

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

(6)

O.A. No. 136 of 1987

DATE OF DECISION 07-04-1989.

Shri M. K. Mayatra

Petitioner

Shri S. V. Parmar

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri B. R. Kyada

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. Trivedi : Vice Chairman

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

Shri M. K. Mayatra, - "Chandresh",
R/o. 2-Dasijivanpara,
Opp. Bhaktinagar Station,
Rajkot.

.....Petitioner

(Adv. : Mr. S. V. Parmar)

Versus

The General Manager,
Western Railway,
Churchgate,
Bombay.

.....Respondent

(Adv. : Mr. B. R. Kyada)

JUDGEMENT

OA/136/87

Date : 07-04-1989

Per : Hon'ble Mr. P. H. Trivedi : Vice Chairman

The petitioner has applied under Section 19 of the Administrative Tribunals Act, 1985 for a direction to the respondent to remove the adverse entries made in his Confidential Reports for the period ending 31st March, 1986. Against these adverse entries he had submitted a representation which was tersely rejected by orders dated 15-12-1986 and subsequent representation dated 22-12-1986 which was also rejected by an order dated 5-2-1987. In both these orders rejecting his representations no reasons have been given. In the first representation against the remark for power of drafting being "poor" the petitioner had asked for file number for reference where direction given on drafting were put up. Against the column concerning capacity for maintenance of Rule Books, Codes etc. the remark was "No" for which he stated that the question of maintenance does not ~~arise~~ arise because he was not supplied Rule Books, Code Books etc. Against adverse remark regarding prompt presentation of papers, the petitioner has asked for reference where

he has not presented them and similarly regarding proper disposal of papers. He has also asked to be shown how guidance was given to him for putting up papers. In his second representation he has taken the stand that the remarks are contradictory and drawn attention to our judgement delivered in OA/114/86.

2. In their reply concerning the grievance regarding adverse remarks, the respondents have merely stated that the representations were duly considered on communication of the adverse remarks as prescribed by instructions and the adverse remarks have been confirmed. However, if the petitioner has any grievance, he may prefer an appeal to the higher authority. We have not been given a copy of any instruction or Rule under which any appeal is provided for and for the purpose of this case we will treat the respondents' statement as their averment to consider the case of the petitioner if he files a further representation.

3. The instructions regarding the record of C.Rs. are designed to serve the purposes of giving due notice to the Government officer about the opinion held by his superiors of the nature and quality of his work and from such remarks an officer is supposed to profit by noting the defects found by his superior officers so that his future work may improve. The instructions, therefore, include a reference to the guidance given by the Reporting Officer to the Government Officer concerned in the course of the work as and when the defects have been noticed. The instructions also include a reference to the need for the remarks being objective and not without some support of instances in which the defects were noticed when they bear any reference to any specific incident. In this

case no particular default recorded any individual case has been noticed, and the working habits in terms of prompt presentation or disposal or maintenance of concerned Rule Books ~~or~~ ~~fixing~~ have been commented upon. It cannot be said that these remarks necessarily required to be recorded for any individual or specific instance or cases in which such defects have been displayed and we cannot state that the supervising officers had no competence in the absence of any such reference to record their opinion based on their observation of the work of the petitioner. It is also necessary to state that another purpose of the maintenance of C.R. of the work of the Government servant is to provide documentary support for making assessment of their capability for further promotion and also to determine their fitness for specific assignments so that the placement of the Government servant concerned may not result in square pegs being placed in round holes. The ^{are} Supervising Officer ~~to~~ give their comments, no doubt, objectively but also fairly keeping in view also the interest of the Government. On this ground also if Supervising Officers are put into the dock every time an adverse remark is recorded to justify every syllable of it, it may not be found ~~done~~ that the purpose of recording C.R.s. will be served. This ~~does~~ not mean however, that as far as possible such ~~remk~~ should be based on objective assessment of the work of the officer and should be recorded referring to such cases for which the defects have been noticed so that it becomes possible for the officer concerned to be satisfied that the remarks are objective and not due to any individual officer's prejudice. For this reason the instructions require representation against adverse remarks to be entertained. The instructions

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do not require any reasons to be given for turning down the representations, far less that a speaking order is required to be recorded when the representations are rejected. The extent and nature of judicial review in such cases has a definite and restricted range. It cannot enable judges to substitute themselves for the superior officers as they would lack the day to day acquaintance with the work of the Government servant as also experience of the nature of the duties that he is to perform and, therefore, in deciding such cases there has to be a judicious restraint exercised. The proper approach in judicial review of such cases is to the extent of ascertaining whether there was any application of mind by the authorities who rejected the representations. From the nature of the reply as also from what is stated during the hearing we are unable to glean any indication how the authorities concerned satisfied themselves regarding this aspect of the matter. Fortunately, the respondents have agreed to consider the case if an appeal is filed against the remarks and although it has not been pointed out that statutory appeal under any instructions has been provided for We consider that in the circumstances of this case it should be remitted to the respondent authorities to consider this petition itself as a representation and dispose of the same by an order which should give sufficient material to show that the representation of the petitioner has been fairly and objectively considered. Subject to this observation we do not wish to interfere with the decision of the respondents.

MA/399/87
in
OA/136/87

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CORAM : HON'BLE MR. P.H. TRIVEDI : VICE CHAIRMAN

18/09/1987

Heard learned advocate Mr. S.V.Parmar for the applicant and Mr. B.R. Kyada for the respondent, respectively. Petition allowed. Applicant to carry out amendments within 10 days from the date of this order. Registry to ^{take action} ~~post~~ accordingly. Miscellaneous petition is disposed of.

P.H. Trivedi

(P.H. TRIVEDI)
VICE CHAIRMAN