

V (11)
14

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.258 of 1988.

Date of decision : May 26, 1989.

Rabindranath Mohanty, son of late Natabar Mohanty, aged 55 years, at present Managing Director, Orissa Plantation Development Corporation Limited, Bhubaneswar 2-A, Kharvela Nagar, Unit III, Bhubaneswar.

... Applicant.

Versus

1. Secretary to Government of India,
Ministry of Personnel & Public Grievances,
Department of Personnel, New Delhi.
2. Secretary to Government of Orissa,
General Administration Department, Bhubaneswar.
3. Secretary to Government of India,
Ministry of Environment & Forests,
Department of Forests, New Delhi.

... Respondents.

For the applicant	...	M/s. Bijan Ray, Sanjiv Das, Ashok Mohanty. Advocates.
For the Respondents 1 & 3		Mr. A. B. Mishra, Sr. Standing Counsel (Central)
For the Respondent No. 2.		Mr. K. C. Mohanty, Government Advocate (State).

C O R A M :

THE HON'BLE MR. 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 ? *Yes*
 3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.
-

J U D G M E N T

K.P. ACHARYA, MEMBER (J)

In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to quash the order contained in Annexure-1 and to order expunction of the adverse entry in the Confidential Character Roll of the applicant for the year 1986-87 pursuant to which Annexure-1 had been issued.

2. Shortly stated, the case of the applicant is that he is a member of the Indian Forest Service and at present holding the post of Managing Director, Orissa Plantation Development Corporation Limited, Bhubaneswar. In September, 1986 the applicant was holding the post of the Chief Wildlife Warden and while holding such post one elephant named as 'Bhola' died in Nandan Kanan on 12.9.1986 and a wild tusker died on 20.11.1986 at Sitalbasa near Bhuban. On this account an adverse view was taken against the applicant that due to the negligence of the applicant both the elephants died on the dates mentioned above and hence an adverse entry was made in his confidential character roll by the concerned Minister on 23.11.1987 (which is sought to be quashed) and in pursuance thereto, Shri M.P. Modi, I.A.S., Special Secretary to Government of Orissa in General Administration Department vide his D.O. letter No. 11405/SE dated 4.12.1987 conveyed to the applicant that on a review of the report on the work of the applicant for the year 1986-87, it revealed that the applicant is an officer of average merit and due to his negligence as Chief Wildlife Warden, the death of two elephants, one at Nandan Kanan and

the other at Sitalbasa near Bhuban occurred and the applicant was further informed that Government hoped that the applicant would try to improve. After receipt of the above mentioned letter, the applicant made a representation to the Government for expunction of the above remarks and such representation not having been disposed of by 26.7.1988 the applicant had no other option but to file this case, which was filed on 27.7.1988 with the aforesaid prayer.

3. In its counter, Respondent No.2, i.e. Secretary to Government of Orissa, General Administration Department maintained that the applicant was in charge of the elephants and due to his negligence, the two elephants having died, the concerned authority rightly remarked in the confidential character roll of the applicant and very rightly assessed the officer as an average one, which under the circumstances should not be unsettled. Hence, no illegality having been committed and the case being devoid of merit is liable to be dismissed.

4. We have heard Mr.Bijan Ray, learned counsel for the applicant and Mr.K.C.Mohanty, learned Government (Advocate (State) for the Respondent No.2 at some length. The moot question that needs determination is as to whether there was any justification for making an adverse entry against the applicant in his confidential character rolls. In the C.C.Rs. of the applicant for the period from 14.12.1986 to 23.3.1987, Shri R.K.Bhujabal, I.A.S., Commissioner-cum-Secretary to Government of Orissa in Forest, Fisheries &
 km

Animal Husbandry Department expressed his views about the applicant in high order and ultimately rated the applicant as an outstanding officer. Then the matter was placed before the Minister of State, Forest, Environment Department, who expressed his opinion regarding the officer during the period from 22.7.1986 to 31.3.1987 and this view was expressed by the Minister in the capacity of the accepting authority. The Minister stated as follows :

" The assessment on Sri R.N.Mohanty as CWLW does not reflect the death of two elephants, one at Nandan Kanan and the other at Sitalabasa near Bhuban, due to his negligence. Besides, the allegations of corruption against him involving financial liability and recovery during his tenure in F.R.I. being enquired into separately have not been taken into account. Accordingly I totally disagree with the Reporting Officer and hold that Sri Mohanty is an officer of average merits. "

This view of the Minister recorded in the C.C.R. of the applicant has been challenged and sought to be expunged.

5. Before we deal with the rival contentions of both the parties it is worthwhile to state that one elephant by the name of 'Bhola' died on 12.9.1986 in Nandan Kanan (Bhubaneswar). Another tusker died on 30.11.1986 at Sitalbasa. The elephant by the name of Bhola had been originally captured in a particular jungle and was brought to Nandan Kanan. For a long time Bhola was perfectly alright. Suddenly, due to ulceration on his left hind foot which had been chained, 'Bhola' did not behave well and from Annexure-5 it appears that Bhola did not obey the command of the Mahut while giving bath in the lake at about 8.30 a.m. on 12.9.1986

18
XII

and then escaped . It was reported that Bhola was behaving in an erratic manner and charging the people and other domestic elephants of Nandan Kanan. He had already damaged the entrance gate of Lion Safari. According to the Wildlife Conservation Officer and Director, Nandan Kanan Biological Park it had become dangerous to human life and public property as well as the staff residing inside Nandan Kanan and there was an apprehension that Bhola may damage the carnivora enclosures which would cause further danger to the local people and visitors. Due to the above mentioned situation the Wildlife Conservation Officer and Director, Nandan Kanan Biological Park, requested the Additional Chief Conservator of Forests (Wildlife) and Chief Wildlife Warden, Orissa, Bhubaneswar to issue orders for hunting Bhola according to the provisions contained in Section 11(a) of the Wildlife (Protection) Act, 1972. Section 11(1) of the Wild Life (Protection) Act, 1972 runs thus :

" (1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of Chapter IV .-

- (a) the Chief Wild Life Warden may, if he is satisfied that any wild animal specified in Schedule I has become dangerous to human life or is so disabled or diseased as to be beyond recovery, by order in writing and stating the reasons therefor, permit any person to hunt such animal or cause such animal to be hunted ;
- (b) the Chief Wild Life Warden or the authorised officer may, if he is satisfied that any wild animal specified in Schedule II, Schedule III, Schedule IV has become dangerous to human life or to property (including standing crops on any land) or is so disabled or diseased as to be beyond recovery, by order in writing and stating the reasons therefor; permit any person to hunt such animal or cause such animal to be hunted. "

19

From the above provision it is crystal clear that if any wild animal has become dangerous to human life or to any property can be ordered to be hunted by the competent authority. There was no dispute presented before us regarding the competency of the applicant as Additional Chief Conservator of Forests (Wild Life) and Chief Wild Life Warden, Orissa to order hunting of the animal by virtue of the powers vested in him under section 11 of the Wild Life (Protection) Act, 1972. From different communication between the Wild Life Conservation Officer, and Director Nandan Kanan Biological Park and the Additional Chief Conservator of Forests (Wild Life) (the present applicant) forming subject matter of this case record we have absolutely no hesitation in our mind to hold that Bhola became dangerous to human life and property. Our views stand fortified on this particular aspect by the silence of Respondent No. 2 who has not at all controverted this aspect in the counter. In such a situation we think in order to save the human lives in Nandan Kanan and of the vicinity and so also to save the property at Nandan Kanan and of other people remaining in the vicinity there was ample justification on the part of the applicant to have ordered hunting of Bhola which culminated in his death.

6. Next, coming to the death of the tusker on 30.11.1986 in Sitalbasa it is found from the record that the wild tusker had sustained some bullet injuries as a result of which it fell down and in gradual process succumbed to the injuries. From the averments in the counter and from different annexures to the application and the counter it

appears that an adverse view was taken against the applicant because neither he went to the spot nor he deputed any veterinary surgeon to cure the wild tusker. Even though conceding for the sake of argument that the applicant should have visited the spot yet could such visit of the applicant or attention paid by the Veterinary Surgeon yield any fruitful result ? Considering the matter from all its aspects, we are of opinion that it would have been dangerous to the life of a person to approach a wild tusker which had sustained bullet injury and by no stretch of imagination one could conceive that the wounded wild tusker would have ever recovered. This is also the view of an expert namely Dr. Banshidhar Jethi, retired Director of Animal Husbandry and Veterinary Services. From Annexure-7/1 it is found that Dr. Jethi has stated that the tusker was shot at Keonjhar jungle by some hunters and having been seriously wounded the tusker travelled from Keonjhar to Dhenkanal and ultimately at Sitalbasa laid itself on the ground which culminated in his death. The retired Director of Veterinary Services stated out of his long and varied experience that the doctors of the Veterinary Department could only treat a tamed elephant. That could be also possible if the Mahut is in a position to fully control the tamed elephant. But it is an impossibility to treat a wild and injured tusker especially from safety point of view. Once an wounded elephant falls on the ground, generally it does never stand. Since last days of the tusker was fast approaching it had therefore, fallen on the ground. In such circumstances, the treatment of the wild wounded

tusker is inconceivable and thus an impossibility. In no circumstances, we can ignore this expert opinion rather it heavily weighs with us. Such being the position we are of opinion that there is no justification to attribute ~~criminal~~ negligence to the applicant for the death of both the elephants namely Bhola and the wild tusker.

7. Next, coming to the opinion of the accepting authority regarding the allegations of corruption against the applicant involving financial liability and recovery during his tenure in F.R.I., no adverse view should have found place in the C.C.R. because it is stated therein that such allegation is being enquired into separately. Without conclusion of the enquiry and findings arrived at by the competent authority it is against all canons of justice, equity and fair play to prejudge the issue and pass any remark against the officer rating him as an officer of average merit. Needless for us to state that opinion on the performance of the officer could be arrived at only after the enquiry is completed especially when the allegation of corruption (which is a very grave and serious charge) is involved. Nowhere in the counter details of ~~criminal~~ negligence on the part of the applicant regarding the death of Bhola and the wild tusker and the nature of corruption or prima facie evidence appearing against the applicant touching his integrity have been stated far less to speak of having been highlighted. The remarks of the accepting authority i.e. the concerned Minister is of very general nature. Apart from non-disclosure of the details in the counter, the accepting authority has not specifically stated as to how due to the ~~criminal~~ negligence of the

km

applicant, both the elephants died. It cannot be understood as to how there was ^{negligence} on the part of the applicant while discharging his official duties. In the adverse entry made in the Confidential Character roll of the applicant, the reviewing authority has failed to clarify as to how there was 'mens rea' on the part of the applicant. In the absence of the details enumerated above, the adverse entry cannot be sustained. This view has already been taken by the Central Administrative Tribunal, Chandigarh Bench presided over by the Hon'ble Chairman of the Principal Bench, in the case of Krishan Lal Sharma -V- Union of India and others reported in (1987) 4 ATC 709. An employee of the Union of India was awarded adverse remarks namely, "highly indisciplined", and "unfit". The Hon'ble Chairman speaking for the Court observed as follows:

" It is not clear as to how he was indisciplined as no particular incident is mentioned or communicated to the Petitioner. It is also stated that he is irregular, careless and casual but no particulars, whatsoever, are given. In the absence of these particulars and specially in the background of the facts of this case, these adverse remarks cannot be sustained and are accordingly quashed."

Similar view was also taken by the Central Administrative Tribunal, Allahabad Bench in the case of Ashok Kumar -V- State of U.P. and others reported in 1988(2) ATJ 646. We are in respectful agreement with the views expressed by the Chandigarh Bench and that of the Allahabad Bench and therefore there is no escape from the conclusion that in the present case, no particulars having been given regarding the negligence, if any, of the applicant, ~~xxxxxx~~ relating to the death

of Bhola and the wild tusker and there being no details stated regarding corruption, dishonesty and lack of integrity on the part of the applicant, such adverse entry is liable to be quashed.

8. It was next contended by Mr. Bijan Ray, learned counsel for the applicant that according to the provisions contained in Rule 10 of the All India Services (Confidential Rolls) Rules, 1970, any representation made against an adverse remark, such representation should be disposed of as far as possible within three months, from the date of submission of the representation. From the data furnished by the applicant and not controverted on behalf of the respondents it is found that a representation against the adverse remarks was submitted by the applicant in January, 1988 followed by another representation submitted to the Chief Minister in April, 1988 which according to the provisions of the rule stated above, should have been disposed of by the end of July, 1988 at the latest. From Annexure-R/3 to the counter it is found that the representation was sent to the accepting authority who made the adverse remarks after about 7 months i.e. on 8.9.1988 and we are told that the representation is still pending disposal which was not disputed at the Bar. Therefore, we take it that the representation has not been disposed of till today. In this connection, Mr. Ray relied upon a judgment of the Central Administrative Tribunal, Allahabad Bench reported in 1987 (2) ATJ 154. At paragraph 37 the Hon'ble Judges observed as follows :

"

Admittedly, the applicant had made a representation against this adverse entry, copy Annexure-14, in March 1984 but the same has not been disposed of so far despite a subsequent reminder dated 12.1.1986 while under Rule 10 of the All-India Services (Confidential Rolls) Rules, 1970, the same has to be disposed of as far as possible within 3 months of its submission. The undue time taken by respondent 1 in disposing of this representation cannot be appreciated and it leads to the inference that respondent 1 has no ground to justify the adverse remark given to the applicant. It is further apparent that respondent 1 has not come forward with any specific instances on which the adverse remark given to the applicant by the accepting authority is based. The bald allegation that this remark was based on the work and conduct of the applicant as assessed by the accepting authority, cannot be accepted. We, therefore, find no good ground to justify the adverse remark given by respondent 1 to the applicant in the year 1982-83 and it deserves to be expunged.

9. In view of the above discussions and the infirmities found in recording adverse view against the applicant by the ~~accepting authority~~ and in view of the fact that the representation has not been disposed of till now (far less to speak of the representation being disposed of within 3 months) we cannot but hold that there are no good grounds to justify the adverse remarks and hence those are not sustainable. Therefore, the adverse remarks recorded by the ~~accepting authority~~ ~~was~~ in the confidential character roll of the applicant are hereby expunged.

10. Before, we part with this case, we feel persuaded to quote the observations of Their Lordships of the Supreme Court asking the Central Government and the State Governments to make necessary modifications regarding the system of maintenance of confidential rolls. The case is reported in

~~KN~~ AIR 1984 SC (Part 1) 531 (Amar Kant Choudhury v. State of

Bihar and others). At paragraph 9 of the judgment Their Lordships were pleased to observe as follows :

" Before concluding we wish to state that the Central Government and the State Governments should now examine whether the present system of maintenance of confidential rolls should be continued. Under the present system, entries are first made in the confidential roll of an officer behind his back and then he is given an opportunity to make a representation against any entry that may have been made against him by communicating the adverse entry after considerable delay. Any representation made by him would be considered by a higher authority or the State Government or the Central Government, as the case may be, some years later, as it has happened in this case, by which time any evidence that may be there to show that the entries made were baseless may have vanished. The predicament in which the officer against whom adverse remarks are made is then placed can easily be visualised. Even the authority which has got to pass orders on the representation of the officer will find it difficult to deal with the matter satisfactorily after a long interval of time. In the meanwhile the officer concerned would have missed many opportunities which would have advanced his prospects in the service. In order to avoid such a contingency, the Government may consider the introduction of a system in which the officer who has to make entries in the confidential roll may be required to record his remarks in the presence of the officer against whom remarks are proposed to be made after giving him an opportunity to explain any circumstance ~~xxx~~ that may appear to be against him with the right to make representation to higher authorities against any adverse remarks. This course may obviate many times totally baseless remarks being made in the confidential roll and would minimise the unnecessary suffering to which the officer concerned will be exposed. Another system which may be introduced is to ask the officer who records the confidential remarks to serve a copy of such remarks on the officer concerned before the confidential roll is submitted to the higher authorities so that his representation against the remarks may also reach the higher authority shortly after the confidential roll is received. This would curtail the delay in taking action on the representation. "

11.

Thus, this application stands allowed leaving

the parties to bear their own costs.

Up XX
[Signature]
24.5.89.
 Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,



[Signature]
26.5.89
 Vice-Chairman

Central Administrative Tribunal,
 Cuttack Bench, Cuttack.
 May 26, 1989/Saranghi.