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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No. 1140 of 1988

R.K. Singh Applicant

Versus

Union of India & Others Opposite Parties.

Hon. Justice Kamleshwar Nath, V.C.

Hon. K.J. Raman, Member (A)

(By Hon. Justice K. Nath, V.C.)

This application under Section 19 of the Administrative Tribunals Act, 1985 is for quashing adverse remarks in the applicant's A.C.R. contained in Annexure-I for the year 1982-83 and rejection of the applicant's representation against it by the State Govt. by orders contained in Annexure-3.

2. The applicant R.K. Singh was working as a Director of Yuva Kalyan Nideshalaya of the State of U.P. in the year 1982-83. In the Annual Confidential Remarks for that year in addition to some remarks of appreciation, certain adverse remarks were communicated to him by letter Annexure-I dated 20.2.1984. The impugned remarks are as follows :-

"(1) However in connection with recruitment of some Field Officers Shri R.K. Singh faced a departmental preliminary enquiry, a report of which has been sent to the Appointment Department. Unless the Appointment Department forms an opinion on that enquiry report it is not possible to certify the integrity of Shri R.K. Singh.

(2) No ground to disagree; I found this officer surrounded by several controversies;

prima facie there was ground to suspect that he was taking recourse to newspapers in these controversies.

(3) Fitness for promotion to higher grade(s) in his turn - Not yet fit.

3. The applicant made a representation dated 21.5.84, Annexure-2. On a consideration of the representation, the Govt. took a decision communicated by letter, Annexure-3 dated 14.5.85. The decision is that action was being taken separately in respect of the entry at item No.1 and that the representation was rejected in respect of the entries at items No.2 & 3.

4. The preliminary enquiry referred to in item No.1 of the impugned adverse entry contained in Annexure-1 seem to have resulted in institution of a regular departmental enquiry. The applicant was served with a chargesheet dated 22.4.87, Annexure-E to the counter. The Chairman, Board of Revenue was appointed as the Inquiry Officer. The applicant submitted his reply dated 27.5.87, Annexure-R1 to the chargesheet. He also filed written arguments, Annexure-R2 in the course of the enquiry; the document does not bear any date.

5. While further proceedings at the end of the Govt. were pending, the applicant filed this application on 27.9.88. The opposite parties filed a counter on 22.12.88. Among other things it was stated in para 24 of the counter that disciplinary proceedings were in progress against the applicant with regard to the observations in the Character Roll for the year 1982-83, hence any change therein would be done after the final

decision in the disciplinary proceedings; no change in the Annual remarks could be made prior to its finalisation.

6. The Inquiry Officer (Chairman, Board of Revenue) appears to have submitted his report to the Govt. The Govt. took a decision on that report and on that basis a letter dated 11.5.89, Annexure-SA1 was sent by the Secretary, Appointment Department to the applicant. The letter is annexed to a Supplementary Affidavit dated 8.3.90. It is stated in para 2 of the Supplementary Affidavit that "the enquiry has found all charges baseless and as a matter of fact the applicant has been exonerated of all the charges contained in the chargesheet". It was further said that on the basis of the Inquiry Officer's report the State Govt. passed orders "by issuing simple warning and matter has been dropped" as communicated in the aforesaid letter dated 11.5.89, Annexure-SA1. In para 5, it was stated that in view of Annexure-SA1, the impugned adverse entry is liable to be struck down.

7. The opposite parties have filed a Supplementary Counter in reply to the applicant Supplementary Affidavit dated 8.3.90. In para 3 of the Supplementary Counter it is stated that the report of the Inquiry Officer indicated that charges Nos 1, 3, 4 and 6 were not proved against the applicant. With regard to charges Nos. 2 and 5 the statement in the Supplementary Counter is as follows :-

"In regard to charge No.2, the Inquiry Officer observed that the applicant defaulted only to

the extent that he took part in that meeting of the Selection Committee which interviewed his real brother-in-law although his integrity and devotion to duty cannot be doubted. In regard to charge No.5, the Inquiry Officer stated that though this charge is partly established but considering the entire background it cannot be said that the letters which the applicant wrote to the Chief Secretary were in the category of misconduct".

8. It was further mentioned that the State Govt. considered the report of the Inquiry Officer and closed the matter by giving a warning to the applicant by letter dated 11.5.89, Annexure-SA1.

9. We have heard the learned counsel for both the parties at considerable length and propose to dispose of this case mainly in the light of the developments following the submission of the enquiry report and the decision of the Govt. thereon.

10. Challenging the Govt.'s orders dated 14.5.85, Annexure-3 on the applicant's representation dated 21.5.84, Annexure-2 against the impugned entry, Shri A.P.Singh, the learned counsel for the applicant urged that so long as decision was not taken by the Govt. in respect of item 1 of the entry, decision could not have been taken on items 2 & 3 because the latter only follow the former. That submission, in our opinion, is not correct.

11. The purport of item 1 of the entry is that it was not possible to certify the integrity of the applicant unless the Appointment Department formed an

opinion on the report of the pending preliminary enquiry in connection with the recruitment of some Field Officers. The main ground of that entry was that the applicant functioned as a Member of the Selection Committee in which one of the candidates was his own brother-in-law. That entry is quite distinct and unconnected with the entry at item 2 to the effect that the applicant was found surrounded by several controversies and *prima facie* there was ground to suspect that he was taking recourse to newspapers in those controversies. The arguments of the counsel for the applicant therefore that the entry at item 2 followed the entry of item 1 is not correct.

12. The entry regarding item 3 could follow the entry at item 1 (as much as it could follow) the entry at item 2. The contention therefore that the Govt. could not take decisions regarding items 2 and 3 during the pendency of the enquiry is not accepted.

13. The next point urged by the learned counsel for the applicant is that while passing the orders contained in Annexure-3, the Govt. had committed a breach of Rule 10 of All India Services (Confidential Roll) Rules, 1970 inasmuch as it did not "consider" the representation. The argument is that consideration has to be proved by showing that mind was applied to the facts and circumstances contained in the representation and reasons for rejecting the representations were recorded. We have not considered it necessary to probe into the manner in which the representation was considered because the impugned

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- 6 -

order Annexure-3 of the Govt. passed on the representation deserves to be modified in view of the conclusion of the enquiry on charges and orders dated 11.5.89 of the Govt. contained in Annexure-SAl. The learned counsel for the applicant however says that the opposite parties may not be given an opportunity to pass orders afresh; we shall revert to that question shortly.

14. In respect of the entry itself, the learned counsel for the applicant relied upon the decision of the Punjab and Haryana High Court in the case of Bhajan Singh Vs. Bahal Singh, S.P. Rohtak 1967 SLR 601 to contend that no adverse entry could be recorded in respect of matter for which an enquiry had been instituted. The contention is misconceived because the nature of the enquiry at the time when the adverse entry was recorded was not a regular departmental disciplinary enquiry which was the case before the Pubjab and Haryana High Court. The entry, Annexure-1 unmistakably mentions that the matter was at the stage of preliminary enquiry. We are of the opinion, that nothing prevented the Govt. from recording that it was not possible to certify the officer's integrity till a final decision was taken by the Appointment Department on the preliminary enquiry report. Indeed, one of us doubted whether such a remark at all constitutes an adverse remark because it only keeps the matter in suspense. By that as it may, there can be no doubt that having regard to the circumstances at the time of the making of the entry the Govt. was not prevented from making it.

15. The most important point urged by the learned counsel for the applicant is that the result of the enquiry on chargesheet constitutes a total exoneration of the applicant from the elements of charge which covered all the three items of the impugned adverse entry. It is urged therefore that this Tribunal may quash the entry completely without calling upon the opposite parties to pass any fresh orders. The contention, in our opinion, seems to be correct only partially. A perusal of the chargesheet, Annexure-E and its comparison with the impugned adverse entry, Annexure-1 would show that subject matter of charge Nos.1 to 4 concerned the entry at item 1. Those charges concerned the alleged irregularities committed by the applicant in the process of recruitment of Field Officers. The statement in para 3 of the Supplementary Counter dated 28.3.90 is that in respect of charge No.2 the Inquiry Officer had observed that the applicant had defaulted only to the extent that he took part in that meeting of the Selection Committee which interviewed his real brother-in-law although his integrity and devotion to duty could not be doubted. The Articles of charges had specifically mentioned that the allegations cast doubt upon the applicant's integrity. Not only the Inquiry Officer held that the applicant's integrity and devotion to duty could not be doubted in this respect, but the Govt. in its decision on the enquiry report, Annexure-SAI did not hold that it disagreed with the opinion of

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the Inquiry Officer and that the applicant's integrity was in doubt. There is force therefore in the contention of the learned counsel for the applicant that the adverse entry at item 1 cannot stand.

16. The entry at item No.2 is alleged by the learned counsel for the applicant to be covered by charges Nos. 5 & 6. Charge No.5 was that his letters dated 30.10.82, 7.12.82 and 31.12.82, the applicant had levelled allegations against the then Gram Vikash Mantri. Charge No.6 alleged that there were publications at the instance of the applicant in a Daily Newspaper named 'PRITIDIN' dated 21st and 28th October, 1982 and 6.12.82 regarding the activities of his Department and that those publications were baseless containing allegations of corruption against the then Gram Vikash Mantri. The impugned adverse entry at item 2 mentioned that the applicant was found surrounded by several controversies and had been taking recourse to newspapers in those controversies. It is not quite clear whether the controversies were only those which had been included in charge No.5 and the recourse to newspapers was only what was incorporated in Charge No.6 although the learned counsel for the applicant has laid emphasis upon ~~the~~ para 24 of the Counter where it was stated that disciplinary proceedings were in progress against the applicant with regard to the observations in his Character Roll for the year 1982-83. We had called upon the learned counsel for the opposite parties to produce before us the record of the disciplinary proceedings and the final orders of the Govt. thereon. The learned counsel produced the records containing the orders and we noticed that the

last order contained observations that orders on some of the other matters relating to the applicant had been passed separately. Further para 3 of the Supplementary Counter mentions that in respect of charge No.5, the Inquiry Officer had stated that it was partly established but considering the entire background it could not be said that the letters were in the category of misconduct. In this situation, it cannot be said affirmatively that the decision taken by the Govt. in Annexure-SA1 in respect of Charge No.5 is such that the Govt. should be debarred from reconsidering its stand in the matter of item No.2 of the impugned adverse entry.

17. In respect of item No.3 of the impugned entry the contention of the learned counsel for the applicant is that it is only a consequence of entries Nos.1 & 2. We have no reason to hold that entry item 3 rests only on the facts concerning entry at item No.1 and 2. The fitness of a person for promotion rests upon his overall performance. Further, it is certainly not within the competence of the Tribunal to say that a particular Govt. servant is fit for promotion. That is a matter which we think as necessarily to be reconsidered by the Govt. bearing in mind the effect of its own decisions contained in Annexure-SA1 on the disciplinary enquiry report.

18. The learned counsel for the applicant says that Annexure-SA1 only contains a warning which is not to be placed on the Character Roll of the applicant. Even so it may be material for deciding whether or not a person is fit for promotion. The learned counsel further says that the question whether or not a person is fit for promotion is not to be decided finally by the Reporting

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- 10 -

Authority because it is the function of the Departmental Promotion Committee. It will, however, be appreciated that the Departmental Promotion Committee itself has to take into consideration the relevant material which may be placed before it by the Govt; and one of such materials is the comment of the Reporting Authority etc. in the Annual Confidential Record which requires comments to be made on fitness for promotion in the proforma prescribed for the purpose.

19. The learned counsel for the applicant lastly contends that there has been an inordinate delay on the part of the Govt. in taking final decision in the applicant's case on account of which the applicant has already suffered heavily inasmuch as quite a few persons junior to him have been promoted above him. It appears to us that the delay on the part of the Govt. to take a final decision was not unnatural. A perusal of the applicant's representation Annexure-2 dated 21.5.84, the reply dated 27.5.87, Annexure-R1 to the chargesheet dated 22.4.87 and the applicant's written arguments, Annexure-R2(which bear shows that they no date)/ are so voluminous and raise so many points of facts as well as law that delay in their disposal was natural. After all, a Govt. can fairly expect its officers to discharge their duties without blemish and if a Govt. servant cannot but make voluminous representations to explain his position, the entire blame for delay cannot be laid at the doors of the Govt.

20. The only questionable delay on the part of

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- 11 -

the Govt. is its failure to review its orders contained in Annexure-3 dated 14.5.85 on the applicant's representation after the Inquiry Officer had submitted his report and at the time when the Govt. took decision contained in Annexure-SAl dated 11.5.89. The Govt. have not addressed themselves to this point in their Supplementary Counter as, perhaps, this point was not specifically raised by the applicant in his Supplementary Affidavit. For aught one knows, the Govt. may not have considered Annexure-3 because of the pendency of this Original Application or it may not have considered it necessary to pass any such orders in view of the decision, Annexure-SAl where it is stated that the Govt. had decided to close the matters concerned with the disciplinary enquiry with a warning as set out therein. The upshot is that finalisation of the matters regarding items Nos. 2 and 3 of the impugned adverse entry still remains in doubt; the Govt. ought to be required to clear off this doubt within a reasonable time.

21. The application is partly allowed and while item No.1 of the impugned adverse entry contained in Annexure-1 dated 20.2.84 is quashed, the opposite party No.1 is directed to reconsider items 2 and 3 of the said impugned adverse entry bearing in mind the decision of the Govt. in Annexure-SAl dated 11.5.89 and the observations contained in the body of this judgement. The opposite party No.1 shall carry out this direction and pass suitable orders within one month from the date of receipt of a copy of this judgement. Parties shall bear their costs.

DR. Acharya
Member (A)

John
Vice Chairman

Dated the 20th April, 1990.

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