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RESERVED ON 21.02.2013

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

(ALLAHABAD THIS THE 6th DAY OF March 2013)

PRESENT:

HON'BLE MS. JAYATI CHANDRA, MEMBER -A
HON'BLE MS. JASMINE AHMED, MEMBER - J

ORIGINAL APPLICATION NO. 275 OF 2007
(U/s, 19 Administrative Tribunal Act.1985)

Anandrao Shamrao Sahare, aged about 48 years, S/o Shri Shamrao Sahare, presently posted as Accounts Officer in the office of Principal Controller of Defence Accounts (Pensions), Draupadighat, Allahabad.

.....Applicant

By Advocate: Shri H.S. Srivastava

Versus

1. Union of India through the Secretary, Ministry of Defence (Finance), New Delhi.
2. The Controller General of Defence Accounts West Block, V.R.K. Puram, New Delhi.
3. The Principal Controller of Defence Accounts (Southern Command), Pune.
4. The Principal Controller of Defence Accounts (Pensions), Draupadighat, Allahabad.

..... Respondents

By Advocate: Shri Ajay Singh

ORDER
BY HON'BLE MS. JAYATI CHANDRA, MEMBER -A

The applicant has filed this Original Application seeking to quash the order dated 29.3.2004 (Annexure A-6) issued by respondent No. 3 and order dated 29.12.2004 (Annexure A-8).

2. The facts of the case are, while the applicant was posted as Assistant Accounts Officer Ambajhari, he was transferred arbitrarily by the respondents to Nasik. He filed an Original

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Application No.2166 of 2002 against his transfer order and the Tribunal by its order dated 27.1.2003 was pleased to cancel the said transfer (Annexure A-2). In pursuance of the order, he rejoined his duty at Ambajhari but the respondents harboured malafide feelings against him. With the intention of harassing him, the Reviewing Officer downgraded his entry for the year 2002-2003 from 'Good' to 'Average'. The Reporting Officer had given him overall grading of 'Very Good' but the Reviewing Officer had recorded an adverse comment. The specific portion of the adverse order is quoted below:-

"The report is highly over-pitched. Shri Sahare is an average AOO. The Officer consistently disobeyed the instructions of the main office regarding distribution of work between him and Sh. Joshi AAO. He also refused to undertake a specialized ized study assigned to him. Feasibility of automation of Engineering Section/AAO vie Office. By his refusal to comply with orders of work distribution, he disrupted the general discipline of the office and set up of wrong example for the staff reporting to him refusal to undertake the study reveals that the officer is incapable of original thinking and cannot apply himself to intricate issues and unwilling to undertake greater responsibility".

The entry given by the Review Officer was accepted by the Final Authority.

3. This was communicated to the applicant, who made his representation, which were turned down by the impugned order dated 29.3.2004 by respondent No.3 (Annexure A-6). Against that, he gave second representation dated 14.5.2004, which was rejected by the Additional CGDA as communicated to him by second impugned order dated 29.12.2004 (Annexure A-8)

4. The applicant has challenged the impugned orders on the following grounds:-

1. Chandre

"(a) It is generally held that Work and Conduct of the officer is best known by his immediate Superior Officer. Since Reporting Officer has given 'Very Good', there is no justification for the Review Officer, who is not in a position to oversee the working of the applicant directly to downgrade the entry.

(b) The Review Officer never issued any warning or has given him an opportunity to better himself. The Review Officer was prevented from carrying out her intention of posting one Shri Joshi to the sanctioned post of AAO Ambajhari by transferring him out by the orders of Tribunal. She showed her enmity against him, who belongs to Scheduled Caste category by damaging his A.C.R. Malafide of Reviewing Officer is also borne out by the fact that the applicant had an unblemished record prior to 2002-2003.

(c) Accepting Officer also passed the order of his functioning on the basis of entry of Reviewing Officer without applying independent mind.

5. The applicant has stated that he was never given any warning etc. arising out of the incidents quoted against him. Learned counsel for the applicant has cited various Rulings:-

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(i) **Union of India Vs. M.E. Reddy and another -**

1980 Supreme Court Cases (L&S) 179. It has

been held that:-

"They also show that such reports are not ordinarily to contain specific incidents upon which assessments are made except in cases where as a result of any specific incident a censure or a warning is issued and when such warning is by an order to be kept in the personal file of the government servant. In such a case the officer making the order has to give a reasonable opportunity to the government servant to present his case.....".

(ii) **State of U.P. Vs. Yamuna Shanker Misra and**

another 1997 (3) A.W.C. 1496 (SC). In this case,

Hon'ble Apex Court has held:-

".....therefore, writing the confidential reports objectively and constructively and communication thereof at the earliest would pave way for amends by erring subordinate officer or to improve the efficiency in service....."

".....If a public servant is guilty of misconduct, he should no doubt be proceeded against promptly under the relevant discipline rules, subject of course, to the protection under Article 311 (2)....."

".....Sincere, honest and devoted subordinate officers are unlikely to lick the boots of the corrupt superior officer. They develop a sense of self-pride for the honesty, integrity and apathy and interia towards the corrupt and tend to undermine or show signs of disrespect or disregard towards the corrupt....."

".....When the finds a sincere, devoted and honest officer to be inconvenient, it is easy to cast him/her off by writing confidential reports with delightfully vague language imputing to be 'not up to the mark'.....".

".....Before forming an opinion to be adverse, the reporting officers writing confidential should share the information which is not a part of the record with the officer concerned, have the information confronted by the officer and then make it part of the record. This amounts to an opportunity given to the erring/corrupt officer to correct the errors of the judgment, conduct, behaviour, integrity or conduct/corrupt proclivity.....".

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(iii) **Ravendra Mohan Dayal Vs. State of Maharashtra and Ors.** 2000 (3) (CAT) page 63.

The Mumbai Bench of the Tribunal has held :-

"M.A. Raja Sekhar para 4

It is no settled law that the object of making adverse remarks is to assess the competence of an officer on merits and performance of an officer concerned so as to grade him in various categories as outstanding, 'very good, good, satisfactory and average etc. The competent authority and the reviewing authority have to act fairly or objectively in assessing the character, integrity and performance of the incumbent".

Swatanter Singh para 5.

"It is true that in view of the settled legal position, the object of writing the confidential reports or character roll of a government servant and communication of the adverse remarks is to afford an opportunity to the officer concerned to make amends to his remissness; to reform himself; to mend his conduct and to be disciplined, to do hard work, to bring home the lapse in his integrity and character so that he corrects himself and improves the efficiency in public service. The entries, therefore, require an objective assessment of the work and conduct of a government servant reflecting as accurately as possible his sagging inefficiency and incompetence. The defects and deficiencies brought home to the officer, are means to the end of correcting himself and to show improvement towards excellence.

As held by the Hon'ble Supreme Court in the cited judgments above, the officers writing the ACR are expected to show objectivity, impartiality and make fair assessment without any prejudice whatsoever with highest sense of responsibility. In the process of report writing, it is the reporting officer who has intimate contact with the official being reported upon and he is the best judge of his performance appraisal and to present truest possible picture of the appraisee..... The accepting authority is not normally expected to have a direct or personal knowledge of the performance of the official being reported upon and is expected to accept/endorse the appraisal of the reviewing authority. It is no doubt conceded that the reviewing authority and the accepting authority have a right to differ with the performance appraisal of the reporting officer.....".

Lastly he has stated that his action in moving to the Tribunal for redressal of his arbitrary transfer should not be used against him. He was within his rights to seek relief against it.

(iv) **Mohammad Thekkethil Vs. The Director of Panchayats and Ors.** 1982 (2) SLR page 390.

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The relevant portion of Hon'ble Kerala High Court is reproduced below:-

"An order of transfer is not ordinarily to be interfered with by this Court. But when it is shown that the order is violative of Art. 14 of the Constitution either because it is arbitrary or is passed for extraneous reasons, this Court has a duty to set aside the order".

6. The Respondents have raised the preliminary objection to the maintainability of the O.A. under section 21 of the Administrative Tribunals Act, 1985. They have quoted following case laws:-

- (i) Mohd. Khalil Vs. UOI (1997) SLJ (CAT) 54.*
- (ii) Bhagmal Vs. UOI (1997) 2 SLJ (CAT) 543.*
- (iii) Shri Niwas Pathak Vs. UOI (1997) 2 SLJ (CAT) 520".*

7. On merits, the respondents have stated that the Reviewing officer has quoted specific instances of disobedience of the orders passed by the main office by the applicant. The downgrading of the Review Officer was done on the basis of the refusal of the applicant to obey the order regarding distribution of work between him and Shri R.K. Joshi. He also refused to undertake the specialized duty as assigned to him. As per para 199 of Office Manual Part-1, ACR written by a Reporting Officer can be modified by Accepting/Reviewing Officer if they record their reasons in writing. The Reviewing Officer/Accepting Officer based their assessment of work and worth of the applicant on two instances:-

- (a) Shri Sahare, AAO consistently disobeyed the instructions of main office regarding distribution of work between him and Shri R.K. Joshi AAO.*

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(b) *Shri Sahare, AAO refused to undertake a specialized study assigned to him on feasibility of automation in Engineering Section/AAO GE Office.*

8. The applicant's allegation regarding malafide based on the outcome of his transfer and the consequential judicial process has no bearing on the entries recorded for the year 2002-2003. The applicant was initially transferred by order dated 26.08.2002. The Tribunal was pleased to cancel the transfer and same was obeyed by its order dated 27.01.2003. The Tribunal in its order dated 27.1.2003 makes no mention of work to be assigned to the applicant or that the work could not be reassigned in part or in whole to some one else or that he can not be given any additional work. The applicant by disobeying expressed orders of the headquarter laid himself open to assessment of his work and worth on the basis of his attitude towards expressed orders given to him. The ACR is a tool to realistically assess his various qualities as displayed through his work. The adverse ACR was communicated to him. He gave his representation by application dated 16.12.2003, which was examined by the Competent Authority and was rejected by the reasoned and speaking order dated 29.03.2004. Thereafter, he represented to CGDA, New Delhi/respondent NO.2 by his representation dated 13.5.2004 which was also rejected by impugned order dated 29.12.2004. He gave further representation to respondent No. 5 dated 20.12.2004 and the same was not entertained as there is no provision for a third representation.

S. Gavandre

9. We have heard counsel for the parties and perused the records. It is seen that order dated 15.11.2010 was passed by this Bench admitting the O.A. after hearing the parties on the point of delay. Hence the delay has been condoned. It is seen that the applicant was transferred from the post of AAO Ambajhari by the order dated 26.8.2002. Against this transfer order, he obtained an interim relief on 27.9.2002. The Tribunal in its order dated 27.1.2003 finally quashed the transfer order. A reading of order of the Tribunal in O.A. No.2166 of 2002 shows that the Tribunal in para 11 of its order has held "No malafide has been established by the applicant" [against the respondents]. However, the applicant has admitted in his representation dated 16.12.2003 that an order was passed by the respondents on 29.10.2002 (copy of which has not been provided) by which work was distributed between him and one Shri B.K. Joshi.

10. There was no action of Review Officer which was behind his back. By his own admission both in the O.A. and representations given by him before the PCDA dated 16.12.2003 (Annexure A-5) that he had himself decided that sharing of work between him and Shri B.K. Joshi were against the Rules without quoting any specific Rule or Provision. In his second appeal to CGDA dated 16.12.2003 (Annexure A-5) he has again alleged malafide against him by Reviewing and Accepting Officer on account of being a member of Scheduled Caste and also because he had got a favourable order from the Tribunal

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canceling his arbitrary transfer order. In this said representation, he has said in para 9 that the order of the PCDA (Admn.) Poona in respect of undertaking study of E Section is defective, biased and in expressed violation of Courts Order.

As a Government servant it is not for him to question the right of the Authority to give him any kind of work. The Reporting Officer has to in part I of the ACR format give a comment on the keenness and willingness of the officer to undertake more and greater responsibility. In part IV assessment of an Officer being reported upon includes a specific remark towards his ability to get accept greater responsibility {pt. i of Part (iii) of ACR format and (b) amenability to discipline pt. i of part (iii)} . The Reviewing Officer has to give his specific comment about the general remarks given by the Reporting Officer (pt.2). In this instance the disagreement note of the Review Officer is based on to concrete instances.

11. In so far as his refusal to share the work with Shri Joshi is concerned, once again it is the normal administrative practice in many instances where one or more persons working in the particular scale are attached in addition to persons working at the same scale in a particular station for a particular period of time in exigencies of work. In this case, it is relevant to see that the applicant was transferred and came back the same post under interim order and was allotted distribution of work. It appears from the order that this was interim arrangement. There is nothing on record or any averment made by the

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applicant that after the final orders of the CAT dated 27.1.2003 he was not allowed to work as AAO Ambajhari. It is also seen that the adverse remarks given by him by Reviewing Officer was duly communicated to him and there was enough opportunity to represent against this. In so far as cases are cited are concerned, all of them are quoted are separate and distinct from this case.

12. Therefore, we find no reason to interfere with the impugned order. Accordingly, the O.A. is dismissed. No costs.

Jasvine Ahluwalia

Member (J)

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Member (A)

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