. and another ...

Respondents

Hon.D.S.Misra,AM
Hon.G.S.Sharma,JM

(By Hon.G.S.Sharma, JM)

This petition under Section 19 of the Administrative Tribunals Act XIII of 1985 has been filed for expunging the adverse remarks given to the applicant for the year 1984-85 by the reviewing authority.

2. It is alleged that the applicant was recruited in the Indian Administrative Service (for short IAS) in U.P. cadre on his selection by the Union Public Service Commission (for short UPSC) on 7.7.73. He was promoted in the senior time scale of IAS w.e.f. 24.7.1977 and was confirmed in that scale w.e.f. 16.1.1984. The adverse remarks for the year 1984-85 were communicated to the applicant by D.O. letter dated 29.10.1986, copy annexure 1, by the then Deputy Secretary of the Department of Appointment U.P. The representation made by the applicant on 24.1.1987 to the respondent no.1 for expunging the remarks did not bear any fruit. He thereafter filed this petition on 3.9.1987 with the allegation that during the relevant period the applicant was posted as Addl. Director General Public Enterprises Bureau, U.P. and the reporting authority, namely, the Secretary of the said Department who was well conversant with the work and conduct of the applicant did not make

any adverse remark for 1984-85 but the reviewing authority, namely, the Chief Secretary to the State of U.P.- respondent no.2 on a honest ground and without any material, made observations in his remarks that the applicant was an officer of ordinary ability and his work was just about the average quality and he was not fit for promotion in higher grade in his turn. The respondent no.2 had seen only 9 files of the applicant and did not have any other opportunity or occasion to see the performance, character, conduct and qualities of the applicant nor did he indicate his dissatisfaction of any kind by passing any orders on the notes of the applicant. Under the G.O. dated 11.1.1984 of the Government of India, the confidential rolls (for short CRs) of the members of the IAS are required to be written within 2 months of the close of the financial year but in the case of the applicant, there was undue delay and the CR of the applicant for 1984-85 was written on 30.6.1986 after a delay of 14 months and the reviewing authority had made its adverse remarks on 12.8.1986 without any foundation, whatsoever, therefor. On account of this inordinate delay, the accepting authority, namely, the then Chief Minister, who had demited his office on 26.9.1985 was not available and the CR of the applicant was not sent for the acceptance of the Hon.Chief Minister who had taken over as Cabinet Minister of the Union of India after 26.9.1985. The grievance of the applicant, therefore, is that there was undue delay in writing his CR for the relevant year and the adverse remarks made in his CR by the reviewing authority were made without any justification or basis.

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3. The petition has been contested on behalf of the respondents and in the counter affidavit filed on their behalf by the Joint Secretary, Appointment Department, U.P., it was stated that the reviewing authority had considered the suitability of the applicant for promotion and had given additional remark in his CR on overall assessment and performance of the applicant. The remarks given by the reviewing authority were based on the consideration of the remarks of the reporting authority and on his own assessment, on seeing the work of the applicant in various meetings and performance in selection committees and the files of the Bureau of Public Enterprises Department. The respondent no.2 thus had an opportunity to see the work of the applicant and the allegation of the applicant to the contrary is not correct. Under letter No.11059 dated 19.9.1985 of the Government of India, when the Cabinet resigns and another Cabinet with new Chief Minister takes over, in which even if the same Minister is included and given the same or different Port Folio, such Minister is deemed to have demited office for the purposes of All India Service (Confidential Roll)Rules and he cannot be reporting/reviewing/accepting authority in respect of those who were working under him earlier. The CR of the applicant, therefore, could not be placed before the then Chief Minister for acceptance. Despite the instructions of the Government of India, due to procedure involved and the exigencies of the public service, sometimes the CR is delayed and after the reporting authority wrote his remarks in the CR of the applicant to the accepting authority, the report was finalised soon thereafter. The remarks about the suitability for promotion are beyond the purview of the reporting authority and as such, remarks had to be written by the reviewing authority after consi-

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dering the suitability of the officer for giving selection grade. The remarks of the reviewing authority are in consonance with that of the reporting authority. The representation of the applicant against the adverse remarks was duly considered by the reviewing authority but it did not find necessary to change its views and the representation was rejected on 21.10.1987 by the State Government. The applicant is, therefore, not entitled to any relief.

4. The applicant reiterated in his rejoinder that the remarks made by the reviewing authority in his CR were based on honest grounds and the reviewing authority was not competent to consider the suitability of the applicant for promotion as the Departmental Selection Committee is constituted for considering the suitability of the officers for promotion. The applicant further stated that the then Chief Secretary had not seen the performance of the applicant in any meeting during the period in question as the applicant had not participated in any meeting presided over by the then Chief Secretary at any time. It was further stated that the CRs of a members of IAS are written in accordance with the provisions of All India Service (Confidential Rolls)Rules, 1970 and the instructions issued by the Government of India on the subject from time to time, and the adverse remarks written in the CR of the applicant are in violation of the said rules and instructions and are liable to be quashed.

5. A supplementary counter affidavit was filed on behalf of the respondents by an Upper Division Asstt. in the Appointment Department of U.P. Secretariat and it was stated by him that the Chief Secretary must sit in the Selection Committee with the officer ^{It is not necessary that} in order to form opinion about him, and in the discharge

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of his duties the Chief Secretary can assess the work of the officers coming to his light in various meetings of the Departments and Selection Committees at various levels. The then Chief Secretary had informed vide his D.O. dated 3.2.1988 that he had judged the ability of the applicant on the basis of the files sent by the applicant and he had also judged his ability on the basis of his personal talks with him and on that basis he had formed an opinion about the applicant ^{and was} as a man of ordinary ability and was not fit for promotion. In reply to this the applicant filed his supplementary rejoinder stating that the applicant did not meet the then Chief Secretary during his tenure and the files which were sent by him were sent to him through the Secretary and the statement made by the Chief Secretary in his DO letter aforesaid is based on surmises and conjectures.

6. The arguments in somewhat great details were advanced on behalf of the applicant in this case in support of his contention that the reviewing authority, the then Chief Secretary to the State of U.P., did not have the occasion to watch the work of the applicant so as to give adverse remarks to him for recording in his CR. The applicant has given the relevant extracts of the 9 files (as annexures 2 to 11) in this case with their gist as annexure 12 which were seen by the respondent no.2 in connection with the working of the Department in which the applicant was working at the relevant time. In view of the clear assertion of the applicant that the respondent no.2 did not have the opportunity to watch his work, ability and suitability in any other manner, the respondents have alleged in para 7 of their counter

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affidavit that reviewing authority while giving his comments on the representation of the applicant had observed that his remarks were based on consideration of the remarks of the reporting authority and the assessment made by him personally on seeing the work of the applicant in various meetings and performance in selection committees and the files of the Bureau of Public Enterprise Department. On the stand of the applicant in his rejoinder to the effect that the applicant had no occasion to participate in any meeting of the Department presided over by the Chief Secretary and the later had no occasion to see his performance in any other manner except on the examination of 9 files aforesaid, the adverse remarks are not based on any material and they are, therefore, without any substance and basis, a supplementary counter affidavit was filed on the basis of the D.O. letter dated 3.2.1988 of the then Chief Secretary to the Special Secretary of the Appointment Department of the U.P. State mentioning therein that it may not be right that he had watched the work of the applicant in the meetings presided over by him but did form an opinion about the working and ability of the applicant and on seeing his various files he had formed an opinion that he is a man of ordinary ability and was not yet fit for promotion. A perusal of the pleadings of the parties makes it clear that besides seeing 9 files alleged by the applicant, the then Chief Secretary did not have much opportunity to watch his work, ability and suitability in any other manner.

7. At this stage, we will like to reproduce below the remarks given to the applicant for the year 1984-85 by the reporting officer as well as the adverse

remarks recorded by the reviewing authority:-

"Worked as Additional Director General Public Enterprise Bureau in 1984-85. His work and conduct has been satisfactory. Integrity certified."

Reporting Officer.

"Work and conduct has been satisfactory. An officer of ordinary ability whose work was just about of average quality."

"Fitness for promotion to higher grade in his turn" — "not yet fit."

Reviewing authority

8. A close examination of the aforesaid remarks shows that the reporting authority had found the work and conduct of the applicant satisfactory. The reviewing authority too agreed with these remarks and he too recorded work and conduct of the applicant satisfactory in the first part of his report. The second part of the report stating "whose work was just about of average quality" was thus self-inconsistent and in clear conflict of his earlier opinion that the work and conduct of the applicant had been satisfactory. The remark "an officer of ordinary ability" may not be adverse as even the work and conduct of an officer of ordinary ability could be satisfactory but the subsequent part of the second sentence of the report of the reviewing authority that the work of the applicant was just about of average quality was rather uncalled for as after once finding the work of the applicant satisfactory, there was no occasion to record that his work was just about of average quality.

9. We are further of the view that the opinion of the reviewing authority about the fitness of the applicant for promotion is also not based on any material. On finding the work and conduct of the applicant satis-

factory, there could be no reason for opining him unfit or not yet fit for promotion. This remark about the ability of the applicant for promotion, thus, does not flow from his earlier remark about the applicant. We have stated above that the reviewing authority did not have any special occasion for forming an opinion about the work, ability and suitability of the applicant and as such, the adverse remarks which are self inconsistent or do not flow from the earlier part of the report of the reviewing authority had no basis and deserve to be expunged.

10. We accordingly allow the petition and direct the respondents to delete/expunge the words "whose work was just about of average quality" and "not yet fit" from the adverse remarks given to the applicant as contained in Annexure 1 and direct the parties to bear their own costs.

Sharma
MEMBER(A)

6/5/88

Dated May 6, 1988

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Subrahmanyam
MEMBER(J)