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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration (C.A.) 1011 of 1987

V.P. Upadhyा Applicant.

Versus

Union of India & others Respondents.

Hon'ble Ajay Johri, A.M.
Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. Ajay Johri, A.M.)

This is an application under Section 19 of the Administrative Tribunals Act XIII of 1985. The applicant, who is working as an Auditor under the Controller of Defence Accounts (Pension), Allahabad, has challenged the adverse remarks in the Confidential Report (CR) of 1984 communicated to him on 9.8.1985 and the orders dated 1.1.1986, 24.2.1987 and 2.6.1987 rejecting his representations against the adverse entries on the grounds that the entry against column 18 of the report 'not certifying' his integrity is unauthorised and contrary to guidelines laid down for writing CRs. According to the applicant the integrity was first certified but later on after 23.5.1985 the word 'not' was added. Similarly the entry against column 23 is also unauthorised, and no entries against columns 18 & 19 which are based on the order dated 23.5.1985 whereby a penalty was imposed on him could be made on the basis of this order, and his representations and appeals have been illegally rejected. The applicant has, therefore, prayed for expunging the adverse remarks and setting aside the impugned orders rejecting his representations.

2. The application has been opposed by the respondents. In their reply they have not denied the facts of the

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case but they have said that the integrity column was completed by the reporting officer on 10.1.1985, but before the report could be reviewed it came to notice that the applicant has been taken up for some wrong actions during the period under report and a disciplinary case was initiated against him in February, 1985. So the reporting officer was asked to reconsider the report and he scored out the entry against column 18 on 23.3.1985 and attached a note as required under the rules. According to the respondents, since the report had not been accepted the entries made could be modified. This column was completed after the investigation was completed in terms of the Department of Personnel's letter No.51/5/72-Estt. (A) of 20.5.1972. The entry under column 23 had to be based on other entries and since the integrity was not certified the applicant was not considered fit for promotion in terms of para 3(vi)(c) of Government of India's letter No.51/4/64-Estt(A) of 21.6.1965. The respondents have said that the representations were considered by the competent authorities and they were rejected and the applicant was informed.

3. We have heard the learned counsel for the parties. The contentions raised by the learned counsel for the applicant were that the facts on which the adverse entries are based were not in existence when the entry was made. The entries were made on 25.5.1985 while the punishment was imposed on 23.5.1985. Also at the time of writing the report on 10.1.1985 column 18 was filled and no special report was made out and the fitness column was also arbitrarily filled. These were contested by the learned counsel for the respondents on the ground that there was an information gap and before the accepting

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officer saw the reports the fact of the applicant having been taken up for the lapses during the period reported upon came to notice and necessary modifications were done by the concerned officers. He also submitted that the entries against column 23 were also correctly made. We have also perused the original CR of the applicant and the notes made on the file, as well as the orders dated 28.1.1987 rejecting his representations.

4. The grounds for seeking relief are that the entry of a fact which did not exist has been made in the CR of 1984 and the entries have been made arbitrarily. The fact that the applicant was taken up for some acts of omission and commission during the period for which the report pertains are, however, not in dispute. What is challenged is that the disciplinary proceeding started only in February, 1985 hence in the report of the period ending December, 1984 this incident could not find place. The respondents have justified the action on the ground that before the reports could be finally accepted the facts came to light and the reports were modified. There is a note dated 31.5.1985 on the subject of acceptance of CR by the JointCDA(P/A). It says that since D&A case has been finalised the column 18 which was left blank has to be filled, and if the accepting authority takes a view that the report is adverse then columns 22 and 23 have also to be filled. The note has referred to the Government's CM No. 51/4/64-Estt(A) of 21.6.1965. It is, therefore, necessary to see this CM. It has been placed at Annexure 'B' to the reply filed by the respondents. The relevant paras reads :

"3.(ii) The column pertaining to integrity in the character roll should be left blank and a separate secret note about the doubts

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and suspicions regarding the officer's integrity should be recorded simultaneously and followed up.

(iii) A copy of the secret note should be sent together with the character roll to the next superior officer who should ensure ~~xx~~ that the follow-up action is taken with due expedition.

(iv) If, as a result of the follow-up action, an officer is exonerated, his integrity should be certified and an entry made in the character roll. If suspicions regarding his integrity are confirmed, this fact can also be recorded and duly communicated to the officer concerned.

.....

(vi)(c) Promotion :

The fact that inquiries are under ~~xx~~ way on the secret report/note should not affect an officer's chances of promotion unless the source of information, etc. or the result of inquiries made upto that stage is such that departmental proceedings or a criminal prosecution is likely to be started shortly against the officer. If the inquiries reveal sufficient cause for departmental proceedings, these can be undertaken even at a later date; if departmental proceedings are not feasible though the integrity of the officer is found to be unsatisfactory, he can be reverted from an officiating appointment on grounds of unsuitability."

In terms of these instructions we do not find that the respondents' action has been in any way arbitrary.

5. Let us next examine the contention raised by the learned counsel that the entries have been made of incidents which did not exist at the appropriate time. The report pertains to the year ending December, 1984. The report was filed on 10.1.1985 when the integrity was certified by the reporting officer. The reviewing

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officer has signed the report on 23.3.1985 and had toned it down slightly saying that the report is 'over-pitched' and the officer may be graded as good. At the same time on this date the reporting officer scored out the certificate of integrity and gave a note that during the period it was found that the officer has shown certain items of work twice and thrice and his explanation has been called for in February, 1985.

6. In the instructions on the preparation and maintenance of confidential reports issued by Department of Personnel on 20.5.1972 the following instructions need to be noticed. These are also based on the 21.6.1965 QM:

"5.2 The procedure for filling up the column relating to integrity is as follows :

(a) Supervisory Officers should maintain a confidential diary in which instances which create suspicion about the integrity of a subordinate should be noted from time to time and action to verify the truth of such suspicions should be taken expeditiously by making confidential enquiries departmentally or by referring the matter to the Special Police Establishment. At the time of recording the annual confidential report, this diary should be consulted and the material in it utilised for filling the column about integrity, if the column is not filled on account of the unconfirmed nature of the suspicions, further action should be taken in accordance with the following sub-paragraphs."

So the reporting officer had to exercise ~~care~~ in filling this column. He evidently either did not maintain the diary or lost sight of the fact of the acts of omission and commission committed by the applicant during 1984. We do not find anything wrong in his correcting the entry

and scoring out the certificate on 23.5.1985 before the report was seen by the reviewing officer and was finally accepted by the Joint CDA(P) on 31.5.1985. The instructions regarding communication of adverse remarks are that this should be done "as far as possible within one month of the completion of the report". A report becomes complete only when it is finally accepted. The report was accepted on 31.5.1985 and adverse remarks were communicated on 9.8.1985. ³¹ ~~The delay cannot be considered fatal abnormal.~~ The instructions and guidelines to have an uniform procedure and short delays like in this in conveying the remarks cannot lead to any fatal harm to the officer reported upon.

7. Confidential reports are a general assessment of the performance of an individual. "To juggle with them when a man's career is at stake is a confidence trick contrary to public interest". Sometimes they can be subjective. So they have to be written after sedulous checking. Except of the entries in the integrity column and fitness for promotion which has to be based on an overall assessment there is no other adverse entry in the applicant's CR. The hierarchy of controlling officers, who report, review and accept the report are the best Judge to comment on the performance. There is no allegation that any of them is prejudiced against the applicant. We, therefore, do not think that this a case calling for our interference. The representations appear to have been adequately dealt with by the Controller General of Defence Accounts. We do find application of mind in the disposal of the same.

8. In the above view, we do not find any merit in the application and it deserves rejection. We

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accordingly dismiss the application. Parties will
bear their own costs.

S. Bhawar

MEMBER (J)

S. Bhawar

MEMBER (A)

Dated: November 4/11, 1988.

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