

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH,
ALLAHABAD.**

ORIGINAL APPLICATION NO. 722 OF 2000

THIS THE 22nd DAY OF DECEMBER, 2005

HON'BLE MR. K.B.S. RAJAN, MEMBER-J
HON'BLE MR. A.K. SINGH, MEMBER-A

Murahoo Ram Shastri, Small Industry Promotion
Officer, (E.I) Branch SISL, Varanasi
Applicant

By Advocate : Sri B.K. Srivastava

Versus.

1. Union of India through its Secretary,
Ministry of Industry, New Delhi.
2. Deputy Economic Advisor (IES)/Additional
Secretary Small Scale Industry, Ministry of
Finance/Department of Economic Affairs, New
Delhi.
3. Development Commissioner, Small Scale
Industry 7th Floor, Nirman Bhawan, new Delhi.
4. Director Small Industries Service Institute,
E-17-18, Industrial Estate, Naini,
Allahabad.

Respondents

By Advocate : Sri Tej Prakash

O R D E R

BY K.B.S. RAJAN, MEMBER-J

The Apex Court in the case of *P.K. Shastri v. State of M.P.*, (1999) 7 SCC 329 in brief reflected the precise purpose of writing of the ACR and the precautions to be taken before writing the same.

The same is as under:-

"...we think that the CRs of an officer are basically the performance appraisal of the said officer and go to constitute vital service record in relation to his career advancement. Any adverse remark in the CRs could mar the entire career of that officer. Therefore, it is necessary that in the event of a remark being called for in the confidential records, the authority directing such remark must first come to the conclusion that the fact situation is such that it is imperative to make such remarks to set right the wrong committed by the officer concerned. A decision in this regard must be taken objectively after careful consideration of all the materials which are before the authority directing the remarks being entered in the CRs."

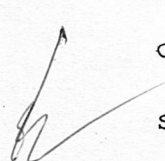
2. The case of the applicant is to be tested on the touchstone of the above decision of the Apex Court in case the applicant has challenged the adverse entries.

3. The Facts: The applicant was appointed as Economic Investigator in 1973 and was later promoted and confirmed as Small Industry Promotion Officer (SIPO) in June, 1987. His job involved preparation of Project Profile Reports, for which Market Survey of Project Profile Items was most essential. This survey could be prepared only by a team of officers and despite repeated requests the respondents could not arrange for any team to conduct the market

survey. The particular District being a newly created one, conducting of the marker survey was considered much more essential for preparation of the requisite Project Profile Report. In the absence of such market survey, the applicant could not complete the Project Profile Report. This resulted in the applicant's being communicated adverse remarks for three consecutive years 1993-94, 1994-95 and 1995-96. The applicant made representations and the authorities had expunged the adverse remarks for 1993-94 but chose to retain the adverse entries for the years 1994-95 and 1995-96. The existence of the aforesaid adverse remarks had the telescopic effect of the DPC not recommending promotion of the applicant to the post in the Indian Economic Services (IES). Result, juniors to the applicant were promoted vide the impugned promotion order dated 09-05-2000. Representation preferred by the applicant had yielded no fruitful result. Hence this OA.

4. Respondents have contested the OA. They have in reply to para 3 of the O.A. contended that in so far as the matter relating to the adverse remarks is concerned, the same is 'highly time-barred'. As to the fact of the requirement of pre marketing survey, the requirement of a team for the purpose, request

of the applicant for making available such a team to conduct the market survey, as reflected in para 4.2 to 4.7 of the O.A. the respondents have admitted the same, by their reply, "Contents of para 4.1 to 4.7 need no comments." However, they have stated that when the competent authority had considered the representation of the applicant against the adverse remarks and expunged the adverse remarks for the year 1993-94 but after due consideration, rejected the representation in respect of adverse remarks for the two subsequent years, the same goes to show that the competent authority had had his open mind in considering the representation and as such, no illegality can be located in the action of the competent authority. The communication of the rejection of the representation is dated 16-05-1996 (in respect of expunction of adverse remarks for the year 1993-94), 6/13-10-1997 in respect of retention of adverse remarks even after consideration of representation, for the year 1994-95 and 1995-96. A further representation dated 24-11-1997 of the applicant was also responded to vide order dated 9/10-02-1998. Yet another representation dated 21-7-1998 was replied vide order dated 31-08-1998. The DPC which had considered the cases of all the eligible candidates for promotion to the IES cadre did not find the applicant fit for the same and as such had not recommended his case for the said



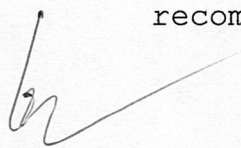
promotion. The applicant had not agitated against the said orders but had come up against the order of promotion, vide impugned order dated 9th May, 2000.

5. Rejoinder has been filed by the respondent, by and large reiterating his stand as contained in the OA.

6. Written arguments have also been furnished by the parties and the same have also been considered. The relevant documents have also been perused.

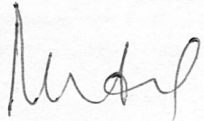
7. First on the question of limitation. The applicant had challenged the impugned order of promotion and prayed for setting aside the same. If non selection of the applicant for promotion was not due to the adverse entries in the A.C.R. of the applicant, as communicated (and rejection of representation, which has also been communicated), then the applicant cannot be faulted with in not agitating against the adverse remarks. Instead, if the existence of the adverse remarks is the sole reason for his non selection, then certainly, the applicant ought to have challenged not only the promotion order but also the order of rejection of his representation against the adverse remarks.

This has obviously not been done by the applicant. In fact, a perusal of the O.A. would go to show that neither the order communicating the adverse entries had been annexed to the OA nor the representation or for that matter rejection of representation against the adverse remarks! It is only the respondents who had annexed the communication whereby the representations have been rejected. All that the applicant annexed was only the impugned promotion order, the seniority list, the representation against the promotion order. In other words, all attempts have been made to circumvent the limitation in agitating against the retention of adverse remarks for the years 1994-95 and 1995-96. Opportunity was available to amend the application in challenging the rejection of representation against the adverse remarks, when in para 10 of the counter the respondents had clearly specified the precise reason for the DPC not recommending. Even this opportunity was not availed by the applicant. If the applicant has allowed the retention of the adverse remarks to remain unquestioned and if the same was the reason for his case not being recommended by the D.P.C. he cannot question the promotion order based on the recommendation of the DPC.



8. Since the applicant has not challenged the retention of the adverse remarks, there is no need to test his case on the touch-stone of the decision of the Apex Court in the case of P.K.Shastri (supra).

9. The OA is thus devoid of merits and ~~no~~ merits only dismissal which is so ordered. No costs.



MEMBER-A



MEMBER-J

GIRISH/-