

BU

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

*NO
Adverse
Reporters*

O.A. No. 333/91
T.A. No.

DATE OF DECISION 16-2-1993.

Shri V.S. Sinha Petitioner

Party in Person Advocate for the Petitioner(s)

Versus

Union of India and Others Respondent

Shri Akil Kureshi Advocate for the Respondent(s)
Shri B.N. Patel

CORAM :

The Hon'ble Mr. N.V. Krishnan Vice Chairman.

The Hon'ble Mr. R.C. Bhatt Member (J)

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 Vijay Shanker Sinha, IAS
 Principal Secretary,
 Government of Gujarat
 Revenue Department (Appeals)
 M.S. Building, Ahmedabad 380 017.

Applicant.

Advocate Party in Person.

Versus

1. Chief Secretary,
 Government of Gujarat
 General Administration Deptt.,
 Sachivalaya, Gandhinagar.
2. Secretary,
 Government of India,
 Department of Personnel &
 Administrative Reforms
 Ministry of Personnel, Public
 Grievances & Pension, Lodi Road,
 New Delhi.

Respondents.

Advocate Shri Akil Kureshi
 Shri D.N. Patel

JUDGEMENT

IN

O.A. 333 of 1991.

Date : 16-2-1993.

Per Hon'ble Shri N.V. Krishnan Vice Chairman.

The applicant is an officer of the Indian
 Administrative Service of the Gujarat cadre, presently working as

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Principal Secretary to the Government of Gujarat. The application was filed on 5-9-1991 and it indicates that the grievance was against the imputation against the applicant in the reply filed by Shri D.M. Dodia, Under Secretary to the Government of Gujarat, General Administration Department on behalf of the first respondent in O.A. No.95/89, filed by the applicant. A copy of that reply is filed by the applicant but not indexed. It is at pages 21 to 28 of the Paper Book.

In para 9 of that reply, the first respondent therein has stated how the adverse remarks of 1965-66 came to be recorded and how they are *justified/ corroborated* by the adverse reports given to the applicant in the later year 1966-67, 1970-71, 1971-72, 8-7-1972 to 2-7-1973, 6-3-1973 to 19-5-1975. A reference was also made to an observation made by the Deputy Director of the National Academy Mussoore, where the applicant was trained as a probationer on his first appointment to the I.A.S. in 1960, which is as follows:

" He should make a much better officer if he gives up his serious attitude towards life."

2. In the application originally filed by the applicant he prayed for multiple reliefs. He was, therefore directed on 20-1-1992 to amend the application and to choose either relief (i) or (ii) or (iii) or (iv and v) or (vi) only to the extent it concerns (iv), as mentioned in para 9. He has chosen relief (i) only. As amended, this reads as follows :

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" 9. Relief(s) sought :

- (1). Expunction of adverse remarks' referred to in the Under Secretary, General Administration Department's letter bearing No. CAT-1289-OA-95/89 G Cell, dated 13-12-1990.
- (a) The remarks for 1965-66. These may be seen in para 9, page of the Written Reply by Shri Dodia, at Annex. I.
- (b) Remarks' for the year 1966-67 on page 5 ibid.
- (c) 'Remarks' for the year 1970-71 on page 5 ibid.
- (d) Remarks for the year 1971-72 on page 5 ibid.
- (e) 'Remarks' for the period from 8-7-1972 to 2-7-1973 ibid.
- (f) 'Remarks' for the period from 6-3-1975 to 19-9-1975 on page 6 ibid.
- (g) Remarks for the year 1960-61 on page 6 ibid. ↗

3. The first respondent i.e. Government of Gujarat, has filed a reply in which an objection has been taken that the application is not filed within ~~the time~~ ~~xxxxx~~ and is highly time barred. On merits, as the adverse remarks a have been considered long back and have become final, ~~it~~ ~~is contended that no relief is due~~

4. No reply has been filed by the Government of India to this Application.

5. On the final date of hearing, we heard the applicant and the learned Counsel for the Government of India. None was present for the State Government.

6. At the outset, it was difficult for us to understand how the reliefs sought under item no 1 (c to g) are maintainable. We therefore directed the applicant to file a statement relatable to the adverse remarks in paras c to g of para 9 (1). Accordingly, the applicant filed such statement on 10-2-1992. The following points emerge from that Statement.

(1) It is alleged that for the period 16-5-1960 to 31-3-1961 the adverse remarks were communicated on 21-12-1990 and the representation was made on 24-12-1990, which is still pending.

(ii) Memorials relating to adverse remarks of 1965-66 and 1966-67 were disposed of by Government on 14-7-187 O.A. 95/89 filed in this connection was ~~disposed~~ disposed of.

(iii) In regard to 1970-71, 1971-72 and 8-7-1972 to 2-7-1973 the representations of the applicant were disposed of by orders dated 14-11-1982, 16-5-1974 and 3-4-1975 respectively and these have become final.

(iv) For the period 6-3-1975 to 9-9-1975, the representation was disposed of finally in appeal by order dated 2-7-1989.

7. We wanted the applicant to file only a tabular statement. Instead the tabular statement is annexed to a lengthy covering written statement which contains his arguments as to how

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this application is maintainable which is an answer to the doubts we had expressed in this behalf at the hearing of the case. We shall refer to this **covering** statement later on.

8. It can be seen from the particulars given in para 6 (ii), that the O.A. 95/89 relating to adverse remarks for the year 1965-66 and 66-67 has already been disposed of in the applicants favour. Therefore, on 20-1-1992 the applicant ~~conceded~~ ^{does not} that he ~~also~~ press the grievance mentioned in this connection para 9 (1) (a) and (b) of the application.

9. Again, from para 6 (ii) and (iv) above, it is clear that the representation/memorial of the applicant against the adverse remarks in the CR for 1970-71, 71-72 8-7-1972 to 2-7-1973 and 6-3-1975 to 9-9-1985 were finally disposed by as many orders, the last ~~xx~~ of which is dated 2-7-1979. They have become final and therefore the applicant cannot question them now. We pointed out to the applicant that, not only is the present O.A. against the adverse remarks which have thus became final barred by limitation, but it is not maintainable before this Tribunal considering the provisions of section 21 (2) of the Administrative Tribunals Act, 1985.

10. In reply to our query as to why the applicant allowed the final orders of the State/Central Government to become final, the applicant stated that he was too busy in his official work to pursue these remedies further. He even goes to the extent of saying that had he diverted his attention to such matters, he might have been charged with lacking in devotion to duty and thus contravening

Rule 3 (ii) of the A.I.S (Conduct) Rules 1968. He says so in his ^{covering} statement as follows:

"The above considerations also apply to the remarks referred to in para 9 sub par 4 on page 5 of Shri Godia's statement. The representation against the remark was made on 15th October, 1974 and disposed of on 3rd April, 1975. I was working as Food Controller at that time. The responsibilities for meeting the needs of the vulnerable sections of the society, maintaining continued supply of essential commodities were entrusted to me. Taking time away from these responsibilities for making representation should have been in violation of rule 3(1) of All India Service (Conduct) rules 1968".

Even if this reason is given in a properly filed Miscellaneous application for condonation of delay we cannot accept it. If this argument is taken to its logical conclusion and the applicant was conscientious and dedicated in his work he should neither have filed the original representation nor the original application nor this statement, for in doing so, he did take away time from discharging his official duties.

11. In the light of such submissions we had to take great pains to explain to the applicant that the reliefs sought in respect of these remarks are not only barred by limitation but are beyond our jurisdiction. They delay cannot be condoned even if we want to, because of the provisions of section 21 (2) of the Administrative Tribunals

Act, 1985. This reads as follows:

Limitation:

(2) Notwithstanding anything contained in sub-section (1) where-

- (a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates: and
- (b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a) or as the case may be clause (b) of sub-section(1) or within a period of six months from the said date which ever period expires later ".

This section prescribes the period within which an application may be filed in respect of a grievance which arose within three years prior to the creation of the Tribunal. *Per contra*, this provision means that if the grievance is more than three years prior to the creation of this Tribunal, it cannot be agitated

Tripartite

before this unless it had been kept alive. It is precisely for this reason that the O.A. 95/89 filed by the applicant relating to the adverse remarks of the year 1965-66 and 1966-67 was admitted, even though the adverse remarks relates to ^a much earlier period, because the ultimate decision on the memorial was rendered by the competent authority only on 14-9-1987, from which date the cause of action, ~~arose~~. The final orders relating to the adverse remarks specified in para 6(iii) and para 6(iv) supra were issued more than three years prior to the setting up of the Tribunal. Those orders have become final and they are outside our jurisdiction. Hence the applicant is not entitled to any relief.

12. What is left for our consideration is the relief claimed relating to adverse remarks for the year 1960-61. It is clear from the narration given above that the Government of India had not communicated any such adverse remarks to the applicant on the conclusion of his probation at Mussorie in 1961. Shri D.M. Dodhia, the Under Secretary to the Government of Gujarat had, in the reply affidavit filed in O.A. 95/89 referred to the remarks given by the Deputy Director of National Academy in para 9 of that reply, with the intention of suggesting that the adverse remarks given for the year 1965-66 are justified as adverse remarks were given even at the end of the probation period in 1961. The applicant has contended in his ~~answering~~ ^{cover} statement that the ~~misuse~~ ^{use} of these remarks for this purpose is an order against which an application under section 19 of the Act lies. The applicant has also contended that even on merits, these remarks are not correct.

13. It is thus clear that the applicant has treated

the reply of Shri D.M. Dodiha as a document communicating adverse remarks to him. We cannot agree with this contention. This will not amount to a communication of adverse remarks as contemplated in rule 8 of the All India Service (Confidential Roll) Rules 1970 which makes it clear that the adverse remarks are to be communicated by the Government or other authority as may be specified by the Government. In the context of the probationary period, 'Government' would mean the Central Government under whom the applicant was serving, while on probation. As no adverse remarks have been communicated by the Central Government, the question of the applicant being aggrieved in respect of a service matter does not arise.

14. For the foregoing reasons, we find that there is no merit in this application and hence it is only to be dismissed and we do so. The applicant states in amended para 6 (D) that he had sent on 24-12-1990 a representation against the adverse remarks for the year 1960-61 to the Government of India, though the State Government, which has neither been acknowledged nor disposed of. We make it clear that our order in this application shall not stand in the way of the respondents from considering any representation / memorial made by the applicant and dispose of it in accordance with law.

15. No order as to costs.

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(R.C. Bhatt)
Member (J)

N.V.Krishnan
(N.V.Krishnan)
Vice Chairman.