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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.381 of 1987.

Date of decision : December 16, 1988.

Shri Bhagirathi Behera, I.F.S.,
At present working as Divisional Forest Officer,
Ghumsur North Division, At/P.O.Bhanjanagar,
District- Ganjam. ...

Applicant.

Versus

1. Union of India, represented through it's Secretary, Home Department, New Delhi.
2. State of Orissa, represented through Special Secretary, General Administration (S.E.)Department, At/P.O.Bhubaneswar, District-Puri.
3. The Chief Conservator of Forests, Orissa, Cuttack. At Old Secretariat, At/P.O./Town/Dist.Cuttack.

...

Respondents.

For the applicant ... M/s.M.R.Panda,&
G.R.Nai, Advocates.

For the Respondent No.1 ... Mr.A.B.Mishra, Sr.Standing Counsel
(Central)
Mr.Tahali Dalai, Addl. Standing Counsel
(Central)

For the Respondent 2&3... Mr. K.C.Mohanty, Government Advocate
(State)

C O R A M :

" 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 ? Yes.
3. Whether His Lordship wishes to see the fair copy of the judgment ? Yes.

JUDGMENT

K.P.ACHARYA, MEMBER (J)

In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to quash the impugned orders contained in Annexures-1 and 3 holding them to be bad in law and unconstitutional and it is further prayed that Respondent No.2 should be directed to consider the representation filed by the applicant in its proper perspective.

2. Shortly stated, the case of the applicant is that at present he is working as Divisional Forest Officer, Ghumsur North Division posted at Bhanjanagar. The work of the applicant for the year 1984-85 was reviewed and during that period he was functioning as Divisional Forest Officer, Nowrangpur. Certain adverse entries were made in his Confidential Character Roll which were communicated to the applicant by the Special Secretary to Government of Orissa, General Administration Department under his D.O.letter No.9489 dated 19.9.1986. On receipt of such a communication the applicant made a representation to the Government for expunction of the adverse remarks made in the Confidential Character Roll for the year 1984-85 vide his D.O.letter No.298 dated 30.1.1987 contained in Annexure-2.

The representation was disposed of in the appropriate level and was rejected as time barred as it appears from a communication addressed to the applicant by the Special Secretary in his D.O.letter No.8829 dated 21.9.1987 contained in Annexure-3. Hence, this application with the aforesaid prayer.

3. Neither the applicant appeared today nor his counsel. The statute authorises this Bench to dispose of a case on perusal of the records and therefore, I have perused the records and I have heard Mr.K.C.Mohanty, learned Government Advocate

for the State Government and Mr. Tahali Dalai, learned Additional Standing Counsel (Central) at some length. I have given my careful consideration to the matters on record and I have carefully considered the arguments advanced by the counsel appearing for the State Government and that of the Central Government. On a perusal of the averments in the Original Application under section 19 of the Act and the averments in the counter filed on behalf of the State Government, I find that it is admitted that the applicant was working as Divisional Forest Officer, Nowrangpur and his performance was assessed for the year 1984-85 and certain adverse entries were made in his Confidential Character Roll which were communicated to the applicant by the Special Secretary to Government of Orissa, General Administration Department (Respondent No. 2) in his D.O. letter referred to above contained in Annexure-1. The prayer of the applicant is two-fold; namely that the adverse entry be quashed and the State Government be directed to consider the representation of the applicant for expunction of remarks in its proper perspective.

4. After hearing learned counsel for the Central Government and that of the State Government, I am of the view the performance of a particular Officer can be suitably adjudged by his superior authority, competent to do so. Judicial review of the same is neither permissible nor possible and the judicial forum could only lay its hands for interference if the plea of malafide, bias etc. "if pleaded" is proved to the hilt. Mala fide and bias being serious allegations, it requires to be proved to the hilt. This position of law has been well settled in a plethora of judicial pronouncements and no authority need be cited. However, I would

rely upon a judgment of the Hon'ble Supreme Court reported in A.I.R.1974 SC 555 (E.P.Royappa v. State of Tamil Nadu and another). At paragraph 92 of the said judgment Their Lordships were pleased to observe as follows :

" Secondly, we must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often very easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. Here the petitioner, who was himself once the Chief Secretary has flung a series of charges of oblique conduct against the Chief Minister. That it is in itself a rather extraordinary and unusual occurrence and if these charges are true, they are bound to shake the confidence of the people in the political custodians of power in the State, and therefore the anxiety of the Court should be all the greater to insist on a high degree of proof. In this context it may be noted that top administrators are often required to do acts which affect others adversely but which are necessary for the execution of their duties. These acts may lend themselves to misconstruction and suspicion as to the bona fides of their author when the full facts and surrounding circumstances are not known. The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party particularly when the imputations are grave and they are made against the holder of an office which has high responsibility in the administration. Such is the judicial perspective in valuating charges of unworthy conduct against ministers and other high authorities, not because of any special status which they are supposed to enjoy, nor because they are highly placed in social life or administrative set up these considerations are wholly irrelevant in judicial approach but because otherwise, functioning effectively would become difficult in a democracy. It is from this stand-point we must assess the merit of the allegations of malafides made by the petitioner against the second respondent. "

In the present case, at paragraph 6.14 the allegation of bias and malafide has been pleaded. The averments in this regard are as follows :

" That the entries which have been made are the tissues of bias, prejudice unknown animus and based on, incorrect and 'non-existent material'. "

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From the aforesaid averment it is crystal clear that there has been no specific allegation of bias, prejudice against any specific officer far less to speak of anything pleaded against the reporting officer. The above nature of averments clearly indicate that the allegations are not only vague but they are of very general nature. Specific allegations giving clear instances not having been pleaded in the averments, it no longer remains open to the person aggrieved to plead specifically against any officer and therefore the question of proving specific allegation to the hilt does not arise. In the absence of any specific allegation against specific officer, pleaded and hence not having been proved the Court cannot act on general and vague allegations. Therefore, I find no merit in this case of the applicant pleading bias or mala fide in order to urge before the Court to quash the adverse entries on the basis of malafide or bias.

5. The next point urged in the application under section 19 of the Administrative Tribunals Act, 1985, by the applicant is that before the adverse entry was made in his Confidential Character Roll, an opportunity should have been given to him to have his say in the matter and thereafter the adverse entry should have been made. This point taken by the applicant, in my opinion, is foreign to the law. As far as I know the reporting officer, if makes an adverse entry in the Confidential Character Roll it has to be communicated to the concerned officer to have his say in the matter and thereafter, the competent authority would consider the representation and pass orders according to law and facts and circumstances of the case. Such a procedure has been adhered to in the present case and therefore, I cannot find any illegality to have been committed by the Special Secretary (Respondent No.2).

6. A grievance has been sought to be made out by the applicant that his representation has not been considered in its proper perspective and therefore, directions should be given to the Government of Orissa, (Respondent No.2) to consider the representation of the applicant in its proper perspective. From Annexure-3 it is found that the representation has been rejected on the ground that it is time-barred. It eventually means that the representation has not been considered on its merits. Rule 9 of the All India Services (Confidential Rolls) Rules, 1970 runs thus :

" Representation against adverse remarks .-

A member of the Service may represent to the Government against the remark communicated to him under rule 8 within three months of the date of its receipt by him ;

Provided that the Government may entertain a representation within one year of the expiry of the said period if it is satisfied that the member of the service had sufficient cause for not submitting the representation in time. "

I have already indicated that Annexure-1 (D.O. letter of the Special Secretary) is dated 19.9.1986 and Annexure-2 is dated 30.1.1987. According to the provisions contained in the aforesaid Rules, the representation should have been filed within three months from the date of receipt of the communication. Nothing appears from Annexure-2 as to the date on which Annexure-1 was received by the applicant. But the fact remains that the representation has not been filed in December, 1986 but it has been made on 30.1.1987. Delay of about a month has occurred. The Government might have considered the case of the applicant on merits if the applicant would have stated the reasons for which there was sufficient cause on his part not to have approached the Government within the stipulated period and then only the Government might have considered condonation of delay. The

applicant not having taken such steps there was no other alternative for the Government but to say that the representation was timebarred. Even in a judicial proceeding where section 5 of the Limitation Act could be attracted, if a petition is not filed by the party to condone the delay, the Court cannot suo motu come to the rescue of the party by condoning the delay. Such is the position so far as the present case is concerned. In the absence of any prayer made by the applicant to condone the delay, the Government had no other option but to reject the representation as time-barred. However, considering the seriousness of the allegation levelled against the applicant especially the allegation touching his integrity I think, the representation of the applicant should be considered by the Government and should be disposed of on merits according to law.

7. In conclusion, I would hold that there is no merit in this case so far as the prayer of the applicant to order expunction of the remarks by this Bench is concerned. This matter completely lies within the province of the Government. I would further direct that if the applicant is so advised and files a fresh representation indicating the cause for the delay occurring on his part in not filing the representation within a time and if the Government consider that sufficient cause has been made out by the applicant then it is for the Government to condone the delay and in case the Government condones the delay, the representation of the applicant be considered on merits and orders be passed according to law.

8. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.