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Reserved

Central Administrative Tribunal, Allahabad.

Registration O.A.No. 88 of 1987

M.A.Khan

...

Applicant

Vs.

Union of India and 3 others

...

Respondents.

Hon.Ajay Johri, 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 by the applicant for expunging the adverse remarks in his confidential report for the year ending 31.3.1985. It is alleged that the applicant was working on the post of Head Ticket Collector (for short HTC) Tundla at the relevant time and his performance was quite satisfactory and his work was not only appreciated but he was also rewarded for his good work but on account of some litigations which he had to make against the railway administration in connection with his service matters, some authorities felt annoyed and on account of personal prejudices the adverse remarks were given to him for the year 1984-85 after a long delay on 24.6.1986 without giving him any notice or opportunity to have his say regarding the alleged short-comings during the period for which the adverse remarks were given.

2. The petition has been contested on behalf of the respondents and it was pleaded that the adverse remarks were given according to rules on merits and as the applicant did not file any representation against the same, his petition is not maintainable. The authority which had given the adverse remarks was competent to do so and this Tribunal has no jurisdiction to interfere in the administrative matters and the petition of the applicant is liable to be rejected.



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3. The applicant filed a rejoinder reiterating his pleas taken in the main petition and maintained that his petition is maintainable and is fit to be allowed.

4. The applicant has placed his reliance on the instructions to be followed while initiating confidential reports on Class III staff issued under the signatures of Sr.DCS Allahabad which lay down that ordinarily, a subordinate shall not be given an unfavourable confidential report before an opportunity has been taken preferably at a personal interview or if that is not practicable, by means of a personal letter pointing out to him the direction in which his work has been unsatisfactory or the faults of character and temperament which require to be remedied. The applicant has also filed the copy of the confidential report as annexure VI rating his 'tact and temper', 'conduct', 'initiative and direction', 'general intelligence', 'keenness, promptness and efficiency', 'reliability', 'relation with superiors, juniors and public', 'knowledge of rules' as poor and he was reported to be unfit for promotion. In the general remarks, it was reported that he is quarrelsome, causes complaints wherever posted, also frames false cases and forges the papers. The applicant did file representation dated 22.7.1986 against these remarks, copy annexure VII. The respondents had denied the receipt of any representation but in the confidential file of the applicant produced by the respondents, such representation is available and has not been disposed of so far.

5. It was contended on behalf of the applicant that never before he was given any adverse remarks and his work was always appreciated. In the working report dated 8.1.1983 relating to the applicant given by the Station Superintendent Tundla Jn. there was nothing adverse and his work was reported to be free from any complaint. The report also contains some appreciation regarding his work, honesty, labour and punctuality. Annexure II is the copy of an order



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of Asstt. Commercial Superintendent Tundla Junction. No date has been mentioned in it but it appears that it was in respect of a period subsequent to 1984-85 as for March 1986, the income given by him was reported to be the highest. Annexure III is the copy of order dated 20.4.1983 of C.C.S. cancelling the transfer order of the applicant to Delhi Division with the observation that the charges brought against him should be processed at Tundla itself. Annexure IV is the copy of order dated 13.8.1984 passed by a Bench of the Allahabad High Court in a writ petition filed by the applicant directing the respondents to give him adhoc promotion on the basis of selection-cum-seniority. Annexure I to the rejoinder is a letter dated 29.7.1987 of the HTC Tundla stating that the applicant was spared for taking over charge as CIT Tundla. This was a senior charge which was given to the applicant.

6. The applicant has alleged his certain litigations with the Railway administration in connection with suspension, non-payment of his dues for the period of his suspension and for promotion etc., and his contention is that on account of the said litigations, he annoyed his superiors and due to that annoyance, the adverse entries were given to him with malafide intention. It was conceded that in the meantime, the applicant has retired and is no more in service <sup>but</sup> ~~and~~ it was contended that his remarks in dispute will have a bearing on his writ petition for promotion which <sup>was</sup> ~~is~~ still pending. It appears to us that the writ petition for promotion was filed in 1983 much before the date on which the adverse remarks were given and as such, they can hardly have any bearing. We further feel from the confidential file produced by the respondents before us as well as from the annexures filed by the applicant himself that he was once



suspended on the basis of some forged suspension order. The applicant himself could not have forged this order but this suggests that either someone in the staff or in the public was unhappy with him and on account of which this device was chosen out of vengeance. This simply suggests that his relations with the staff or public were not good and in view of this background, the remark 'poor' cannot be said to be without any justification. We further find from the confidential file, which was also perused by the learned counsel for the respondents that a report under Section 420, 468 and 471 IPC was lodged against the applicant on 30.8.1983 with the Delhi Special Police Establishment in respect of an occurrence. This was in respect of the cheating of the railway administration by the applicant by getting his transfer order cancelled on the basis of forged letters dated 20.2.1983 and 19.3.1983 purported to have been issued by Sri Rajiv Gandhi, M.P. It appears from letter dated 28.5.1986 of the S.P., C.B.I. New Delhi that a case against the applicant is pending trial in the Court of Metropolitan Magistrate New Delhi Sri O.P. Gagne on the basis of the aforesaid FIR. The said case does not seem to have been decided in the meantime. The applicant chose to conceal these <sup>material</sup> facts which clearly suggests that he should have been directly or indirectly involved in forging or at least using the forged letters on the basis of which his transfer was cancelled. Keeping these aspects in view, the adverse remarks awarded to the applicant were not without any reason or justification. Though he might not have been given any specific opportunity to improve his conduct about these facts, the applicant is otherwise supposed to be fully aware of all these developments and as such, some lapses on the part of reporting authority in not making the strict compliance



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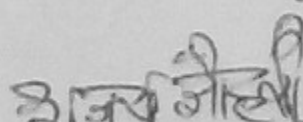
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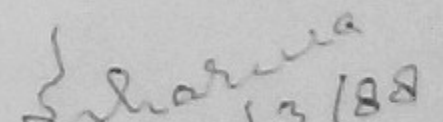
of the instructions contained in annexure VIII, as mentioned above, will not help the applicant in this case and we feel reluctant to interfere with the adverse remarks awarded to the applicant in this case.

7. The applicant has also filed a copy of a letter of the Northern Railway as annexure IX under which the column relating to "fitness for promotion" was ordered to be deleted from the form of confidential report for group 'C' staff. This was issued sometime in 1986 and cannot be applied to the adverse remarks to be given for earlier years.

8. We have also examined the question of delay in awarding the adverse remarks to the applicant as well as all <sup>and his representation against adverse remarks.</sup> other points raised in his petition and rejoinder. It appears from his confidential file that even in the past, he was awarded adverse remarks. In the year 1982-83, he was reported to be 'not yet fit' for promotion and the representation made by him was rejected. We further find that there was no prejudice in the minds of the railway authorities against the applicant. His work was always appreciated or condemned on merits. Had there been any personal animosity in the minds of the respondents the applicant could not be given the senior charge in 1987 and his work could also not be appreciated by some authorities. In view of all these considerations, despite some lapses on the part of the respondents, mainly the non-consideration of the representation made by the applicant against his disputed adverse remarks, we do not feel inclined to interfere with the adverse remarks awarded to the applicant under the circumstances of this case.

9. The petition is accordingly dismissed without any order as to costs.

  
MEMBER (A)

  
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MEMBER (J)

Dated 11th March, 1988  
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