

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH  
ALLAHABAD**

(THIS THE 15<sup>th</sup> DAY OF July 2010)

PRESENT:

**HON'BLE MRS. MANJULIKA GAUTAM, MEMBER-A**

**ORIGINAL APPLICATION NO. 1605 OF 2003.**

(U/s, 19 Administrative Tribunal Act. 1985)

Praveen Lal Nigam, aged about 43 years, S/o Shri Surendra Nigam, R/o 117/Q/556, Indrapuri, Sharda Nagar, Kanpur.

.....Applicant

By Advocate : Shri Rakesh Verma

Versus

1. Union of India, through the Secretary, Ministry of Defence South Block, New Delhi.
2. The Chief Engineer, Central Command (Engineer's Branch), Lucknow CANTT. -2.
3. Shri G.S. Singh, Superintending Engineer, Commander Works Engineer, Kanpur Cantt-2.
4. Shri S.K. Agrawal, Executive Engineer, Garrison Engineer (MES), Kanpur Cantt.-2.

..... Respondents

By Advocates : Shri N.C. Nishad/Shri A.K. Pandey

**ORDER**

The applicant is employed in the office of Garrison Engineer B/Chakeri, Kanpur w.e.f. 10.4.1984. Aggrieved by adverse remarks in the A.C.R given for the period from 6.10.2002 to 31.3.2003, he has filed the present O.A. seeking the following reliefs:

"(i) *To issue a writ, order or direction in the nature of certiorari quashing letter dated 2.5.2003 passed by the respondent No. 4 endorsing and communicating adverse remarks in the ACR of the petitioner for the period from 6.10.2002 to 31.3.2003 as well as letter dated 30.9.2003 passed by the respondent NO. 3 rejecting the representation of the petitioner dated 30.5.2003 confirming the aforesaid adverse entries (Annexure A-1 & A-II).*

"(ii) *To issue a writ, order or direction in the nature of mandamus directing the respondent No.2 to decide the representation of the petitioner dated 30.5.2003 by a reasoned and speaking order within a period of one month.*



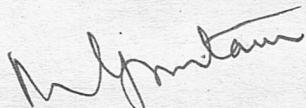
- (iii) *To issue any other suitable writ, order or direction in the facts and circumstances of the case which this Hon'ble Tribunal may deem fit and proper.*
- (iv) *To award cost of the petition".*

2. According to the applicant, he has been working for 19 years and has consistently good record. According to him, he was made to work under his junior by respondent No. 4 Shri S.K. Agrawal and when he complained in this regard, respondent NO. 4 became furious with him and threatened to spoil his A.C.R. Accordingly with malafide intention, he gave the following adverse remarks for the period of 6.10.2002.

*"Quality of mind is original. Knowledge of work, power of acquiring general information and speed of disposal are satisfactory. Power of expression is strained. Attention to details is casual. He is industrious. Judgment is average, willingness to accept responsibility is reliable. Relations with subordinates, colleagues and public are cordial. AJE (Civil) of average intelligence and average perception. He tries to improve himself when cautioned. He has a casual attitude. His expression both written and verbal is possible. His appearance and bearing in neatness, smartness and turnout is impressive. He moves with motivation"*

3. The petitioner preferred a representation dated 30.5.2003 through proper channel to the respondent No. 2 and made a request to quash the adverse remarks. The applicant alleges that respondent Nos. 3 and 4 without referring the representation to respondent No. 2, who was reviewing authority, rejected his representation vide letter dated 30.9.2003 (Annexure A-3), taking the ground that the adverse remarks have been recorded with malafide intention and that the appeal has been rejected without going through the reviewing authority, the applicant has filed the present O.A.

4. According to the counter affidavit filed by the respondents, they have stated that the ACR has been given as per Rule and for the period indicated. The fact that he has not been given any adverse entry earlier is not relevant. It has also been stated that the



applicant has tried to confuse the matter of his adverse A.C.R with his posting and has tried to link the two issues. It has been stated that posting of the officer is done on the basis of their competency and that the applicant has never been made to work under his junior. It has also been clarified that the representation of the applicant has been disposed by the respondent No. 3 after due instructions of Competent Authority and that remarks in the A.C.R were advisory in nature.

5. In the rejoinder affidavit, the applicant has simply said that the facts stated in the counter affidavit are misleading and not correct.

6. Supplementary Counter affidavit and supplementary rejoinder affidavit has also been filed, reiterating the same position.

7. I have heard both the counsel and perused the record on file. It is clear that the applicant has spent a lot of time and energy in making the case of the malafide against the respondent No. 4 and has tried to show in great detail that he was not picked up, instead his junior officer was made to officiate. He has also said that respondent No. 4 to whom he explained his embarrassment and difficulty became annoyed with him and threatened to spoil his ACR.

8. Respondent No. 4 who has been made a party in his personal capacity has not filed a personal affidavit but has filed counter affidavit on behalf of Department. He has denied all charges of malafide against the applicant and has stated that the adverse entry was given based on the performance of the officer and that the applicant has unnecessarily tried to confuse the matter of A.C.R with that of posting to a particular place. Counter affidavit and

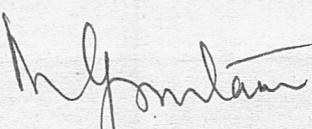
*W. S. P. S. Jayaraman*

Supplementary Counter Affidavit categorically state that the applicant has never worked under his junior. In the rejoinder and supplementary counter, the applicant has merely called this fact misleading but has not clarified or rebutted it with actual facts. The applicant has also nowhere given the date and time of the meeting with respondent NO. 4 in which he was threatened with adverse ACR.

9. Looking at the facts of the case, no case for malafide is made out against the respondent No. 4 and it is very clear that there is no direct connection between the place of posting or duty assigned to the applicant and the A.C.R. recorded against him. But at the same time a reading of the adverse comment communicated to the applicant show that the adverse comments are very sweeping and general in nature and no ground for giving such remarks have been mentioned. The explanation of the respondents that the remarks are advisory in nature, does not hold good as the adverse comments are not advisory but damaging. Thus, both the adverse comments i.e. annexure A-1 and rejection of the representation Annexure A-2 lack application of mind and do not give adequate reason justifying the adverse comments against the applicant. For the above reason, Annexure A-1 and Annexure A-2 cannot be sustained and are hereby quashed and set aside with direction to the respondents to have the A.C.R. for the period 6.10.2002 to 31.3.2003 of the applicant written again after careful application of mind and as per Rules and policy giving reasons for the views expressed in the body of the ACR.

10. O.A. is thus allowed. No costs.

Manish/-



Member (A)