

[illegible]

Date of decision: 8th. may, 1991

Vishnu Charan Das	Applicant
Versus		
Union of India and others	Respondents

For the applicant M/s. Jayanta Das,
P.K.Padhi,
K.P.Misra,
Advocates.

For the Respondents Mr. Ganeswar Rath
1 and 2 Addl.Standing
 Counsel (Central)

C O R A M:

THE HON'BLE MR. B.R.PATEL, VICE CHAIRMAN

A N D

THE HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be permitted to see the judgment? Yes.
2. To be referred to the reporters or not? *yes*
3. Whether Their Lordship's wish to see the fair copy of the judgment? Yes.

• • • •

J U D G M E N T
=====

B.R.PATEL, VICE CHAIRMAN: Briefly mentioned the facts are that the applicant while working as Divisional Accountant in Nimapara Irrigation Division in the district of Puri, Orissa earned some adverse remarks for the period from 1.4.1985 to 17.6.1986 which were duly communicated to him vide Annexure-A/9. The applicant represented against the adverse remarks vide Annexure-A/10. On receipt of the representation, Respondent 2 deputed an inspecting Officer to verify the correctness or otherwise of the adverse remarks. The inspecting officer submitted a special report where he recommended the expunction of the adverse remarks. On consideration of the special report of the inspecting officer and the representation of the applicant, Respondent No.2 passed an order vide his memo dated 10.8.1987 expunging seven adverse remarks out of eleven Vide Annexure-A/11. The applicant thereafter appealed in his petition dated 17.8.1987 to the Accountant General (A&E), Respondent No.1 (Annexure-A/12). Respondent No.1 rejected the appeal and this order was communicated by respondent No.2 vide Memo dated 2.12.1987 (Annexure-A/13). Being aggrieved with this order the

Pr

37

applicant has moved this Tribunal seeking the following reliefs:

- 1) Issue of orders setting aside Annexures-A/9, A/11, and A/13;
- 2) Expunge the adverse entries on the basis of the special report submitted by the inspecting officer;
- 3) to promote him to the post of Senior Grade Divisional Accountant from the date his immediate junior, Respondent No.4 and others were promoted; and
- 4) on promotion, to post him to a Senior Grade Division in Puri.

Since the applicant has retired in the meantime relief No.4 has become infructuous.

2. The Respondents have denied the allegations of malafide and bias against the Respondents. They have also denied the allegation of the applicant about nonapplication of mind on the part of the respondents no.2 and 1. In ~~para~~ paragraph-16 of their counter they have stated that "the very fact that the respondent No.2 expunged some of the adverse remarks/entries in the Confidential Character Roll of the applicant shows the openness of the mind with which respondent No.2 dealt with the case". They have further stated in paragraph-18 of their counter that "the Appellate Authority sought several clarifications from Respondent No.2 regarding the points raised by the applicant in his appeal and only after satisfying himself on the various points, the Appellate Authority gave his final decision".

[Signature]

38

3. We have heard Mr. Jayanta Das, the learned Counsel for the applicant and Mr. Ganeswar Rath the Learned Additional Standing Counsel (Central) for the Respondents and perused the relevant papers. Mr. Das contended that the order passed by Respondent No.2 at Annexure-A/11 expunging some adverse remarks and retaining some other adverse remarks is not a speaking order as no reason has been given by respondent No.2 in passing the order. Annexure-A/11, therefore, does not show that respondent No.2 had, in fact, applied his mind to the various adverse entries before he passed the order. In this connection he drew our attention to the judgment of the Delhi Bench of the Central Administrative Tribunal in the case of Dr. Hari Dev Goyal Vs. Union of India and others reported in ATR 1988 (1) C.A.T 145 and the judgment of the Ernakulam Bench of the Central Administrative Tribunal in the case of K.Radhakrishna Menon Vs. Collector of Central Excise reported in (1989) 10 Administrative Tribunals Cases 203. These are two identical judgments passed by Hon'ble Mr. S.P.Mukerji when he was administrative Member of Delhi Bench and later as Vice-Chairman of the Ernakulam Bench of the Central Administrative Tribunal. Adverse remarks in the Annual Confidential Report (ACR for short) of the officer were challenged in both the cases and as such are applicable to the case before us. The question whether a non speaking

Pran

39

order can be acted upon came up for examination by the Bench in both the cases. In the case of Dr. Hari Dev Goyal Vs. Union of India and others the representations of the officer were rejected in a bald order that the representations have been considered or examined and rejected or was not possible to accede to the request of the officer. In this case, the Delhi Bench allowed the application to the extent of directing the Chief Commissioner, Chandigarh Administration to reconsider the representations of the applicant and until such reconsideration the impugned adverse entries would remain inoperative and should not be acted upon for any purpose whatsoever. In the later case the Ernakulam Bench relying on the judgments of Hon'ble Supreme Court in the cases of State of Orissa Vs. Binapani Dei (AIR 1967 SC 1269), A.K. Kraipak Vs. Union of India (1969) 2 SCC 262: AIR 1970 SC 150), and in the Calcutta High Court in the case of Dr. Gopeswar Dutta Vs. Union of India (1982(1) SLJ 207) and that of the Orissa High in the case of Madan Mohan Khatua Vs. State of Orissa ((1978) 1 SLR 829) and a judgment of Ernakulam Bench in the case of E.G. Nambudiri Vs. Union of India (ATR (1987) 2 CAT 360) allowed the application and directed the expunction of the adverse remarks in such a manner that no word of these portions is legible 'even if efforts' are made to read it.

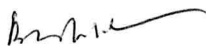
Pr. An

In the cases referred to above, the Hon'ble Supreme Court have held that "even if an order is administrative in character, if it involves civil consequence, it must be made consistently with the rules of natural justice". The Calcutta High Court have observed that "the rule requiring reasons to be given in support of an order is like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in proper spirit and mere pretence of compliance with it would not satisfy the requirement of law". The Orissa High Court have observed in their judgment referred to above that "a bald order indicating the fact of rejection would not satisfy the aggrieved officer and is likely to create an impression that the merit of the matter has not been taken into account". Accepting the dictum laid down by the Hon'ble Supreme Court we hold that the order at Annexure-A/11 suffers from grievous legal infirmity in as much as no reason has been indicated as to why some adverse remarks should be expunged and some others would remain the ACR. We, of course, agree with Mr. Rath that respondent No.2 has applied his mind otherwise he would not have expunged some adverse remarks and not the remaining ones. This however, does not cure this order of the infirmities since it gives no indication as to how the mind has been applied. In other words no reason has been given for the order

Rath

passed which does not help the applicant to appeal to the Appellate Authorities in an effective manner. We have also noticed that the order of the Appellate Authority as communicated by the Respondent No.2 does not indicate the reason as to why the Appellate Authority(Respondent No.1) has rejected the appeal. For this reason we quash the orders at Annexures-A/11 and A/13 and relying on the judgment of the Ernakulam Bench referred to above we also quash Annexure A/9 which would have the effect of expunction of all the 11 adverse entries. We cannot however, write the ACR of the applicant and substitute the report of the inspecting officer for the ACR of the applicant for the period from 1/19.4.1985 to 17-6-1986(FN). We are not in a position to assess the performance of the applicant during this period with the help of the inspection report which is the legitimate function of the respondent Nos. 1 and 2 who are the superior officers of the applicant.

4. Admittedly the Departmental Promotion Committee(DPC for short) met on 30.5.87 and 31.5.87 to consider cases of eligible candidates including that of the applicant to the post of Senior Grade Divisional Accountant. The adverse remarks were communicated to the applicant by Respondent No.2 in Memo No.Con-104-Vol.II-24 dated 28.4.1987(Annexure-A/9) through the executive Engineer, Drainage Master Plan Division, No.1 Puri who served ^{it} on the applicant by his



letter dated 4.5.1987. The applicant represented against the adverse remarks vide Annexure-A/10. The Respondent No.2 expunged some of the adverse remark vide his Memo dated 10.8.1987 (Annexure-A/11) and the Appellate Authority i.e. Respondent No.1 rejected the applicant's appeal dated 17.8.87 in December, 1987 (Annexure-A/13). This account makes it abundantly clear that the DPC considered the ACR of the applicant with all the adverse remarks. This is also admitted by the respondents in paragraph 12 of their counter which says that "The Departmental Promotion Committee could not clear the name of the applicant for promotion as Selection Grade Divisional Accountant in view of the adverse entries in his Confidential Character Roll for 1985-1986". This paragraph further says that the representation dated 15.5.1987 made by the applicant against the adverse entries was received by Respondent No.2 on 25.5.1987 and the DPC met on 30th and 31st May, 1987. Now that adverse entries have been expunged, we would direct the Respondents to take early steps for convening a meeting of the Review DPC to consider the case of the applicant for promotion to the rank of Senior Grade Divisional Accountants with effect from the date his junior has been promoted to the rank of Senior Grade Divisional Accountant. The review DPC should be convened within a month from the date of receipt of a copy of this judgment, since the applicant has

[Signature]

43

retired in the meantime. If this review DPC does not find him suitable for promotion, his case should be reviewed for promotion as many times as the DPC had met subsequent to 31.5.1987 and before the retirement of the applicant for consideration of cases for promotion to the rank of Senior Grade Divisional Accountant.

5. The application is accordingly disposed of leaving the parties to bear their own costs.

[Signature]
 8.5.91
 MEMBER (JUDICIAL)

[Signature]
 8.5.91
 VICE CHAIRMAN

Central Administrative Tribunal,
 Cuttack Bench: Cuttack: K. Mohanty.

