

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 188 of 2000

Allahabad this the 10th day of April, 2003

Hon'ble Mrs.Meera Chhibber, Member (J)

Suresh Chandra Majumdar, aged about 57 years,
S/o Late Priya Das Majumdar, R/o Quarter No.DT-13,
Armapore Estate, Kalpi Road, Kanpur-208009, presently
employed as Join General Manager, Ordnance Factory,
Kanpur.

Applicant

By Advocates Shri N.K. Nair,
Shri M.K. Upadhyay

Versus

1. Union of India through the Secretary, Ministry
of Defence, Department of Defence Production,
Government of India, New Delhi.
2. Chairman, Ordnance Factory Board/Director-
General, Ordnance Factories, 10-A, Shaheed
Khurdiram Bose Road, Calcutta-700001.
3. General Manager, Ordnance Factory, Kalpi Road,
Kanpur.
4. Shri S.P. Pal, Adult, Father's name is not known
to the applicant, presently employed as General
Manager, Ordnance Factory, Katni.

Respondents

By Advocate Shri Amit Sthalekar

O.R..... pg.2/-



O R D E R (Oral)

By Hon'ble Mrs.Meera Chhibber, Member (J)

By this O.A. Applicant has challenged the adverse remarks given for the period from 01.04.98 to 31.03.99 communicated by Memorandum No.410/A/G dated 14.09.99. He has further sought for quashing of the order dated 16.12.1999, by which his representation has also been rejected.

2. It is submitted by the applicant that he was working as Joint General Manager in the Ordnance Factory, Kanpur where he had come on transfer from Ordnance Factory, Katni in June, 1999. He was initially appointed as Supervisor w.e.f. 01.11.1966 and due to his hard working and dedication, he passed the examination of Associate Member II Metals, which is equivalent to B.E. Metals and consequently he got appointment as Assistant Manager on probation in the year 1977. Thereafter, he applied for the post of Assistant Manager in the Ordnance Factory and was selected through U.P.S.C. as such, he was appointed as Assistant Manager under the Director General, Ordnance Factories in February, 1977. He was further promoted as Deputy Manager in February, 1981 and as Deputy General Manager in November, 1988. In August 1994 he was further promoted as Deputy General Manager (Selection Grade) which was later on categorised as Joint General Manager. He has, thus, submitted that right from the beginning his service career he had been working with ^{full} the ~~entire~~ satisfaction of his superiors and ^{got} ~~goes~~ to the higher rank due to his utter dedication. His work and conduct through out has been very good and whatever responsibilities or duties have been given to him, he always carried them out with dignity. It is very

unfortunate that during the period when he was posted at Katni, the General Manager, Ordnance Factory - Shri S.P. Pal picked up an unwarranted quarrel with the applicant and started abusing him. The applicant did not report the matter to the higher authorities at that time, thinking that the Officer might change his attitude with the passage of time but, he was surprised when he received the memorandum dated 14.09.99, whereby the applicant was communicated the following adverse remarks;

"From your ACR for the above period following shortcomings have been noticed:

- (a) You have no initiative.
- (b) You take no interest in work.
- (c) You are in the habit of quarreling with the senior officers.
- (d) You are a non performer.
- (e) You have reached your peak.

1. The shortcomings are communicated to you with a view to afford you an opportunity to overcome these shortcomings and enable you to give a better performance which is to the mutual interest of yourself and the organisation.

3. You are hereby advised to appreciate the contents of this memo in the correct spirit and endeavour to eliminate the discrepant attributes to further improve your performance in future.

4. It is also brought to your notice that representation, if any, on this communication should be made within one month of the date of this communication."

The applicant was totally surprised because the same officer had earlier given him 'Very Good' reports and he was never told that there was certain shortcomings or applicant did not have any initiative or he required to improve his working ability, thus, being aggrieved he gave

a representation to the higher authorities, however, even the higher authorities rejected the representation vide memorandum dated 16.12.1999 without dealing with the points raised by the applicant.

3. It is submitted by the applicant that these adverse remarks were ^{the 12} ~~being~~ result of quarrel which had taken place between him and Shri S.P. Pal and it is the same Shri S.P. Pal who was the Reviewing Authority of the applicant, ~~and~~ even though Reporting Officer has given 'Very Good' but, the Reviewing Authority reduced it to 'Average' and gave adverse remarks as well. He has alleged that these adverse remarks were given to him due to personal bias of said Shri S.P. Pal. He has also impleaded him as respondent no.4 in the O.A. Even though Shri S.P. Pal was served the notice but, he did not bother to file a reply, therefore, in law allegation of malafides made against the respondent no.4 stand admitted because ^{he} ~~they~~ have not been denied by Shri S.P. Pal in person. Since the whole case of the applicant was based on personal bias of Shri S.P. Pal, Court had directed the respondents to produce the A.C.Rs of the applicant for 3 years prior to 1998-99 and 3 years after 1998-99 to see whether the allegations have some force or it was in normal course that the Reviewing Authority had downgraded the applicant and given adverse remarks to advise him to improve himself. I have seen the confidential reports of the applicant and it would be relevant to note that the same Shri S.P. Pal has accepted the grading of the applicant as 'Very Good' as a Reviewing Officer ^{in earlier year} ~~but,~~ for the years 1998-99 even

though the Initiating Officer had graded the applicant as Very Good, it was reduced to 'Average' by said Shri S.P. Pal. Not only this, in the subsequent year also the applicant had been given 'Very Good' by the Initiating Officer and the same had been accepted by the Reviewing Officer-Shri B.K. Sharma. Even otherwise the service profile was shown by the respondents in a chart form shows through out the applicant has been graded mostly as 'Very Good' and it was only during this period i.e. from 1998-99 that his grading was reduced to 'Average' by Shri S.P. Pal, which was okayed by the accepting officer. It is further seen that for the year 1997-98 against the column of Inter Personal Relation and Team Work, it was recorded that his relationship with superior, colleague and subordinates is normal, he ^{makes B} ~~has~~ effort to promote the team spirit. The Reporting Officer had graded him as Very Good and the same Shri S.P. Pal had written ~~too~~ that there is no reason to disagree. Therefore, it looks like that the grievance of the applicant is ^{based B} ~~found~~ on well founded apprehension that his A.C.Rs had been ~~advised~~ ^{spoiled} by the said Shri S.P. Pal due to his personal bias. For the year 1998-99 Shri S.P. Pal has merely stated that he should be graded as 'Average'. No reason has been assigned ~~that~~ ^{for same this is not understood how} ~~that~~ ^{that} all of a sudden for the year 1998-99, said Shri S.P. Pal ~~have~~ ^{has} lot of things against the applicant namely he has no initiative, takes no interest in the work or is in habit of quarreling with the superior officers or he is non-performer, etc. There is nothing on record to show that applicant was cautioned or given any warning in writing nor there is any other such evidence on record to show that the adverse entries were given on the basis of some material. In fact in the subsequent A.C.Rs the Reporting Officer has written that the officer is sincere, submissive


and amiable, which has been agreed by the Reviewing Authority. In fact Reviewing Officer has also stated categorically that he is sincere, sober officer and take initiation in his work. Thus, it is clear that the adverse remarks for the period from 01.04.98 to 31.03.99 were given to the applicant due to some personal bias of the said Shri S.P. Pal and he was downgraded also by the same person for the same reasons. Accordingly memorandum dated 14.09.99 is quashed and set aside. It is seen that the applicant had given a detailed representation but, the same was also rejected in a stereo type and mechanical manner without any application of mind. It is seen from the original records that higher authority has not even discussed anything in the files other than what ~~have~~ ^{stated} been ~~discussed~~ in the rejection order, communicated to the applicant. Since this order is without application of mind, same is also quashed and set aside. The adverse remarks and downgrading as 'Average' stand expunged from the A.C.R. for the period from 01.04.98 to 31.03.99.

4. ^{have to} Now I ~~am going to~~ see what ^{would be the impact} ~~is result~~ of this order. I am informed that the applicant is due to retire on superannuation on 31.12.2003. It is also seen that during the pendency of this O.A., the applicant had filed M.A.No.3475/02 seeking a direction to the respondents to restrain them from affecting any further promotion on the post of Addl.General Manager, from the post of Joint General Manager so that in the event of the application being allowed, his due promotion without being superseded by his juniors, is ensured. The applicant has also placed on record the order dated 20.08.2002 to show that as many as 51 persons (officers) were promoted as Addl.General Manager, out of

which from serial no.29 onwards all were juniors to the applicant. The Court had protected the applicant by observing in its order dated 30.09.02 that any promotion made by the respondents during the pendency of the O.A., shall be subject to the outcome of this O.A.

5. Now when the adverse remarks which were communicated to the applicant have been expunged, the natural consequence would be, that the respondents would have to place his case for reconsideration before the review D.P.C. who would consider his A.C.Rs for the years 1998-99 as given by the Reporting Officer, and in case he is found fit, he shall be granted promotion w.e.f. from the same date when his immediate junior was promoted as Addl.General Manager with all consequential benefits in accordance with law. This exercise shall be completed by the respondents within 3 months from the date of receipt of a copy of this order. If, the applicant was superseded only because of this adverse remark and is found fit by the review D.P.C., he would be entitled to the arrears as well. With the above directions, the O.A. is allowed. No order as to costs.

by ignoring the grading & adverse remarks as given by review authority


Member (J)

/M.M./