

RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 1318 of 1988

Ashok Kumar Applicant.

Versus

Union of India & another Respondents.

Hon'ble D.S. Misra, A.M.

In this application, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing of the adverse entry for the year 1978-79 communicated to him vide letter dated 28.11.1979 and for quashing of the orders rejecting his representation for expunging the adverse remarks contained therein.

2. The case of the applicant, in brief, is that he is a member of Indian Administrative Service (hereinafter referred to as IAS) in the cadre of Uttar Pradesh; that during the period from 31.7.1978 to 31.3.1979, the applicant worked as Additional District Magistrate (Project), Unnao; that the adverse entry for the period 31.7.1978 to 31.3.1979 was communicated to the applicant by respondent no.2 (copy Annexure '2' to the application); that the aforesaid entry communicated to the applicant was contrary to the facts and due to the personal whim of the reporting and reviewing authorities; that a detailed representation to respondent no.2 against the aforesaid entry (copy Annexure '3') was rejected without application of mind (copy Annexure '4'); that the applicant filed a review application dated 12.3.1982 before respondent no.2 which was also rejected vide letter dated 29.4.1982; that the applicant preferred a memorial under Rule 25 of All India Service (Disciplinary and Appeal) Rules, 1969 on 14.12.1984 placing various facts in detail showing the falsity of the aforesaid adverse entry and requesting for its expunction (copy Annexure '5'); that the applicant was

A3
2

informed by respondent no.2 vide its letter dated 3.3.1986 (copy Annexure '6') that the Hon'ble President of India has rejected the memorial of the applicant; that as the applicant did not have any copy of the order of Government of India, he made its demand vide his representation dated 18.6.1986 requesting respondent no.2 to furnish copy of the Government of India's order so that the applicant may be apprised of the reasons on which respondent no.1 rejected the memorial of the applicant; that after sending repeated reminders the applicant was supplied a copy of the Government of India's letter vide communication dated 4.11.1988 (copy Annexure '7'). The applicant has alleged that the reporting officer was biased and prejudiced against the applicant and recorded the entries mala fide. The applicant has stated various details in support of this contention in para 6(xiv) of the application.

3. A counter affidavit was filed on behalf of respondent no.2, State of U.P. No counter affidavit was filed on behalf of respondent no.1 and it was stated by the learned counsel for respondent no.2 that he would be holding the brief on behalf of respondent no.1 also. The applicant filed a rejoinder affidavit to the counter affidavit filed by respondent no.2 with which he filed some more documents in reply to the counter affidavit of respondent no.2.

4. I have heard the learned counsel for the parties and carefully perused the documents on record. The adverse entry communicated to the applicant is contained in the letter dated November 24, 1979, enclosed with Annexure No.'2' to the application, which reads as follows :-

"Who somehow or other does not appear to be shaping well. He could hardly guide and orient his subordinate staff, since he himself exhibited an irresponsible conduct by absenting himself from duty off and on. He also does not try to go deep and is, therefore not able to gain comprehensive knowledge of the work entrusted to him. His reports are generally superfluous.

BL

-: 3 :-

He has an average capability for taking decision, but generally avoids to accept responsibility. He did not apply himself well to work with the result that the progress of S.F.D.A. Project in the district remained at a low level.

His relations with the subordinates and public remained satisfactory. He did not maintain any relations with his colleagues and other officers since he preferred to remain aloof.

Sri Ashok Kumar has not yet acquired that maturity which an officer of his standing should have by now since despite repeated warnings he did not show signs of improvement.

He is in the habit of absenting himself from duty in an unauthorised manner, for which had to call for his explanation a number of times.

Sri Ashok Kumar made no efforts to make a success of his job inspite of repeated warnings given by me personally.

Fitness for promotion to higher grade(s) in his turn totally unfit.

I do not expect him to cover much milage."

The last three sub-paragraphs of the entry contains the remark of the reviewing officer - Commissioner, Lucknow Division and the earlier part is that of the District Magistrate, Unnao, who was the immediate supervisory officer of the applicant. It is relevant to mention here that although comments on the representation of the applicant were obtained from the reporting officer, comments of the reviewing officer were not obtained while rejecting the same by respondent no.2. In the reply filed on behalf of respondent no.2, no reason* for not obtaining the comments of the reviewing authority has been given. Both the reporting officer and the reviewing officer are stated to have died. The applicant has stated that he would have liked to implead both the reporting officer as well as the reviewing officer but he has not done so as they are not available to deny or accept the allegations made against them.

b/

A3
4

:- 4 :-

5. The first point urged by the learned counsel for the applicant is that the impugned adverse entry by the reporting officer as well as the reviewing officer is contrary to facts and is based on personal bias, prejudice and malice on the part of the concerned officers. In support of his contention he has cited the allegations contained in para 6(xiv) of the petition and the representation made by the applicant to respondent no.2 as soon as the full purport of the adverse entry was communicated to the applicant in the year 1979. He invited my attention to para 3 of his representation in which he has alleged that he conducted enquiry into serious irregularities alleged in the construction of Jaruva-Kheda link road in Nawabganj Development Block of district Unnao under "Food for Work" programme in which the District Magistrate Unnao, the reporting officer, wanted him to submit a report in his favour as the District Magistrate was also alleged to be involved in that transaction. The applicant had alleged in his representation that during the course of the enquiry the reporting officer was constantly trying to pressurise him to submit a report favourable to him and he returned the report submitted / more than once suggesting him to make changes in the enquiry report. It is also alleged that he could not yield to his desires, he became displeased with the applicant and gave him the impugned adverse remarks in his annual Confidential Report. Regarding the report given by the reviewing officer the applicant has alleged in para 4 of his representation that the Commissioner, Lucknow Division, who ~~xxxx~~ also conducted an enquiry against the applicant in a disciplinary proceedings was also biased. The applicant was given to understand that the Commissioner, Lucknow Division in his capacity as the Enquiry Officer had not done justice and he had represented against the unjustified action of the Commissioner in the conduct of enquiry proceedings to the Government. The applicant has alleged that due to this factor the Commissioner had developed a prejudice and bias mind against the

PL

8
B3
-: 5 :-

containing baseless allegations. *h*
applicant and given adverse remarks / ~~xxxxxxxxxxxxxxxxxxxx~~ The
contention of the applicant is that while considering the representa-
tion of the applicant respondent no.2 did not care to apply its mind
by examining the correctness of the allegations made by the applicant
These allegations have been repeated in para 6(xiv) of the applica-
tion. Its reply is contained in para 12 of the counter affidavit filed
on behalf of respondent no.2 in which it is stated that the reporting
officer, the then District Magistrate, Unnao, Late B.D. Maheshwari,
in his comments on the representation of the petitioner against
the said adverse entry stated that "it was totally incorrect for the
petitioner to say that the adverse entry was wrong, absurd and
was given due to jealousy and prejudice; that the entry had been
given on the work and conduct of the applicant and was wholly
correct; that there was no question of pressurising the applicant
and the involvement of the reporting officer in that case as the
work was done by BDO concerned under the supervision of the
District Panchayat Raj Officer, District Development Officer and
the Technical Supervision of Assistant Engineer; that the enquiry
regarding Jaruva-Kheda link road was entrusted **to** the applicant
by him and had there been any question of pressurising him in that
case he would not have made him the enquiry officer". On going
through this reply it is evident that Late B.D. Maheshwari has not
denied that in the enquiry entrusted to the applicant there were
allegations about the involvement of the District Magistrate, the
reporting officer. The last sentence of the comment of the reporting
officer gives an impression that the process of putting pressure
on the applicant was preceded by the endorsement of enquiry to
the applicant. On the other hand the applicant has alleged that
the process of putting pressure on him started after he ~~submitted~~
^{specifically} *h*
submitted the enquiry report and this has not been /denied by the
reporting officer.

6. In the light of the facts enumerated above I come to
the conclusion that the reporting officer had developed prejudice
h

-: 6 :-

against the applicant who failed to comply with his wishes in the matter of submitting a favourable enquiry report to the reporting officer. Regarding ~~the~~ ^{alleged} prejudice on the part of the Reviewing Officer, the learned counsel for respondent no.2 stated that while deciding the representation of the applicant against adverse entry the comments of the reviewing officer were not obtained. No reasons for not obtaining the comments of the reviewing officer has been given. In the absence of any denial of the alleged prejudice on the part of the reviewing officer it is reasonable to presume that the allegations made by the applicant were substantially correct. I am of the opinion that the allegation of the applicant regarding bias and prejudice on the part of the reviewing officer is also established.

7. I shall now examine the content of the impugned adverse remarks. These remarks can be divided into seven parts. Some portion of the remarks given by the reporting officer, which was not communicated to the applicant is contained ⁱⁿ on a summary form in the letter dated 24.11.1979, (copy Annexure '2'). It states that Ashok Kumar is an intelligent, young and a very average quality officer. It goes on to state that "he somehow or the other does not appear to be shaping well. He could hardly guide and orient his subordinate staff, since he himself exhibited and irresponsible conduct by absenting himself from duty off and on. He also does not try to go deep and is, therefore, not able to gain comprehensive knowledge of the work entrusted to him. His reports are generally superfluous." In his representation to respondent no.2 and in the claim petition the applicant has alleged that this is contrary to facts and is based on the personal bias and prejudice on the part of the reporting officer, who felt annoyed due to non-compliance with his wish to submit a favourable report in the matter of ~~conducting~~ ^{conducting} enquiry in /construction of the road project, referred to earlier. The applicant has also alleged that the remarks regarding ~~the~~ ^{the} his absenting himself from duty off and on is also incorrect in so far as the reporting officer has failed to substantiate it by any

:- 7 :-

documentary evidence or mentioning specific dates of the alleged lapse on the part of the applicant. On going through the reply of respondent no.2 it is noticed that there is considerable force in this allegation of the applicant. I am, therefore, of the opinion that these remarks are unjustified and are liable to be expunged.

8. The second part of the report states as follows :

"He has an average capability for taking decisions but generally avoids to accept responsibility. He did not apply himself well to work with the result that the progress of SFDA Project in the district remained at a low level." It is contended on behalf of the applicant that these remarks are contrary to the factual position as is clear from a perusal of Annexure '8', which is a progress report of work done, target fixed and results achieved under SFDA Project and Integrated Village Development Scheme in the district of Unnao. The respondents in their reply have not challenged these figures and have merely stated that this progress report is for the whole year 1978-79 whereas the applicant remained incharge of these schemes from July 31, 1978 to March, 1979. I have considered these contentions. There is no merit in this contention of the respondents as the applicant was incharge of the scheme for results ~~for~~ ^{for results} ~~for~~ for major portion of the year under report and the credit/achieved during the year must go to the applicant. It is noticed that except under item described as 'construction of tubewells' the achievements ~~are~~ ^{are} ~~more~~ under all other items ~~is~~ ^{are} more than the target fixed and in at least one case the achievement is 200 percent. Even in respect of the construction of tubewells as against a target of 150, the achievement is 133. On a perusal of these achievements it is evident that the impugned remarks are contrary to facts. Respondent no.2 have stated that in his comments the reporting officer has stated that these remarks are based on overall assessment of performance of the officer. In my opinion this is a lame excuse of the reporting officer merely to conceal his inability to substantiate the allegations contained in the remarks. I am, therefore, of the opinion that these

bc

(A3)
B

:- 8 :-

remarks are unjustified, contrary to facts and liable to be expunged.

9. The third part of the remark states as follows :

"His relation with the subordinates and public remained satisfactory. He did not maintain any relations with his colleagues and other officers, since he preferred to remain aloof." The applicant has alleged that the first part of this report that "his relations with the subordinates and public remained satisfactory" is not an adverse remark and should not have been treated as adverse remark. The proforma of Confidential Report for officers of All India Services is provided under the All India Services (Confidential Rolls) Rules, 1970. It provides that the assessment by the reporting officer should contain remarks under the following sub-heads :

- (i) State of Health.
- (ii) General Assessment.
- (iii) Integrity.

Under the general assessment there is a specific provision for remarks regarding relations with subordinates, colleagues and public relations. The reporting officer has stated that the applicant's relation with subordinates and public remained satisfactory, but so far as his relations with colleagues is concerned, he did not maintain any relation with his colleagues and other officers, since he preferred to remain aloof. The applicant has alleged that these remarks are totally incorrect and unfounded and that he had made social calls on various officers in the district, met them frequently on different official and social occasions and had extremely good and healthy relations with his colleagues and other officers. It is added that the applicant did not believe in extra-gossiping or unnecessary socialisation at the cost of his honest discharge of duties in order to achieve best results. The reply of respondent no.2 is that according to the reporting officer these remarks are based on an overall assessment of the conduct of the officer. In my opinion in the absence of any instance of strained relation of the applicant with any of his colleagues given by the reporting officer in his comment,

K

-: 9 :-

the existence of such a remark in the Confidential Roll of the applicant should be treated as an uncalled for remark which has not been substantiated. I am of the opinion that while retaining the first sentence of these adverse remarks the second part is liable to be expunged.

10. The next part of the remark states as follows :

"Shri Ashok Kumar has not yet acquired that maturity which an officer of his standing should have by now. Since despite repeated warnings he did not show signs of improvement". In his representation as well as in the claim petition the applicant has alleged that at no point of time any warning was ever administered either by the reporting officer or by any higher officer and, therefore the entire observations in the aforesaid part of the entry are baseless and unfounded. The applicant has contended that the qualities of maturity and standing of an officer has to be judged on the basis of achievement of targets entrusted to the officer and not on the basis of personal bias and prejudice. In the reply of respondent no.2 again there is no documentary evidence in support of the allegation that any warning was issued to the applicant regarding these matters.

The ~~xxx~~ reply of respondent no.2 that this is again based on an overall assessment of the work and conduct of the officer does not ~~claim~~ to justify these remarks. I am, therefore, of the opinion that these remarks are not justified and are liable to be expunged.

11. The next part of the remarks states as follows :

"He is in the habit of absenting himself from duty in an unauthorised manner, for which I had to call for his explanations a number of times". In his representation as well as in the present application the applicant has alleged that he never absented himself in an unauthorised manner ~~at~~ ^{be and} leave was refused ~~at~~ ^{be} at no point of time / and his leave was always sanctioned as and when he proceeded on leave, and due information in time was given to the concerned officers and that at no point of time the applicant was ever informed of refusal of any leave by the competent authority. In the reply filed on behalf

H

-: 10 :-

of respondent no.2 no specific instance of the allegations contained in this part of the entry has been stated. The reporting officer's comments are also silent on this point. On the other hand the applicant has stated that in discharge of his duties as Incharge of SFDA Project he had to visit various parts of the district for supervision in the field, he could not/ be available at Headquarter of the district, as he could not be physically present simultaneously at two places. He has also denied the receipt of any memo calling for his explanation even once. I ^{have} consider the contentions of the parties and I find that the allegation of the applicant absenting from duty is also contained in part I of the report and to that extent it is mere repetition of the allegations contained in part I of the remarks, ^{which, been} ~~be~~ have ^{also} examined in detail and it is not necessary to repeat the same here again. In my opinion these remarks are also unsubstantiated and are liable to be expunged.

12. The remaining portion of the impugned adverse remarks as given by the reviewing officer, reads as follows :

"Sri Ashok Kumar made no efforts to make a success of his job inspite of repeated warnings given by me personally." These remarks relate to the quantum of success achieved by the applicant in ^{be} ~~the~~ job entrusted to him. It has ^{also} ~~been~~ been observed earlier that the progress report for 1978-79, which has not been contested by the respondents, has established that the achievements against targets of work given to the applicant were sometimes in excess of the targets and in most of the cases slightly less than 100 percent. The applicant has also filed copy of letter of ^{be} recommendation of the Commissioner, Lucknow Division (the reviewing officer in the instant case) to the District Magistrate, Unnao (the reporting officer) categorically stating that in the matter of obtaining deposit under the National Savings Scheme the district had achieved 90 percent of the target due to the efforts of officers and staff of district Unnao. A copy of this was sent by the District Magistrate to the

be

-: 11 :-

applicant in which it is stated that the leadership and guidance provided to his subordinates by the applicant was appreciated. The applicant has stated that in the light of such a letter of appreciation and commendation, the remarks of the Commissioner, Lucknow Division was based. It is evident that the impugned remarks are contrary to facts and based on the prejudice developed by the reviewing officer due to an ongoing enquiry in which the Commissioner was functioning as the Enquiry Officer. I have considered the matter and I find that there is considerable force in the contention of the applicant and I am of the opinion that these remarks are wholly unjustified and liable to be expunged.

13. The last part of the report states that the applicant was totally unfit for promotion to higher grade even in his turn and he does not expect the applicant to cover much mileage. The contention of the applicant is that these remarks are ~~totally~~ redundant in view of the facts that soon after the recording of the above mentioned remarks by the reviewing officer the applicant was allowed not only promotion in the senior time scale of pay but has also been promoted in the selection grade of the service. In reply, the respondents have stated that the fact of promotion of the applicant to the senior scale does not establish that the entries recorded by the reviewing officer should be expunged. I have considered the contention of the parties and I am of the opinion that there is considerable force in this contention of the applicant. The grant of senior scale to an IAS Officer is regulated by the instructions contained in the Indian Administrative Service (Pay) Rules, 1954. Although the rules do not provide for the grant of senior time scale of pay after holding selection but before granting the senior time scale the competent authority does examine the fitness and suitability of the officer for holding a post in the senior time scale of pay. The fact that the competent authority ignored the specific remark of the reviewing officer that the applicant "was not fit for promotion even on his turn" clearly establishes that these remarks were

H

-: 12 :-

ignored by the competent authority. These adverse remarks also suffer from non-observance of the procedure of Rule 10 of the All India Services (Confidential Rolls) Rules, 1970. Rule 10 deals with consideration of representation against adverse remarks and it states that "the Government shall, and if it considers necessary, in consultation with the reporting authority, the reviewing authority or the accepting authority, consider the representation made under Rule 9 by a member of the Service and pass orders as far as possible within three months of the date of submission of the representation."

Although these rules do not make it mandatory for the Government to consult the reporting and the reviewing authority while considering the representation of a member of the Service it is in the interest of justice and equity that the reporting authority should be asked to justify the remarks against which a representation is made. In the instant case the applicant had made specific allegations of fact both against the reporting officer and the reviewing officer. The State Government chose to obtain the comments of the reporting officer but failed to obtain the comments of the reviewing officer. Whether this was done intentionally or due to lack of care on the part of the dealing officers has not been explained by respondent no.2. It is, therefore, reasonable to presume that this was due to lack of care and not in pursuance of a positive decision of the competent authority not to obtain the comments of the reviewing authority. Unfortunately, for the applicant, the reviewing officer is no more in this world and it is impossible to obtain his comments at this late stage. On the facts and circumstances of the case I am of the opinion that these unsubstantiated remarks are not justified and are liable to be expunged.

14. It is contended on behalf of respondent no.2 that the confidential reports should be treated as objective assessment of the reporting and reviewing authorities, who are senior and responsible officers and the courts of law need not interfere with these reports. I have considered these contentions and agreeing

H.L

-: 13 :-

with the same I am of the view that normally the Courts or Tribunal should not interfere in such administrative matters but at the same time I am of the view that when the administrative order, like the one before us, is passed arbitrarily with a biased mind and without any material or justification, it is the duty of the Court/Tribunal to invoke its jurisdiction to save the aggrieved person from the rigours of such illegal orders. In coming to this conclusion I find support from the case of Regional Manager, U.P.S.R.T.C. v. Pawan Kumar Dubey (AIR 1976 S.C. 1766), in which it was held that where against the 'adverse remarks', the Government servant so reported against, has asked for the particulars on the basis of such remarks and the authorities have failed to give the necessary particulars showing that the allegations against him are justified it must be held that such adverse remarks are unwarranted and still worse, if such adverse remarks are acted upon thereafter to the prejudice of the Government servant concerned. It must be said to the credit of respondent no.2 that the State Government have not acted upon the adverse remarks to the prejudice of the applicant in the matter of grant of senior time scale of pay and the selection grade of the service, but it cannot be presumed that these remarks will not be utilised to the prejudice of the applicant in future also. It is, therefore, necessary to adjudicate where there is lack of sufficient justification for not interfering with these remarks. In the case of Angpal Kapoor v. The State of Punjab and others (1973 (1) SLR 989) the Punjab & Haryana High Court has held that courts can interfere where adverse remarks are found to be unwarranted and unjustified.

15. A very relevant factor which has been noticed in the instant case is that while considering the representation of the applicant against the impugned adverse remarks, the State Government have failed to scrutinise the specific allegations made by the applicant vis-a-vis a very unsatisfactory comment of the reporting

b2

-: 14 :-

officer without dealing with the specific allegations made by the applicant in his representation to respondent no.2. The rejection of the representation by respondent no.2, as communicated to the applicant vide letter dated 22.12.1981 (copy Annexure '4'), merely states that the Government had considered his representation and rejected his prayer for expunction of the adverse remarks. Similarly, the rejection of the representation by the President of India, vide letter dated 4.11.1988 (copy Annexure '7'), merely states that adequate grounds do not exists for expunging or modifying the impugned adverse remarks and that the memorial to the President has been rejected. I have considered the matter and I am of opinion that in view of the specific allegations of prejudice and personal bias on the part of the reporting officer as well as the reviewing officer contained in the representation of the applicant it was incumbent on the respondents to scrutinise and examine the points raised in the representation in an objective manner and to pass a reasoned order which may create a feeling of justice having been done to the aggrieved Government servant. It is unfortunate that this has not happened in the instant case and the respondents have failed to apply their mind in an objective manner to examine the allegations contained in the representation of the applicant. I find support in this view in the case of Madan Mohan Khatua v. State of Orissa & others (1978 (1) SLR 829) in which the Orissa High Court has held that a bald order without indicating the ground of rejection was likely to create an impression that the merit of the matter had not been taken into account. The observation regarding the importance of the ephemeral character roll and the need of putting the officer to notice of the drawback in a contemporaneous manner should not have been lost sight of. It had accordingly directed that the representation of the petitioner against the adverse entry should be disposed of afresh taking these aspects into consideration.

In yet another case Dr. Gopeswar Dutta v. Union of India (1982)

b2

-: 15 :-

(1) SLR 857), decided by the Calcutta High Court, it has been held that the Court has power to quash such appellate order where it is not a reasoned order and can direct the authority concerned to reconsider the appeal after giving a hearing to the petitioner.

16. The learned counsel for the applicant invited my attention to the following case law in support of the prayer of the applicant that these remarks should be expunged :

In the case of Krishan Lal Sharma v. Union of India & others (1987 (4) ATC 709) the Principal Bench, New Delhi of this Tribunal considered the adverse remarks given to the applicant and observed "It is not clear as to how applicant was indisciplined as no particular incident is mentioned or communicated to the petitioner. It is also stated that he is irregular, careless and casual but no particulars whatsoever are given. In the absence of these particulars and specially in the background of the facts of this case these adverse remarks cannot be sustained and are accordingly quashed." In the case of S.R. Julkha v. Union of India & others (1988 (6) ATC 18) it was held by the Chandigarh Bench of this Tribunal that where a confidential report is not objective but tainted with malice, the entire report has to be rejected even if some adverse remarks mentioned therein are justified. The acid test for a valid ACR is objectivity in its reporting. In the case of Ashok Kumar v. State of U.P. & another (1988 (7) ATC 979), a Division Bench of which I was a Member, it was held that the Tribunal can look into the justification for adverse remarks. In that case the Tribunal had quashed the adverse remarks on the ground that they were based on allegations, which were not established in the disciplinary enquiry. I have considered the ratio of the three cases, mentioned above, and I am of the opinion that the ratio of the first two cases is fully applicable to the instant case.

17. In view of above, the impugned adverse remarks, as

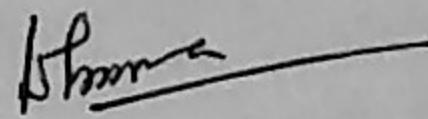
b2

19

~~A3~~
~~16~~

-: 16 :-

elaborated above, are hereby quashed and respondent no.2 is directed to expunge the same for the Annual Confidential Report of the applicant. The application is accordingly allowed to the extent indicated above without any order as to costs.



MEMBER (A).

Dated: May 19, 1989.

PG.