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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No.1141 of 1988

R.K.Singh Applicant

Versus

State of U.P. & Others Opposite Parties.

Hon. Justice Kamleshwar Nath, V.C.

This application under Section 19 of the Administrative Tribunals Act, 1985 is for quashing certain adverse remarks in the Annual Confidential Report for the year 1980-81 in respect of the work and conduct of the applicant as contained in Annexure-I to this application.

2. In Lucknow there is a Society registered under the U.P. Cooperative Societies Act, 1965 and called as Pradesha Cooperative Dairy Federation Limited (in short P.C.D.F.). Among the various provisions governing its operation there are Bye-laws. The Committee of Management according to Bye-laws 2(c) is known as Board or Board of Directors. The Board, under Bye-laws 30, consists of 12 Directors one of whom is the Managing Director. The Managing Director is appointed by the State Govt. vide Bye-laws 2(1). There is an Advisory Board under Bye-laws 38 which carries on the function of advising the Board of Directors. It consists of 7 Members which include the Milk Commissioner of U.P. and the Managing Director of P.C.D.F. who is also the Member Secretary. The Milk Commissioner under Bye-laws 2(m) is the person appointed as such by the State Govt. under Section 7 of the U.P. Milk Act, 1976.

3. During the period in question, i.e. 1980-81 the applicant R.K. Singh was the Managing Director of the P.C.D.F. and opposite party No.3 V.K. Mittal was the Milk Commissioner. The Committee of Management of the P.C.D.F. seems to have been superseded some time earlier and an Administrator was appointed under Section 35 of the U.P. Cooperative Societies Act, 1965. Opposite Party No.3, V.K. Mittal was ^{also} the Administrator.

4. The applicant functioned as the Managing Director of the P.C.D.F. from 7.4.80 to 31.10.80. A complaint about his performance was made by opposite party No.3 by letter dated 27.9.80, Annexure-14 to the State Govt. addressed to Shri A.K. Das, Secretary of the Animal Husbandry, Department of Govt. of U.P. It appears from this complaint that the applicant had been transferred out from the P.C.D.F. about 8 or 10 days before the issue of the letter but he had not handed over charge although opposite party No.3 had been pressing upon him to proceed on transfer. Ultimately, the applicant ceased to work in the P.C.D.F. after 30.10.80.

5. On the complaint, Annexure-14 dated 27.9.80, applicant's explanation was called by letter dated 23.10.80, Annexure-6 (annexed to Annexure-2) from A.K. Das addressed directly to the applicant. The applicant sent a reply dated 30.10.80, Annexure-7 (annexed to Annexure-2). The State Govt. appears to have considered the explanation to be satisfactory and decided to drop the matter and the decision was communicated to the applicant by letter dated 11.12.81, Annexure-3 (annexed to Annexure-2) from Deputy Secretary to the Govt. of the Milk Development Department directly

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to the applicant.

6. In the meantime, by letter dated 25.11.81, Annexure-I from the Deputy Secretary in the Village Development Department of the Govt. addressed directly to the applicant, the impugned adverse entry was communicated to the applicant which runs as follows :-

" During his tenure as Managing Director of P.C.D.F. business of the Federation suffered adversely. He was half-hearted in the discharge of duties. He could not inspire confidence in the team of his officers. He is an ill-behaved officer. Certain actions taken by this officer casts aspersions on his integrity. Integrity not certified. Fitness for promotion to higher grade(s) in his turn - Unfit".

7. On 15.2.82 the applicant made a representation to the State Govt. by letter, Annexure-2 addressed to the Secretary in the Appointment Department of the Govt. of U.P. On a consideration of the representation the State Govt. expunged only the following portion of the remarks contained in Annexure-1 :-

" Certain actions taken by this officer casts aspersions on his integrity. Integrity not certified";

and in its place the words "integrity certified" were substituted.

8. It is admitted that the impugned adverse remarks were recorded by opposite party No.3 although the decision of the State Govt. treating the applicant's explanation dated 30.10.80, Annexure-7 holding it to be satisfactory and communicated by letter dated 11.12.81, Annexure-3 had already been taken.

9. Two of the various points raised by the applicant in this application are as follows :-

- (1) The material on which the adverse entry was given by opposite party No.3 and ultimately accepted by the State Govt. leading to the communication thereof by Annexure-I is entirely and wholly the material contained in the complaint, Annexure-14 dated 27.9.80 of opposite party No.3 on which the applicant's explanation dated 30.10.80, Annexure-7 had been accepted by the State Govt. to be satisfactory and a decision was taken to "drop the matter". It is urged that the same material could not be utilized subsequently to incorporate the adverse entry.
- (2) Opposite Party No.3 was not competent to function as the applicant's Reporting Authority within the meaning of Rule 2(e) of All India Services (Confidential Roll) Rules, 1970. In line with that contention is also the contention that the Reporting Authorities' remarks had been reviewed and accepted by persons who were not the applicant's "Reviewing Authority" and "Accepting Authority" within the meaning of Rule 2(f) and (a) of the All India Services (Confidential Roll) Rules, 1970.

10. I may take up point No.(1) first. It will be recalled that when the complaint, Annexure-14 was made by opposite party No.2 on 27.9.80 to the State Govt., the applicant was already under orders of transfer although he stayed on till 30.10.80. The complaint consists of the covering letter Annexure-14 and a note annexed thereto. In the covering letter, it was

stated that the applicant was incapable of managing the work, had loose administration, rarely sat in office and a couple of such matters had come to notice has made his integrity doubtful.

11. In the note annexed to the covering letter specific instances regarding applicant's performance were set out. Mention is made of an agreement dated 25.7.80 with National Trading Corporation on 25.7.80 in hot haste within twentyfour hours of the proposal without consulting the Chief Commercial Manager, after instant change of the staff and despite report of unsatisfactory performance of the N.T.C. in the preceding years. Dates in the month of August, 1980 were specified indicating that the applicant practically did not attend his office throughout the month. Mention is made of purchase of sugar on 18.4.80 for Rs.52,800/- paid on that very date from Rampur for the Moradabad Factory without purchase orders of the Factory. It was stated that the Quality Control Officer of the Moradabad Factory found the sugar unfit for baby food and that huge quantity of baby food was already lying dump in stock and that the applicant had been posted as District Magistrate, Rampur immediately before his posting in the P.C.D.F.

12. There were also complaints about inaction for commissioning of four Milk tankers, for recruitment of staff for Cattle Field Factory Varanasi which was to

be commissioned by December, 1980. There was mention of the applicant's creating hurdles in the working of Senior officers so much so that Joshi, Assistant Engineer and Shah resigned but were persuaded to stay back, Vyas Marketing Officer resigned and left, and the Chief Commercial Manager was thinking of getting himself transferred.

13. The note closes with the observation that those were only some of the important points, that the working of the P.C.D.F. was almost at a standstill and that it did not seem possible to revive it in the prevailing atmosphere. The explanation of the applicant contained in Annexure-7 dated 30.10.80 tried to meet all the points raised in the complaint. However, the letter dated 11.12.81, Annexure-3 (annexed to Annexure-2), after referring to the applicant's explanation dated 30.10.80, called by letter dated 23.10.80, communicated the State Govt.'s decision (English Translation) as follows :-

" In this connection I have to inform you that Govt. has found the explanation submitted by you to be satisfactory and the matter has been dropped. It may be mentioned that letter Annexure-6 dated 23.10.80 (annexed to Annexure-2) contained all the same points as were set out in Annexure-14."

14. It is a definite case of the applicant that it is only on the material contained in Annexure-14 and Annexure-6 (annexed to Annexure-2) that the

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impugned adverse remark has been made. There is no denial of this allegation in the counter. The reply in para 5 of the counter is as follows :-

" That with regard to the contents of paragraph 6(iii) of the petition, it is submitted that the explanation of the petitioner was called by the State Government on the report of the Milk Commissioner vide letter dated 27.9.80. The explanation of the petitioner in reply thereto was considered and Government decided to stop proceedings against him. It is further submitted that the adverse remarks in the Annual Confidential Report of the petitioner were given on the basis of overall assessment of work, conduct and performance of the petitioner. The adverse entry has no connection with the points raised against the petitioner."

15. It must be mentioned at this stage that the opposite parties have not stated that there was any material against the applicant other than the one which was set out in the complaint, the orders of the Govt. calling for the applicant's explanation and the explanation submitted by the applicant. I have already pointed out that the period for which the remarks were made were from 7.4.80 to 31.10.80 and the complaint was made at the fag end of that period dated 27.9.1980. Even at the time of hearing my attention was not invited to any other material contained in the records on the basis of which the adverse remarks were recorded. It must therefore be

held that the material on the basis of which the impugned adverse remarks were recorded were none other than those which were subject matter of the complaint which was dropped by the Govt. after considering the applicant's explanation.

16. The question is whether in this state of affairs, it was permissible for the opposite parties to record the remarks in question. The learned counsel for the parties have not cited any law on the subject. It is not in dispute that adverse remarks cannot be recorded if there is no material; awarding adverse remarks without material would be arbitrary and cannot be sustained. It appears to me that the same result follows in a case where a material had been brought to the notice of the competent superior authority but the authority after considering the same has found it to be unacceptable. The Civil Law as applicable to judicial proceedings is aware of the principles of resjudicata; and although in the administrative-field the ~~principles~~ law of resjudicata will not apply in the manner they apply to the judicial proceedings, nevertheless, the principle thereof cannot be altogether ignored. After all, a person who has been subjected to scrutiny once and has been exonerated thereof should not be subjected to scrutiny afresh unless some illegality, material error or omission, some fraud or like vitiating circumstances are found. In De Smith's Judicial Review of Administrative Action, Fourth Edition (1980) at page 107 the law is stated as follows :-

"Considerations of fairness to individuals whose interests will otherwise be directly and prejudicially affected may lead the courts to attribute

binding effect to administrative acts and decisions which the competent authority wishes to repudiate or rescind. Indeed, it would seem that the legal competence of administrative bodies to rescind their decisions depends (in the absence of statutory provision for this matter) at least as much on considerations of equity and public policy as on conceptual classification."

17. The learned author has referred to Ganz "1965" public Law 243 - 255. In 1965 Public Law (incorporating the British Journal of Administrative Law), G. Ganz has dealt with the subject of "estoppel and res judicata in Administrative Law" at pages 237 to 255. At page 255 he has stated the conclusion as follows :-

" It is submitted, therefore, that a valid determination of an administrative body affecting the rights of the subject is in the absence of express statutory provisions binding on the authority except where it has been obtained by fraud and perhaps misrepresentation or mistake or it is based on facts which have changed or it is necessary in the public interest for the authority to change its mind."

18. I feel that the law has been correctly stated by the two authorities as mentioned above. In order therefore for the opposite parties to get over the decision of dropping the matter raised in the complaint against the applicant for reason of his explanation having been found satisfactory it was necessary for the opposite parties to show that some of the elements referred to in the above statement of the law existed in this case on account of which they were competent to record the adverse remarks in question. That has not been shown.

I am satisfied therefore that the impugned adverse remarks could not have been recorded and they must be expunged.

19. In view of my findings on point No.(1), it is not necessary to decide point No. (2).

20. The petition is allowed and the impugned adverse remarks contained in Annexure-I for the years 1980-81 in the Annual Confidential Report of the applicant are quashed.

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Vice Chairman

Dated the 8th March, 1990.

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