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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. ~~XXXX~~ 475 of 1987
O. A. No. 546 of 1987

DATE OF DECISION 16-02-1988

Shri Ramanlal M. Desai **Petitioner**

Shri S. D. Shah **Advocate for the Petitioner(s)**

Versus

Union of India & Anr. **Respondent**

Shri J. D. Ajmera **Advocate for the Respondent(s)**

CORAM :

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

The Hon'ble Mr. P. M. Joshi : Judicial Member

JUDGMENT

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OA/475/87)

OA/ 546/87)

16-02-1988

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

The petitioner had originally asked for relief regarding adverse remarks in his A.C.R. of 1986-87 and regarding orders of his reversion dated 4-9-1987 Annexure 'A1'. These two cases being separate we had asked the petitioner to file separate applications. However, there is a connection between the adverse entries and the order of reversion and for the facility of disposing of the cases we have heard the parties together in both the cases.

2. In OA/546/87 the applicant has impugned the orders rejecting the representation made by him against adverse remarks in the Annual Confidential Report for 1986-87. This report has been challenged on the ground :

- 1) that the second respondent who has communicated the impugned orders rejecting his representation has not supervised his work and is not having the knowledge of his performance;
- 2) that the order is not a speaking order as it makes no reference as to why his representation has not been accepted;
- 3) the petitioner has had a meritorious service record as seen from the promotions and commendations given to him and also from the figures of improved collections;
- 4) the petitioner has reported defects in touring due to inadequate travelling allowance which have handicapped him and this has not been taken into account in assessing his performance;
- 5) In para 26(b) of the A.C.R. form the remarks made are not relevant. The remarks are required to be made, if there is a special characteristics or outstanding merits. If there is no outstanding merit or characteristics, no remark should have been made. Instead derogatory remarks have been made. This shows the bias of the reporting officer.

3. In reply the respondents have urged that judicial ^{review} / record of remarks in the confidential reports is not within the jurisdiction of the Tribunal as they reflect the assessment made by the officers who are competent to do so.

The representation of the petitioner has been considered by the competent officer and the result thereof has been communicated to the petitioner. Such remarks are not violative of Articles 14 and 16 and are not arbitrary. It is not open to the Tribunal to sit in appeal over the decision taken by the competent authority in rejecting the representation of adverse remarks. The reviewing officer who was not respondent No.2 according to the written statement in reply has every right in his capacity to give his assessment for the work of the applicant and the remarks against item 26(b) in the confidential report for 1986-87 were not of the reporting officer but of the reviewing officer. The counter signing authority ^{who} also was not respondent No.2 has to make an assessment regarding the applicant's duties. The conclusion of the competent officers was that the applicant had no cordial relations with the district authority and he was shy in meeting higher officers and whenever the work was entrusted by the Regional Director he had not devoted fully in the discharge of his duties.

4. After hearing the learned advocates we find that there is no doubt that the competent authorities and not the courts have the function of making an assessment of the work of the officer reported upon and the courts should not decide whether the remarks should be retained or expunged or sit in appeal over the judgment of the competent officers competent to record or review of such remarks or decide upon the representation made relating thereto. However, the fact that the A.C.Rs. are the record on the basis of which decisions regarding promotions, efficiency bar or matters affecting the service conditions of the officers are made render them relevant when disputes regarding service conditions come before us. It is then necessary to know whether there has been application of mind, whether officers competent to do so have recorded, reviewed or accepted such remarks, whether they have considered the representation and passed orders and whether the remarks made are derived from the performance of the officer and relevant in the appropriate period. It is also necessary to know whether the remarks have been made objectively and whether there was basis for them. There are adequate Government instructions regarding the principles and procedure to be followed in recording such remarks and in disposing of such representations. It may not be necessary to pass speaking orders in the sense that a reasoned order showing the basis



on which conclusions have been derived for rejecting the representation need be stated in the orders deciding upon the representations made but there is no doubt that there should be an evidence of application of mind by the competent authority regarding the ground urged in the representation and why such grounds have not been accepted.

5. In this case there is only a bare statement that the representation has been rejected. There is no satisfactory explanation why the Column 26(b) has been commented upon when the comments do not relate to fitness for out of turn promotion. There is no indication regarding any attempt made to guide or admonish the officer prior to recording the adverse entries in his C.R. We cannot avoid the suspicion that the petitioner's deficiency has been viewed with dis-proportionate severity. We consider that the decision on his representation needs to be reviewed. It is necessary that the National Savings Commissioner applies his mind to the grounds of the representation and having regard to the record of performance of the petitioner makes a fresh decision whether such remarks should be retained or modified or expunged.

6. In OA/475/87 the petitioner has been reverted from the post of Assistant Regional Director to the post of District Savings Officer (S.G.) by an order dated 4th September, 1987 at Annexure 'A1' and on reversion posted at Bhavnagar. He challenges this reversion on the ground : (1) that although he is ^{the} senior most, his juniors one Mr. Godani and another Mr. Pandya are sought to be promoted without superior merits and therefore the orders suffer from hostile discrimination. (2) The reversion has been brought about by adverse entries communicated to him as at Annexure 'A5' about which his representation at Annexure 'F' has been rejected. He has challenged in another petition the communication of adverse remarks and the rejection of his representation thereto. In this petition he states that even if he is regarded as an average officer, he cannot be considered unfit to hold the post and, therefore, he should not have been reverted.

7. The respondents contend that the impugned order of reversion is from a promotion post in which the petitioner was promoted on a purely ad hoc and temporary basis. For ad hoc promotion no selection based on merit is involved and such an ad hoc appointment is purely stop gap arrangement. Such an arrangement can be put to an end to at any time and appointment on such basis does not vest any rights in the petitioner. The petitioner's work was not found to be effective and his relations with the local leaders or public opinion and with the State Government and other officials were not cordial. The observations in the adverse entries are made by reviewing officer who is competent to express his views. The credit which the petitioner has sought to take by giving the figures of collections in spite of the handicap on his touring are mis-leading because such results cannot be ascribed to a single person's efforts.

8. We have heard the learned advocate who has cited 1979 GLT 281, 19 GLR 1921, 1975 AIR 1117, 1974(1) AIR (SC) 423 and 1978(2) GLR 379.

9. It is admitted in this case that the petitioner was promoted on a purely ad hoc and temporary basis. Such a promotion does not involve any right to continue in the post. However, the respondent cannot act arbitrarily and capriciously in reverting the officer. The petitioner was promoted on 7-1-1986 and the circumstances which account for his reversion need to be gone into to satisfy that such reversion is not mala fide or arbitrary. If the reversion were caused by the post having been abolished or the ad hoc promotion having been available only for a fixed period or that regularly appointed candidates were available and were to relieve the petitioner, the plea that reversion can be resorted to would have been regarded as satisfactory. In this case from the reply given by the respondent it is clear that the petitioner was not regarded as suitable, for his services were not regarded as satisfactory. It is this conclusion of the respondent for reverting the petitioner which has been questioned by the petitioner. This conclusion is based upon the adverse entries in the confidential report of the petitioner for the period 1986-87. We have no record of any previous adverse entries regarding the petitioner. The petitioner has described that his services were meritorious until the year 1986-87 and this has not been controverted by the respondent. No doubt the respondent has not allowed full credit of the figures of collections which the

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petitioner has relied upon by stating that such collections are not the result of a single man's efforts but even so part of the contribution to this result can reflects some merit. The C.R. in which adverse remarks have been communicated have graded the petitioner as an average officer and the petitioner pleads that this does not render him un-suitable. However, the same report has stated that the petitioner is a most incompetent officer and it is not in public interest to continue him. We, therefore, cannot agree with the petitioner's stand that he has ~~not~~ been regarded as suitable to continue to hold the promotion post.

10. Reversion from a promotion post to which the appointment has been made on an ad hoc basis has not been regarded as a punishment or reduction in rank although it causes adverse consequences. This is because there is no right vested in continuing in the promotion post to which the appointment is on a purely ad hoc and temporary basis. However, whether such a reversion is a penalty or not is a question which arises. For this attendant circumstances are required to be seen. If the attendant circumstances are such that there is any forfeiture of pay or any other evil consequences or stigma or loss of seniority the decisions cited show that such circumstances would render such reversion to be bad in law if it does not follow the rules governing the due imposition of penalty. The mere fact that the juniors of the petitioner have been continued in the promotion post does not render the reversion to be of the nature of penalty. Administrative exigency can explain why the juniors are retained for a short period in the promotion post if they are also appointed on ad hoc basis. If after selection, such juniors have superseded the petitioner and promoted on regular basis, such promotion cannot be struck down either. In this case there is no doubt that the attendant circumstances clearly show that the reversion has been caused by holding that the petitioner is not suitable to continue in the promotion post to which he was appointed on ad hoc basis. This suitability has been judged on the basis of the petitioner's not maintaining sufficiently cordial, satisfactory and effective relationship with local leaders of public opinion and State Government officials. We cannot say that the respondent are not entitled to come to this conclusion provided he has done

so after proper inquiry. The petitioner has had full opportunity to take up the matter with the superior and competent officer of the respondent authorities in this regard and they have come to a conclusion that the conduct and performance of the petitioner were deficient in the required respect. We, therefore, find that the impugned orders of reversion are flawed insofar as they are of the nature of penalty, based as they are on the adverse remarks against which a representation has been made and which has been rejected without showing whether there was an application of mind to the grounds stated therein. The respondents are at liberty to pass appropriate orders regarding reversion after properly disposing of the representation showing reasons why the representation is rejected or not found to have merit and in the light of the final orders passed thereon.

11. In the result we find that both the petitions have merit and in view of our directions stated above the order of reversion is quashed and set aside to the extent stated above. No order as to costs.

Sd/-
(P. H. TRIVEDI)
VICE CHAIRMAN.

Sd/-
(P. M. JOSHI)
JUDICIAL MEMBER