

Adverse
remarks

6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No./30/1991

~~J.A. No.~~

DATE OF DECISION 23/06/92

Shri Chiranjilal Petitioner

Mr. D. M. Thakkar Advocate for the Petitioner(s)

Versus

Union of India & others. Respondent

Mr. B. R. Kyada Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R. C. Bhatt

:

Judicial Member

The Hon'ble Mr.

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 Chiranjilal,
L/11, Opp. Railway Station,
Mehsana.

...Applicant.

(Advocate: Mr. D.M. Thakkar)

Versus

1. Union of India,
(Notice to be served through
the General Manager,
Western Railway,
Churchgate,
Bombay.
2. The Divisional Railway Manager(E),
Western Railway,
Kothi Compound,
Rajkot.
3. The Chief Mech. Engr.,
Western Railway,
Churchgate,
Bombay.

...Respondents.

(Advocate : Mr. B.R. Kyada)

J U D G M E N T

O.A. NO. 30 OF 1991.

Date : 23.06.1992.

Per : Hon'ble Mr. R.C. Bhatt : Judicial Member

1. This application under Section-19 of the Administrative Tribunals Act, 1985, has been filed by the applicant serving in the Railway, seeking the prayer that the impugned order dated 23rd July, 1990, Annexure-A/5, passed by the then DRM, Rajkot, be quashed and set aside as the same is arbitrary, illegal and not being in conformity with the Judgment of this Tribunal in O.A./725/88, dated 14th December, 1989. The respondents have filed reply contending that the speaking order was passed by the then Divisional Railway Manager and it was not a malafide order, but the same was passed as per the directions

given by the Tribunal and hence it cannot be said that the same is arbitrary, illegal and unsustainable.

2. The learned advocate Mr.D.M.Thakkar, for the applicant submitted that the applicant is serving as Senior Fuel Inspector under the respondent no.2, the Divisional Railway Manager (E), Rajkot. It is alleged in the application that the applicant was communicated adverse remarks for the period ending on 31st March, 1985, vide letter dated 22nd July, 1985. The applicant has produced at Annexure-A/1, the adverse remarks communicated to the applicant in the order ending 31st March, 1985. The applicant had filed a appeal against the adverse remarks ending on 31st March, 1985, but the same was not disposed of by the respondent's authorities. The applicant has averred in the application that the aforesaid adverse remarks Annexure-A/1, were written by the superior officer Mr.Phoolsingh, who had some personal grudge, bias and vendetta, ~~talk~~ against the applicant. The applicant had made a representation Annexure-A/2, dated 14th September, 1986, against the adverse remarks, dated 5th Sept. 1986, but the said representations were rejected by the competent authority without recording any reasons for the same. The copy of which is produced at Annexure-A/^{dated 3/10/86}₃/The applicant thereafter filed O.A./725/88, which was decided by this Tribunal on 14th December, 1989, in ^{which} this Tribunal gave the following directions to the respondents.

"In the facts of this case therefore, it is appropriate and adequate to decide the case to be remitted to the competent authority disposing of the representation for recording a speaking order with reference to the representation dated 5.9.1986. ~~AM~~ Such a speaking order should show how the adverse remarks are allowed to stand in respect of competence regarding DAR enquiry or sifting of evidence or on what basis unfitness of promotion or poor capacity are concluded. Such a speaking order may give details to the necessary extent to show that the representation has been examined with reference to the facts brought on the file regarding the performance of the petitioner in the relevant year for which the adverse remarks have been communicated. Such a speaking order be passed within 4 months from the date of this order. Until such a speaking order is passed it is further directed that the relevant promotion committee should not consider such remarks to prejudice the petitioner regarding his promotion."

The learned advocate for the applicant submitted that the impugned order Annexure-A/5, dated 23rd July, 1990, is not at all according to the specific directions given by this Tribunal, and hence the same be quashed and set aside.

3. The learned advocate for the applicant submitted that the respondents had to pass a speaking order with reference to his representation dated 14th September, 1986, which by mistake is shown as dated 5th September, 1986, in the ~~summing up~~ paragraphs -8, of the judgment. He submitted that the Tribunal in para-8, of the Judgment has specifically directed the respondents to dispose of the representation

by a speaking order which should show how the adverse remarks were allowed to stand in respect of competence with regard to DAR enquiry or sifting of evidence or on what basis unfitness of promotion or poor capacity are concluded. He submitted that the further directions were, such a speaking order may give necessary details extended to show that the representation had been amended with reference to the facts brought on the file regarding the ----- performance of the petitioners in the relevant year for which the adverse remarks had been communicated. Learned advocate for the applicant submitted that the respondents without following the said directions of the Tribunal passed the order, that the DRM had gone through the case and found that the applicant was not pulling on well with --- his colleagues and seniors and is unable to extract work out of his juniors, and he therefore, agreed that the then Sr. DME, that the applicant does not possess Officer like qualities and he is not fit for Class II service. Learned advocate for the applicant submitted that this speaking order shows that the same was passed without application of mind in a mechanical manner.

4. Learned advocate for the respondents submitted that as per the directions of the Tribunal, in the earlier O.A., the case was put before the DRM Shri Kale, who has passed the speaking order which is neither illegal nor arbitrary.

5. I have heard the learned advocates and I agree with the submissions of learned advocate for the applicant that the respondents' impugned order Annexure - A/5, does not show that he has decided the representations of the applicant dated 14th December, 1986, (which by mistake is shown in the order in O.A./725/88, as dated 5th Sept. 1986). It also does not show as to how the adverse remarks of the relevant order ending with 31st March, 1985, Annexure-A/1, were allowed to stand in respect of competence, regarding DAR enquiry, or sifting of evidence nor does it show on what basis unfitness of promotion for poor capacity were concluded. The reference in the order that having gone through the case it was found that the applicant was not pulling ~~an~~ well with his colleagues and his seniors and he is unable to extract out of his work from his juniors, is not compliance of the directions of the Tribunal with regard to the adverse remarks, in respect of competence regarding DAR enquiry or sifting of evidence. The competent officer ought to have in the speaking order shown the compliance of the representation made by the applicant and the manner in which it was disposed of by him. The speaking order passed by the competent authority, thus suffers from serious infirmity, as observed above. Hence, again ~~xx~~ the case is remitted to the competent authority to dispose of the representation of the applicant dated 14th Sept. 1986, complying the directions of the Tribunal in O.A./725/88.
6. Hence the following order :

12

ORDER

"The application is partly allowed. The impugned order Annexure-A/5, is quashed and set aside and the competent authority is directed to decide the representation of the applicant dated 14th September, 1986, by a speaking order, according to the directions given in para-8, of O.A./725/88, decided on 14th December, 1989, within three months from the date of receipt of this order. The application is disposed of accordingly. No order as to costs."



(R.C.Bhatt)
Judicial Member

AIT