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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No.786 of 1988

Chetan Prakash Mittal .... Applicant

Versus

Secretary, Ministry of Defence,  
Govt. of India, New Delhi &  
Others. .... Opposite Parties.

Hon. Justice K.Nath, V.C.

This application under Section 19 of the Administrative Tribunals Act XIII of 1985 is for quashing an adverse entry at item No.5 of Part-III of the applicant's Annual Confidential Report for the year ending 31.12.1985. The entry records that the applicant had been given "recorded warning" for delay in finalization of a case vide communication dated 17.7.1985. There is also a prayer to quash the order dated 8.1.1986 confirming the said "recorded warning" passed by the Controller of Defence Accounts.

2. The applicant was working as Section Officer (A) in the Office of the Joint Controller of Defence Accounts (Funds), Meerut during the year 1985. It appears that the applicant had received a letter dated 9.5.84, issued by the Controller General of Defence Accounts, which was disposed of by the applicant on 8.6.84 and that was returned to him on 11.6.84 with some query. The Controller General of Defence Accounts issued another letter dated 11.9.84 / 1.10.1984 which was handed over to the applicant on 22.10.84 and he was directed to submit its disposal urgently. The applicant is said to have kept the letters pending with him resulting in abnormal delay in finalization of the case to which the

letters concerned. On account of that abnormal delay a "RECORDED WARNING" was issued by order dated 16.7.85 under the direction of Joint Controller of Defence Accounts without calling for any explanation in the first instance. It appears that the letter containing the recorded warning was returned by the applicant with certain remarks, but the Controller of Defence Accounts (Training) Meerut approved the award of recorded warning with an advice to the applicant to make a representation, if he so desired.

3. Affidavits have been exchanged. The case has been argued by the applicant Shri Chetan Prakash Mittal in person; Shri K.C. Sinha appearing on behalf of the opposite parties has argued in reply.

4. The first point raised by the applicant is that the making of the recorded warning without a prior opportunity to explain is contrary to the provisions of the Govt. of India, Ministry of Home Affairs' O.M. No.51/3/69-Estt(A) dated 27.9.69. The applicant has reproduced the relevant paragraph of the above memorandum at page 7 of the application. According to the opposite parties, there is no mandatory requirement of a precedent opportunity to show cause for the purpose of awarding a recorded warning.

5. The Office Memorandum, as reproduced in the petition, says that representations against warning etc. which are recorded in the Confidential Report should be dealt with in accordance with the procedure laid down for dealing with representation against adverse entries in Confidential Reports, unless an

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opportunity had already been given to the officer concerned to make a representation in the matter before the warning is administered. This provision deals with the two situations. The first situation is in respect of the matter in which an opportunity has already been given before a warning is recorded. The provision is that in such cases there is no representation to be considered after the warning has been recorded. The second situation relates to a case where a warning is recorded before an opportunity is given; and in that case the representation against such warning is to be dealt with in the manner as is laid down for dealing with a representation against adverse entries in the Confidential Reports. An appreciation of both these situations in the Office Memorandum will show that the Department is not bound to give a precedent opportunity in all cases in which a recorded warning may be ultimately given. The discretion rests with the competent authority. If an opportunity has been given, no further representation is to be entertained by such authority; if an opportunity has not been given, a representation has to be entertained and has to be dealt with like representations against adverse entries in the Confidential Reports. The applicant's contention therefore cannot be accepted that the impugned recorded warning is invalid for want of a precedent opportunity to show cause.

6. The second point raised is that the impugned adverse entry in the A.C.R. is barred by time. The contention seems to be that since the matter related to the applicant's performance between May and October, 1984, the recorded warning could not have been given on 16.7.85.

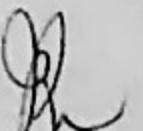
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The applicant has referred to Govt. of India, Ministry of Home Affairs letter No. 51/5/72-Estts(A) dated 20.5.73 on the subject in the relief clause, para 7(b) of the application, but he has neither filed the copy of the letter nor produced any extract thereof in his application. It is not possible therefore to accept the contention. A perusal of the counter indicates that the matter must have been in process between October, 1984 and July, 1985 when ultimately the impugned warning was recorded on 17.7.85. Perhaps the entry might as well have been made in the Annual Confidential Report for the year 1984, but if by the time the matter came to be concluded, the Annual Confidential Report of 1984 also had been closed, nothing should be deemed to prevent the competent authority from incorporating it in the A.C.R. of 1985. After all, the A.C.R. is the record of the performance of an employee which is a continuing process, and I do not think that the remarks should be confined to specific compartments in point of time when the scrutiny thereof takes time. In my opinion, the entry is not liable to be quashed on any ground of delay or bar ~~of~~ time. The applicant has also referred to Rule 11 of the C.C.S. (CC&A) Rules in respect of Censure entry. The Rules relate to the award of punishment as distinguished from an assessment of performance for the purposes of the Annual Confidential Report. 'Recorded warning' is not the same thing as 'Censure' as contemplated in Rule 11 of the C.C.S. (CC&A) Rules. ~~It is~~ Strictly speaking, ~~that~~ the recorded warning does not form any category of punishment specified in those rules; ~~at~~ <sup>at</sup> ~~not~~ only

constitutes <sup>a</sup> part of the assessment of the performance of an employee. I have already pointed out that a failure <sup>of</sup> <sub>in</sub> a precedent opportunity before recording a warning does not vitiate the warning.

7. These are all the points raised by the applicant, which must fail.

8. The application is dismissed. Parties shall bear their costs.

  
Vice Chairman

Dated the 20th October, 1989.

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