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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.364 of 1987.

Date of decision : April 29, 1988.

Shri Anirudha Basu,
son of Shri Asutosh Basu,
SSA, Interim Test Range,
11 O.T.Road, Balasore.

...

Applicant.

Versus

1. The Director, T.B.R.L., Chandigarh.
Sector-30, Chandigarh-166320.
2. The Scientific Adviser to R.M.,
New Delhi-110011.
3. The Director, Interim Test Range,
Balasore.
4. Union of India through Director,
T.B.R.L., Chandigarh,
Sector-30, Chandigarh-166320.

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Respondents.

For the applicant ... Mr. G.N. Misra, Advocate.

For the respondents ... Mr. A.B. Mishra, Senior Standing
Counsel (Central)

C O R A M :

THE HON'BLE SHRI B.R.PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR.K.P.ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? ~~No~~ No
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

JUDGMENT

J P ACHARYA, MEMBER (J)

In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to order expunction of the adverse remarks as contained in Annexure-1.

2. Shortly stated, the case of the applicant is that he is a Senior Scientific clerk in the Office of Director, Interim Test Range at Balasore. His higher authority passed an adverse remark in his annual confidential report for the year 1984-85 which is sought to be expunged.

3. In their counter, the respondents maintained that the assessment of the higher authority in regard to the applicant has been correctly assessed and hence reflected in the annual confidential reports. It is further maintained by the respondents that the adverse remarks should not be expunged.

4. We have heard Mr. G. N. Misra, learned counsel for the applicant and learned Senior Standing Counsel (Central) at some length. It was submitted with emphasis by Mr. G. N. Misra that the assessment of the competent authority in regard to the performance of the applicant is wholly biased and uncalled for. It was contended on behalf of the applicant that the applicant is sincere, loyal and faithful worker and according to Rules, the competent authority without giving him advance intimation in writing regarding the impression carried by him of the work rendered by his subordinates, it was not open to him to make an adverse entry in the Annual confidential rolls. It was also further submitted that this adverse remark has been

given with the only intention to allow the subordinates of the applicant to supersede him and gain promotional posts. This argument^{of} ~~was~~ ^{was} refuted by learned Senior Standing Counsel (Central). We have given our anxious consideration to the arguments advanced at the Bar. No rules were placed before us to indicate that before recording an adverse remark in the confidential character rolls, it is incumbent upon the competent authority to communicate the impressions one carries about his subordinate so that there can be reformation on the part of the subordinate. In absence of any such Rules being placed before us we are unable to accept the aforesaid argument of learned counsel for the applicant. The applicant may think himself to be loyal, faithful and sincere in his work but that is not the end of all. His work and performance has to be assessed by his higher authorities and in the absence of any positive evidence before us that such remark was passed out of motive, bias or malafide we are nobody to assess the performance of a particular employee and order expunction of such remarks. So far as the malafide and bias are concerned, ^{an} argument ~~was~~ advanced before us is that this adverse remark has been recorded only with malafide intention to allow the subordinates to supersede the applicant. This may be a mere apprehension or conjecture but in the absence of any positive evidence placed before us, which the applicant has failed to do, we are not in a position to come to a finding that the adverse remark made in the annual confidential rolls resulted from any malafide or bias.

5. Learned counsel for the applicant relied upon a judgment of the Hon'ble Supreme Court reported in AIR 1987 SC 948 (*Brij Mohan Singh Chopra v. State of Punjab*) and contended that Courts have a right to strike down or expunge the adverse entries made against an official which has not been communicated to him or opportunity has not been given to him to make any representation. In the case of *Brij Mohan Singh Chopra* (Supra) it would be found that *Brij Mohan* had been compulsorily retired on the basis of an adverse entry made in the Confidential character Roll which was not communicated to him and no opportunity was given to him to make a representation. Hence, the order of compulsory retirement passed by the appropriate authority was struck down. The principles laid down in the aforesaid case do not apply to the facts of the present case because the adverse entries made against the petitioner has been communicated to him which is sought to be expunged. Therefore, the principles laid down in the case of *Brij Mohan Singh Chopra* have no application to the facts of the present case.

6. In the circumstances stated above, we find no merit in this application which stands dismissed leaving the parties to bear their own costs.

B.R.PATEL, VICE-CHAIRMAN,

g agree.



Revised 29.4.88
Member (Judicial)

Revised 29.4.88
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
April 29, 1988/S.Sarangi.