

THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 389 of 1992

T.A. No.

DATE OF DECISION 27.10.94

Shri Tusharchandra Maganlal Petitioner
Kapadiya

Party in person Advocate for the Petitioner(s)

Versus

Union of India and ors. Respondent

Shri Akil Kureshi Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.B. Patel, Vice Chairman

The Hon'ble Mr. K. Ramamoorthy, Administrative Member

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 ?

No

Shri Tusharchandra Maganlal Kapadiya
234, Sector No.4
Nirnaynagar
Ahmedabad 382 481

.. Applicant

(Party in person)

Versus

1. Union of India
through :
The Director General
Government of India
Ministry of Communications
Department of Telecommunication
Dak Bhavan, Parliament street,
New Delhi-1.

2. The Chief General Manager,
Gujarat Telecom Circle
Khanpur, Ahmedabad.

3. The District Manager,
Telecom
Dist. Surat

.. Respondents

(Advocate : Mr.Akil Kureshi)

J+U D G M E N T

IN

O.A.389 OF 1992

Dt. 27.10.94

Per : Hon'ble Mr.N.B.Patel

: Vice Chairman

The applicant seeks expunction of the adverse remarks entered in his confidential sheet for the year 1983-84 (Annexure - A / Page 22). At the relevant time, the applicant was working as Assistant Engineer (OP), at Surat in the Gujarat Telecom Circle. The adverse remarks against which the applicant has filed this OA were made by the Reporting Officer, namely, the Divisional Engineer(P), Surat, one Shri Avdheshkumar who was the immediate

superior of the applicant. The remarks were accepted by the Reviewing Authority, namely, the Chief General Manager, Gujarat Circle and the applicant's representation against remarks was rejected. The applicant then submitted a memorial against the rejection of his representation and that memorial has also come to be rejected by the appropriate authority by order dated 22.4.1992 which was communicated to the applicant on 2.6.1992. The remarks were accepted and the representation of the applicant was rejected on the ground that all the adverse remarks were based on objective assessment of the performance of the applicant during the relevant period. The present OA is filed on 26.8.92.

2. The contention of the applicant in the OA appears to be that the adverse remarks were passed by the Divisional Engineer (P), Shri Avdheshkumar as the said Avdheshkumar was antagonised against him and was ~~thereafter~~ vindictive and unduly harsh towards him. In this connection, the applicant has cited some instances in his OA to show that Shri Avdheshkumar was antagonistically disposed towards him. However, the OA itself shows that the applicant has charged Avdheshkumar with antagonism and vindictiveness towards him, only because the said Shri Avdheshkumar had issued several memos to the applicant during the relevant period showing his displeasure about the performance of the applicant and his habit of proceeding on leave frequently. In the reply which is filed by the

respondents, the allegation that Avdheshkumar was actuated by malice towards the applicant are stoutly denied. Having gone through the entire record of the case, we have no hesitation in holding that the allegations of malice and malafides are totally devoid of any substance. We may mention that, at the stage of arguments, the applicant also ~~considered~~^{conceded} that the adverse remarks against him were not the product of any personal malice towards him on the part of Avdheshkumar. The only contention which was pressed by the applicant, at the time when we heard him, was that the adverse remarks against him were absolutely unfounded.

3. In the reply, the respondents have come up with the case that the representation of the applicant against the adverse remarks was rightly rejected as all the adverse remarks were made on an objective assessment of the performance and behaviour of the applicant during the relevant period and they were all well-founded. It is also pleaded in the reply that the Divisional Engineer (P) had, during the relevant period, issued several memos to the applicant in connection with his work and behaviour, so that the applicant might show improvements.

4. As already stated, the only contention pressed by the applicant, at the time of the hearing of the OA, was that the adverse remarks against him were unfounded.

It would, therefore, be convenient to deal with the adverse remarks passed against the applicant under different heads and to consider whether each of the same was founded on some material or was unfounded.

5. The first adverse remark is made against column No. 1 (b) of Part-III of the confidential report. This column deals with "the result achieved and the quality of performance and application of knowledge, delegated authority and conceptual and professional skills on the job". The remark is that the quality of the applicant's performance was poor and the application of knowledge and exercise of delegated authority on the part of the applicant was unsatisfactory. It is also noted against this column that the applicant's conceptual and professional skills were poor. The applicant has said that he had a long experience of the work done by him and there was no basis for making this adverse remark. However, there are two letters dated 6.8.83 and 11.8.'83 (Annexure R1 and R2) showing that the remarks against this column were not unfounded. The letter dated 6.8.'83 is especially pertinent in this connection as this applicant was informed of several defaults committed by him in the matter of performance of his duty, such as that proper records were not ~~been~~ maintained in his section; instructions from higher authority were not suitably carried out; the files which were marked to DE (P) were disposed of by the applicant at his own level; MIS reports of the applicant's section were regularly received late and

the applicant was not making any efforts to check the correctness of the data supplied and the calculations made. It was also pointed out by this letter dated 6.8.83 that, though the applicant was supposed to carry out inspections, he had not carried-out any inspections and he had also not complied properly with the inspection reports of the Divisional Engineer and District Manager. The letter also points out that the applicant was not carrying-out the orders of the DE. By the letter dated 11.8.83, the applicant was called upon to explain his absence from duty on 6.8.83 without any prior intimation. In this very letter, it is also observed that the applicant was not conveying to field units, regularly, the remarks of the DE on fault figures and trunk efficiency figures. The applicant was asked to show improvement in this regard and was cautioned that ~~the~~ lapses in this matters will be viewed seriously. It is not possible in the face of this material to say that the adverse remarks about the quality of the applicant's performance and the actual application on his part of his knowledge and exercise of delegated authority by him was unfounded.

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6. The next adverse remark against the relevant column is that the applicant was home-sick and consequently was lacking in commitment and was found not devoted to his duty. The applicant himself has stated in his OA and also before us that, during the

relevant period from 1.4.83 to 31.3.84, he had frequently proceeded on leave for a total period of 4 months. The applicant stated that while he was transferred to Surat, his family was residing at Ahmedabad and, therefore, he had frequently to proceed on leave. It appears that it was because of the frequent absence of the applicant from duty that he could not pay proper attention to his work and could not exercise necessary supervision over the work of his subordinates. The mere fact that the applicant's family was residing at Ahmedabad cannot justify the applicant, who was holding a responsible supervisory post, to proceed frequently on leave in such a way as to adversely affect his work. In this connection also, the applicant was informed several times as evidenced by the communications dated 14.11.83 and 31.1.84 [Annexure R2(4) and R2(5)]. As already stated, the applicant himself has stated that he could not attend to his work single-mindedly as his family was residing at Ahmedabad and he was forced to leave his headquarters quite often because of family circumstances. Whatever may ~~have~~^{be} the reason why the applicant frequently left ~~his~~ headquarters, the fact remains that he could not devote single-minded attention to his duty. This being the position, we are not inclined to accept the contention that the remarks against relevant columns on these points were unfounded.


7. The third adverse remark against the applicant is that he had very poor relations with his superiors, colleagues and subordinates. In this connection also, it requires to be noted that the applicant himself has not controverted the fact that there was delay in sending periodical reports to the higher authority and that there was lack of supervision on the part of the applicant. The applicant stated before us that certain lapses ~~are~~ occurred in the working of his branch during the relevant period, as the members of the staff subordinated ~~to~~ him were rather juniors and inexperienced. However, if the Reporting Officer felt that this occurred because of not-too-cordial relations between the applicant and his subordinates, it cannot be said that the Reporting Officer was far off the mark. So far as the applicant's behaviour towards his immediate superior i.e. his Reporting Officer is concerned, the communication dated 6.1.1984 [Annexure - R2(7)] is sufficient to indicate that the applicant's behaviour towards his immediate superior Officer was bordering almost on insolency. One instance quoted in this ~~letter~~ ^{letter} is about an occasion when the applicant had told the DE that the latter should not talk nonsense and need not bluff him. It is pointed out in this letter that when the applicant thus misbehaved with the DE, Shri Avdheshkumar, some other officers were also present in the chamber of Shri Avdheshkumar. Another incident ~~is~~ mentioned in this letter is about an occasion on 5.1.84 when the DE had called the applicant for some discussion with him whereupon the applicant had sent back the Peon saying that he

did not want to go to the room of the DE and that he insisted upon every instructions to him being issued in writing. It is impossible in the face of this material to say that the adverse remark against the applicant about his relationship with his superiors, colleagues and subordinates was unfounded.


8. The next adverse remark is to the effect that the applicant was lacking in qualities of intellectual honesty, ~~x~~ creativity and innovativeness. In this connection, it is material to note that, while the respondents have placed on record sufficient material to show that adverse remarks against the other columns discussed above were well-founded, ^{they have} ~~having~~ not been able to bring to our notice any material which would justify the remark that applicant was lacking in intellectual honesty, creativity and innovativeness. The remark against this column is indeed of far-reaching consequence and should not have been made without any foundation. It is not shown as to in what way the applicant had displayed intellectual dishonesty or in what way he was lacking in creativity or innovativeness. We, therefore, find that this particular adverse remark against column No.2(iv) of Part-II of the report is totally unsustainable and deserves to be expunged.

8. In the result therefore, we allow the OA partly by ordering expunction of the adverse remark

entered against column No.2(v) under the head of "intellectual honesty, creativity and innovativeness" which adverse remarks are to the effect "qualities lacking". The OA is dismissed in so far as the prayer for expunction of the remaining adverse remarks are concerned. No order as to costs.



(K. Ramamoorthy)
Member (A)



(N.B. Patel)
Vice Chairman

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