

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Allahabad this the 24<sup>th</sup> October 1994. (8)

Registration No. 827 of 1988

Hon'ble Mr. T.L. Verma, J.M.

Hon'ble Mr. K. Muthukumar, A.M.

Dr. N.S. Parihar,

Senior Scientist,

Division of Pathology,

Indian Veterinary Research Institute,

Izatnagar, Bareilly-U.P.-243122.

..... Applicant.

By Advocate Sri Ashok Bhoshan.

Versus

1. Dr. N.S. Randhawa,

Director General,

Indian Council of Agricultural Research,

Krishi Bhawan,

New Delhi- 110 001.

2. Dr. P.N. Bhat,

Director,

Indian Veterinary Research Institute,

Izatnagar, Bareilly, U.P.-243122.

..... Respondents.

By Advocate Sri J.N. Tewari.

ORDER

By Hon'ble Mr. K. Muthukumar, A.M.

1. The applicant, who is Scientist (Pathologist) in the Pathology Department of Indian Veterinary Research Institute, (IVRI) Izatnagar, he is aggrieved by certain adverse remarks communicated on his annual confidential report for 1985 and has approached this Tribunal with a prayer to quash the said adverse remarks.

2. The adverse remarks in his case were as follows:-



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General Remarks : " As former Head of Division he is expected to inspire young Scientists through lead research publications, which are lacking. He is advised to improve his performance in this direction."

3. The adverse remarks were communicated to him by the Director of BVRI in his D.O. letter dated 25th May, 1987. The applicant, <sup>in</sup> his averments has alleged that the above adverse remarks are not only incorrect but are unfounded for the reason that he has three publications to his credit for year 1985 which appeared after 9th January 1986 and two of these research articles were based on data generated by him over the years and <sup>ed under</sup> analysis/ his guidance and that during 1985 he was a Former Head of the Division but was working almost single-handedly on the research project entitled "studies on the Pathology of the nervous system in sheep". In his further submissions the applicant stated that the adverse remarks for the 1985 confidential report ~~which~~ were actually communicated to him after a <sup>which was</sup> delay of more than 15 months/ in violation of the time limit prescribed under the rules. He has further averred that his representations were summarily rejected without assigning any reason and he was not given any opportunity to convince the authorities about his research work.

4. The respondents have contested the submission of the applicant. They have brought out the following points in their averments.

1) The instructions providing for giving remarks in the confidential report are administrative and direct<sup>ory</sup> in nature and that it is wrong to say that adverse remarks are communicated after one month/without any effect.



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ii) The applicant did not publish any paper on the approved research project and publication of research paper in a reputed Journal is an important aspect for evaluation job done by the applicant.

iii) Since reputed Journal published papers only after thorough scrutiny, non-publication of any article on the subject approved by the Scientific Research Council by the applicant was considered as a serious shortcoming.

iv) In case of Scientific<sup>staff</sup>/the primary consideration before the reporting / Reviewing Officer is to see whether Scientist was devoting himself to the approved research project, whether the objective of research project as per technical programme had been fulfilled and whether the project is according to the target decided while framing<sup>ing</sup> the project and/whether knowledge generated during the course of research work has been published in the reputed Journal. The applicant's representations were considered by the Council and were rejected. There has been no bias and no harassment or discrimination has been caused to him.

5. The learned counsel for the applicant submitted that the representations were summarily rejected without assigning any reason what-so-ever. Besides the adverse remarks were also communicated after considerable delay and it was not correct on the part of the respondents to hold that there had been no

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publications, the applicant had in fact brought out and listed the publications relating to the project on which he was doing research which were printed during the year 1988-89 in the Indian Journal of Animal Sciences as pointed out in the rejoinder affidavit. The fact that he had not listed these publications which are under process in his self assessment form/ <sup>of the</sup> confidential report, should not be held against him as these publications were not actually printed at that time. In this representation he had also indicated the articles ~~that~~ published regularly since 1984-85-86 on various subjects. The project entrusted to him was taken up only in the later part of 1985 and was completed by December 1987. The Staff Research Council meeting in the year 1985 which was held on 5.2.1986 considered the progress on the project as satisfactory and approved the technical programme for the year 1986 and, therefore, there was no material on which adverse remarks could be justified. The learned counsel also cited the following cases in support of his contentions i.e. (1) A.I.R. 1987 SC 1201 State of Haryana Versus P.C. Wadhwa Para 14, (2) 1990 S.C.C. (L&S) 38=1989 (4) S.C.C. 664 Baidyanath Mahapatra Versus State of Orissa Para 6, (3) 1988 (1) Administrative Tribunal Judgement 360 Para 4.

6. The learned counsel for the respondents, however, pointed out that in the absence of lead research publication, his performance was not considered up to the mark and, therefore, the recording of these remarks for the year in question was justified. The learned counsel for the respondents also pointed out that subsequently, however, the applicant had been promoted. The representations were also duly considered and rejected by the appropriate authority. In these circumstances <sup>ed</sup> the learned counsel maintain<sup>d</sup> that there was no ground for expunging the adverse remarks.



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7. We have heard the learned counsel for the parties and perused the record.

8. The adverse remarks referred to the lack of research publications through which the applicant as a former Head of the Division was <sup>expected</sup> to inspire young scientists and was advised to improve his performance in this direction. These remarks no doubt pertained to the year 1985 but was communicated in May 1987. It is true that there was some delay in the communication which, <sup>was</sup> avoidable/did not, however, result in denial of opportunity for the applicant to represent. The limited point for our consideration is not so much the delay in communication of the adverse remarks but the rejection of his representation without assigning any reason. We have considered the cases cited by the learned counsel for the applicant. However, in <sup>a</sup> more recent decision in the Union of India Versus E.G. Nambudari AIR 1991 SC 1216, the Apex Court has laid down the law as follows:-

"There is no dispute that there is no rule or administrative order for recording reasons in rejecting a representation. In the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a Government servant against the adverse entries the competent authority is not under any obligation to record reason. But the competent authority has no licence to act arbitrarily, he must act in a fair and just manner. He is required to consider the questions raised by the Government servant and examine the same, in the light of the comments made by the officer awarding the adverse entries and the officer counter-signing the same. If the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons. In the absence of any statutory or administrative provision requiring the competent authority to record reasons or to communicate reasons, no exception can be taken to the order rejecting representation merely on the ground of absence of reasons. No order of an administrative authority communicating its decision is rendered illegal on the ground of absence of reasons *ex facie* and it is not open to the court to interfere with such orders merely on the ground of absence of any reasons. However, it does not mean that the administrative authority is at liberty to pass orders without there being any reasons for the same. In governmental functioning



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before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion. If the order as communicated to the Government servant rejecting the representation does not contain any reasons, the order cannot be held to be bad in law. If such an order is challenged in a court of law it is always open to the competent authority to place the reasons before the Court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence aliunde before the court to justify its action."

9. In the counter affidavit the respondents have averred that the non publication of any article by the applicant on the subject approved by the Scientific Research Council was considered <sup>a</sup> serious short coming and that the publications referred to by the applicant in para 6.7 of his application were not on any approved research project of the applicant, and, therefore, were irrelevant. They have further averred that the question whether the scientific out put produced during the year can be considered exemplary and whether the knowledge generated during the year from the approved technical programme has been found by the scientific community at large worthy of publishing is important for determining the quality of scientific out put during the year, and / ~~or this can be only / end of the year.~~ <sup>by</sup>

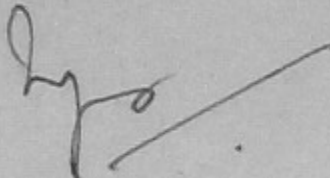
10. This Tribunal will not substituted its judgement <sup>or</sup> for the judgement/evaluation of the appropriate scientific authority in regard to the question whether the publications stated to have been brought out by the applicant would constitute Lead Research Publications or not. The applicant has not alleged any malafide in the consideration of his representation by the appropriate authority and we find that the applicant's request for interview with the Director General of ICAR was also accepted and he was asked to meet the Director General ~~wherever~~ on any working day when the Director General of ICAR is <sup>at</sup> the Head Quarters of the Council.

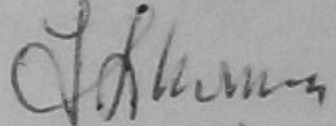


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In the light of the averments made by the respondents, there is no reason for us to believe that the appropriate authority had disposed of his representation arbitrarily. In the light of the Apex Court's Decision Supra, the fact of non communication of the reason while communicating the order rejecting the representation, does not by itself vitiate the order. We, therefore, find no justification to direct the respondents to expunge the adverse remarks.

11. In the light of the above discussions we find that there is no merit in the application and <sup>it</sup> is accordingly dismissed. There shall be no order as to costs.

  
Member (A)

  
Member (J)

Allahabad Dated: 24.2.1994

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