

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No. 1239 of 1988

Om Prakash Upadhyay Applicant

Versus

Union of India & Others Opposite Parties.

Hon. Justice Kamleshwar Nath, V.C.

This application under Section 19 of the Administrative Tribunals Act XIII of 1985 is for expunging an adverse confidential entry made in the Character Roll of the applicant for the year 1986 communicated by Annexure-III dated 7.5.87 and for damages as a result of that entry.

2. The applicant was promoted as a Controller of Explosives on 25.3.81 and worked in Hazari Bagh (Bihar) from 1981 to June, 1986. In July, 1986 he was transferred to the post of Controller of Explosives Agra where he worked during the remaining period of the year. The communication of the adverse entry in Annexure-III runs as follows :-

"It has been recorded in your Confidential Report for the year 1986 that you are of erratic and unpredictable nature and occasionally resort to drama to convince your superiors, colleagues, subordinates and public. Your written and oral communication skill is also not good. You indulge in groupism which is bad for the administration. You have no capacity to inspire and motivate subordinates. The data given by you in your self assessment report is not correct. Though you have done some good work in weeding of files the work is yet to be completed. Your coming to office outside office hours is not proper. Instead of solving problems in office you are creating more problems.

The above defects are viewed seriously and you are advised to improve upon the shortcomings pointed out above".

3. The case as set out in the application is that Opposite Party No.2 Shri N.G. Kundu, Deputy Chief Controller of Explosives at Agra became jealous and prejudiced to the applicant because of applicant's sincerity and honesty, and appreciation by public and various classes of officers. It is further said that Opposite Party No.2 carried a strong communal bias of which the applicant became a victim. He referred to a sanction of a taxi fare by Opposite Party No.2 to a Bengali Upper Division Clerk while refusing taxi fare to the applicant. Similarly, Opposite Party No.2 did not prevent one J.C. Biswas an Upper Division Clerk from describing himself as Assistant in the office of the Controller of Explosives, Guwahati. The case therefore is that the adverse remarks are a result of mala fide, arbitrariness, and vindictiveness of Opposite Party No.2 and is in violation of all norms and principles of writing Confidential Reports. It is further pleaded that the remarks are abstract in nature and are without any material basis. He has relied upon a circular, Annexure-VIII of 1961 of the Govt. of India, Ministry of Home Affairs regarding the norms for preparation of Confidential Reports.

4. The applicant further said that Opposite Party No.2 used to make false and fabricated entries in the Log Book of the office vehicle leading to misappropriation of public property, which the applicant had mentioned to Opposite Party No.2.

5. The applicant made representations against the adverse entry which were ultimately rejected by the Govt. of India by communication dated 1.9.88

contained in Annexure-VII. The applicant's grievance in that regard is that the rejection has been done by a non speaking order and was beyond the jurisdiction of "Desk Officer(Vigilance) to pass this order". The applicant has sought for the relief mentioned above on these grounds.

6. Counter Affidavit on behalf of all the Opposite Parties has been made by Opposite Party No.2, the officer who made the entries. The allegations of bias, communalism, vindictiveness have been denied. Circular, Annexure-VIII as contained in the norms for recording adverse entry is not disputed; but the defence is that the remarks have been recorded according to the norms. The allegations regarding Log Book and misappropriation of public property have been denied and it is pointed out that the accounts had been audited and no such fault was pointed out by the Audit Party. Allegations in respect of favouritism for the Bengali Upper Division Clerk or for Biswas is also denied.

7. In the matter of rejection of the applicant's representation by Opposite Party No.1, it is stated that Annexure-VIII clearly says that the representation had been carefully considered by the competent authority and therefore it is not a non-speaking order and that the Desk Officer (Vigilance) had not passed the order rejecting the representation, but had only communicated it to the applicant.

8. The applicant has also filed a rejoinder.

9. I have heard the learned counsel for both the parties at considerable length and have been taken through the various Annexures.

10. Certain features in connection with the impugned adverse remarks may be mentioned. The Opposite Party No.2 was Reporting Authority and Opposite Party No.3 was the Reviewing Authority. According to the applicant, the impugned remarks were recorded by opposite party No.2 and were confirmed by opposite party No.3 (vide paras 13 and 15 of the application). In respect of opposite party No.2, the applicant had made allegations of mala fides, vindictiveness etc. as mentioned above; he did not make any such allegation against opposite party No.3. The applicant's statement of case, so far as the opposite party No.3 is concerned, simply is that opposite party No.2 kept claiming that he was a favourite of opposite party No.3 (vide para 14) and that the opposite party No.3 only kept his representations made to opposite party No.3 pending and only when he ultimately requested opposite party No.3 to forward his representation, treating to be a memorandum of appeal, to the competent authority, that opposite party No.3 forwarded it to the Ministry by letter dated 4.2.88, Annexure-V. The up-shot is that while the applicant has raised a grievance against opposite party No.2, he has not raised any grievance against opposite party No.3. The statement that opposite party No.2 claimed that he was a favourite of opposite party No.3, has no value in the eyes of law. The further complaint that opposite party No.3 kept his representations pending is besides the point, because all those representations were addressed to opposite party No.3 who had made the remarks as

contained in Annexure-III. Opposite Party No.3 was quite competent to keep them pending as infructuous because the proper authority to be addressed any representation against the remarks was the Government. It is admitted that when the applicant requested opposite party No.3 to forward his representations to the competent authority treating them to be an appeal, opposite party No.3 forwarded it to the Ministry concerned. The case, therefore, as set out by the applicant does not constitute a grievance in the eyes of law against opposite party No.3.

11. The applicant's allegations of mala fides, arbitrariness, vindictiveness and communal bias of opposite party No.2 may now be examined. The allegation that the applicant's sincerity and honesty and appreciation of his performance by public and various classes of officers, made opposite party No.2 jealous and prejudiced against him, is neither specific nor stands to reason. A sincere and honest subordinate is an asset to his superior, and I do not think that the superior may feel jealous or prejudiced for that reason alone in respect of the asset available to him.

12. The allegation of communal bias is with reference to a Bengali Upper Division Clerk, ^{McGraw} Apart from denial of bias in favour of a Bengali, it cannot follow that the person is prejudiced against those of other community. It is not enough to show that an officer has favoured another; it is necessary to show that he has acted adversely to the applicant in order to favour the other. There is no such circumstance in the present case.

13. The allegation of vindictiveness is said to be supported by the applicant's informing opposite party No.2 of making false and fabricated entries in the Log Book; but if no fault was found by the Audit Parties as stated in the Counter Affidavit, the allegation of false and fabricated entries in the Log Book must fail.

14. The allegation of mala fides, according to the applicant, rests on the allegation of jealousy and prejudice, communal bias and the allegedly false and fabricated entries in the Log Book. For reasons recorded, those allegations have already failed and therefore there is no foundation for the case of mala fides.

15. The learned counsel for the applicant complains that the letter of appreciation, Annexure-II issued by the Govt. in favour of the applicant should also have been placed in the Annual Confidential Records File in accordance with the Govt. of India Orders published at page 377 of All India Services Manual by R.N. Misra. That is besides the point. Moreover, the letter of appreciation is of the year 1981; that has nothing to do with the applicant's performance in the year 1986.

16. The most important point urged by the learned counsel for the applicant is that there is no material in support of the impugned remarks. The applicant has placed reliance upon Annexure-VIII as containing the norms for recording Annual Confidential Remarks. Annexure-VIII, however, provides for the method of communication of adverse remarks; it does not lay down

what the remarks should contain. It is mentioned that it is not only the duty of the Reporting Officer to make an objective assessment of his subordinate's work and quality but also to give him at all times the necessary advice, guidance and assistance to correct his faults and deficiencies and if that is done, there would be no difficulty in recording adverse entries because the Reporting Officer would refer to defects which had persisted. This does not mean that unless some defects persist despite efforts to erradicate, adverse remarks cannot be recorded. It may be mentioned that the applicant did not say in his petition that he had never been informed earlier of the defects which have been recorded in the impugned adverse remarks. The norms contained in Annexure-VIII, therefore, are of no help to the applicant.

17. The learned counsel for the applicant has also referred to the case of Ashok Kumar Versus State of U.P. & Others 1988(3) CAT 392 decided by this Bench of the Tribunal. That decision is distinguishable for several reasons. The Govt. servant in that case belonged to Class I All India Services and the provisions relating to recording of Confidential remarks were governed by All India Services (Confidential Rolls) Rules, 1970. These Rolls do not apply to the present case. A close examination of the decision would show that it settled mostly questions of fact and not questions of law. Adverse entries for the years 1974-75 and 1975-76 were in question. The remarks recorded for the year 1974-75 by the Reporting Authority constituted a

satisfactory report, but the Reviewing Authority without recording his disagreement with the remarks of the Reporting Authority had given adverse entries in the year 1977. The Tribunal found that although according to the provisions of the Form of Confidential Reports the Reviewing Authority was required to record his disagreement with the Reporting Authority, he had not done so. It was also noticed that Rule 6(1) of the Confidential Roll Rules, 1970 provided for dispensing with the report of the Reviewing Authority where there was an undue delay in making the review. A period of three years had elapsed when the Reviewing Authority recorded his remarks. The Tribunal, therefore, held that the Reviewing Authority was not justified in giving the adverse remarks and that no material was produced to justify them.

18. In respect of the year 1975-76, the Reporting Authority had recorded ~~an~~ adverse remarks on the basis of inquiry report of 1976, but the Govt. servant has been exonerated of all the charges in the enquiry which also covered his conduct for the year 1975-76. The Tribunal held that since the Govt. servant had been exonerated of the charges, there was no justification to sustain the entry recorded by the Reporting Authority. The Tribunal went on to add that since the Reviewing Authority had no other material, he was not justified in giving his adverse remarks.

19. It will be noticed that the decision in the case of Ashok Kumar Vs. State of U.P. & Others (supra) is essentially on the particular facts of that case, although there is an observation that the Reviewing

Authority did not have any material to support his own adverse remarks.

20. It will be appreciated that the Confidential remarks in respect of an officer may concern two types of facts :-

- (i) Objective facts, i.e. those which are capable of being proved by positive facts, and
- (ii) Subjective facts, i.e. those which although not capable of being proved by positive facts are nevertheless relevant for the purposes of an overall assessment of the work and conduct of an officer of which the Reporting/Reviewing Authority may have personal knowledge.

There is no difficulty so far as the remarks relating to class (i) are concerned; it is expected that there must be a positive material in support of and in the absence of a material, the remarks are liable to be struck down. In respect of remarks pertaining to class (ii), the criterion of the validity is not the existence of a positive material but the bonafides and the opportunity of observation of the Reporting and Reviewing Authority. In support of this view I may refer to the observations of the Supreme Court in the case of Union of India Vs. M.E. Reddy and Others AIR 1980 SC 563. The Supreme Court observed that under the various Rules on the subject, it is not every adverse entry or remark that has to be communicated, and that the superior officer may make certain remarks while assessing the work and conduct of the Govt.

servant based on personal supervision or contact. It is observed that some of entries may be ^{connected} ~~acted~~ with general reputation, honesty or integrity that the officer enjoyed and that it would be difficult, if not impossible, to prove by positive evidence that a particular officer is dishonest, but those who have the opportunity to ^{watch} ~~quash~~ the performance from close quarters, are in a position to know the nature and character of his performance and of his reputation. The impugned adverse remarks, in my opinion, have to be viewed in this light.

21. The learned counsel for the opposite parties produced before me the original Annual Confidential Report of the applicant. The remarks contained in three objective facts :-

- (a) data in self assessment report is not correct.
- (b) weeding work to be completed, and
- (c) applicant's coming to office outside office hours created problems.

It will be noticed that self assessment report is the applicant's own report. It was his duty to show that the data in his report was correct. He has failed to prove ^{that} The arrears of weeding work are admitted in the applicant's own representation, Annexure-IV which, of course, contains an explanation that the work was enormous. The fact, nevertheless, remains that the weeding work was in arrears. Going to office outside office hours is also admitted in para 7 of applicant's representation, Annexure-IV, but it is explained to have been in the interests ^{of} work. The applicant further

mentioned in the representation that opposite party No.2 had asked him not to work outside office hours. If the applicant continued to go to the office outside office hours despite the restraint, he cannot make a grievance ^{of} _{to} the adverse remarks that his visit created problems.

22. The remark that the applicant was erratic or was an unpredictable nature and occasionally resorted to drama to convince his superiors, colleagues, subordinates and public are vague and are capable of objective assessment. It should have been possible for the opposite parties to point to some of the errors, temperamental instability or dramatic attitude in the Counter Affidavit or from other ^{record} _{report}; but that has not been done.

23. The remaining remarks namely that the applicant indulged in groupism and had no capacity to inspire and motivate the subordinates, are basically subjective in nature. The Reviewing Authority recorded that he agreed with the assessment of the Reporting Authority and that the applicant was trying to be smart and to polarise the staff against Deputy Chief Controller of Explosives. These observations fall within the field of the Reporting and Reviewing Authorities' personal supervision, contact and observation of the work and conduct of the applicant. They cannot be said to be contrary to rules or the law and therefore must be maintained.

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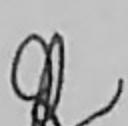
24. The applicant's contention that the appellate order contained in Annexure-VII has been passed by the Desk Officer (Vigilance) is wholly misconceived. The Desk Officer has simply signed the letter, Annexure-VII which contains the communication of rejection order by the competent authority. Since the order clearly mentions that the applicant's representation has been carefully considered by the competent authority and rejected, it does not suffer from the infirmity of being a non speaking order because it is a concurring order.

25. These are all the points which have arisen in this case. In view of what has been found above, the application is partly allowed and the following portions of the impugned adverse remarks contained in Annexure-III are quashed :-

" You are of erratic and unpredictable nature and occasionally resort to drama to convince your superiors, colleagues, subordinates and public".

In other respects the application is dismissed.

26. Parties shall bear their costs.


Vice Chairman

Dated the 18th Aug., 1989.

RKM