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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 658 OF 1992
Cuttack, this the 27th day of May, 1999

Akshaya Kumar Parida Applicant

Vrs.

Union of India and others Respondents
FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No*

.....
(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

27.5.99

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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ORIGINAL APPLICATION NO. 658 OF 1992
Cuttack, this the 27th day of May, 1999

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Akshaya Kumar Parida, Auditor,
son of Keshab Chandra Parida,
Office of the Accountant General,
Audit-I, At/PO-Bhubaneswar, Dist.Puri ...Applicant

Advocates for applicant - M/s C.A.Rao
P.K.Parida
S.K.Purohit
S.K.Behera

Vrs.

1. Union of India, represented by the Secretary of Finance, New Delhi.
2. Comptroller & Auditor General of India, New Delhi.
3. Senior Dy.Accountant General (Admn.), (A&E), Office of the A.G.,Orissa, Bhubaneswar.
4. Senior Dy.Accountant General (Admn.), (Audit-I), Office of the A.G., Orissa, Bhubaneswar.
5. Accountant General (A&E), Office of the A.G.,Orissa, Bhubaneswar.
6. Accountant General (Audit-I), Office of the A.G.Orissa, Bhubaneswar....Respondents

Advocate for respondents - Mr.U.B.Mohapatra
A.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act,1985, the petitioner has prayed for quashing eleven orders at Annexures 1,7,9,11,13,15,17, 19, 21, 23 & 26. He has also prayed for a declaration that Annexure-29 is illegal.

2. Facts of this case, according to the applicant, are that while he was working in the office of Accountant General,Orissa, in letter dated 14.7.1982 (Annexure-1) he was communicated with adverse entries

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in his CR for the period 1.7.1981 to 31.3.1982. He represented in letter dated 28.7.1982(Annexure-2). In response he was informed in letter dated 22.2.1983 (Annexure-3) that in his letter dated 28.7.1982 he has not contested specifically the adverse remarks communicated to him and therefore, he was informed that he may file his representation, if any, against the adverse remarks communicated in Annexure-1. Thereafter the applicant filed a detailed representation on 27.6.1983 for expunging the adverse entries communicated to him in Annexure-1. This detailed representation is at Annexure-4. In letter dated 8.7.1983 (Annexure-5) he was informed that his representation at Annexure-4 is time barred. He filed a further representation dated 19.7.1983 (Annexure-6) seeking expunction of the adverse entries communicated in Annexure-1. In letter dated 13.1.1984 (Annexure-7) the applicant was communicated adverse entries in his CR for the period from 1.4.1982 to 31.3.1983 and he was asked to submit representation, if any, within six weeks from the date of receipt of this letter. According to the endorsement on Annexure-7 this was received by the applicant on 6.2.1984. He filed a representation dated 24.2.1984 (Annexure-8) for expunging the adverse entries. Again in letter dated 6.2.1985 (Annexure-9) adverse entries for the year 1983-84 were communicated to him. His representation for expunging the adverse entries is dated 20.3.1985 and is at Annexure-10. In letter dated 29.3.1985 at Annexure-11 his representations dated 17.7.1982 and 24.2.1984 were rejected. At this stage it is necessary to note that his representation dated 24.2.1984 was for expunging the adverse entries for the period 1.4.1982 to 31.3.1983. As regards his representation dated 17.7.1982 referred to in the letter at Annexure-11 the applicant's representations for expunging the adverse entries for the year 1981-82 are dated 28.7.1982 and 27.6.1983. Against the

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order at Annexure-11 the applicant filed a representation dated 26.4.1985 addressed to Comptroller & Auditor-General (Annexure-12) through proper channel. Vide letter dated 14.2.1986 at Annexure-13 his representation dated 20.3.1985 at Annexure-10 for expunging the adverse entries for the year 1983-84 communicated in Annexure-9 was rejected. At Annexure-14 is a letter dated 24.3.1986 addressed by the applicant to Accountant General (A&E) (respondent no.5) enclosing the appeal dated 24.3.1986 against the order rejecting his representation for expunction of the adverse entries for the year 1983-84. Again in letter dated 10.12.1987 (Annexure-15) adverse entries for the period 1.4.1986 to 9.2.1987 (1986-87) were communicated to him. His representation dated 22.12.1987 for expunging the adverse entries for 1986-87 is at Annexure-16. In letter dated 15.9.1989 (Annexure-17) he has been informed that adverse remarks contained in his CR for 1986-87 have not been expunged. Against that rejection order he filed representation dated 25.10.1989 (Annexure-18) enclosing his representation against the order rejecting his representation for expunction of the adverse entries for 1986-87. In order dated 29.10.1990 (Annexure-19) the appeal was rejected. Against this order dated 29.10.1990 he filed appeal to Comptroller & Auditor General in his appeal dated 11.12.1990 and forwarded the same to Accountant General in his letter dated 11.12.1990 (Annexure-20). Again in letter dated 2.1.1990 (Annexure-21) adverse entries in his CR for the period August 1988 to March 1989 were communicated to him. His representation for expunging adverse entries for the period August 1988 to March 1989 communicated in Annexure-21 is dated 30.1.1990 (Annexure-22). In letter dated 23.4.1990 (Annexure-23) his representation for expunging the adverse entries for the period August 1988 to March 1989 was

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rejected. His appeal against the rejection is dated 8.6.1990 (Annexure-24). At Annexure-25 is another letter from the applicant making some change in the representation at Annexure-24. In order dated 22.1.1991 his representation for expunging the adverse entries for the period August 1988 to March 1989 was disposed of. Certain of the adverse remarks were ordered to be expunged and some others were allowed to stand. At Annexure-28 is a letter dated 13.3.1991 from the applicant addressed to Accountant General enclosing his representation dated 13.3.1991 with enclosures addressed to Comptroller & Auditor General against the adverse entries for the period August 1988 to March 1989. The enclosure to Annexure-28 is, however, a representation dated 13.3.1991. The last annexure is Annexure-29 in which he was informed that appeal against rejection of representation by the authority higher than the authority who rejected the first representation does not lie with Comptroller & Auditor General. Accordingly, the applicant was informed that his representation for expunging the adverse remarks for the period 1.4.1986 to 9.2.1987 has been rejected by Comptroller & Auditor General and on the same analogy his representation addressed to Comptroller & Auditor General for expunging the adverse entries for the period August 1988 to March 1989 was not forwarded to Comptroller & Auditor General. From the above recital of facts, it is seen that the applicant has been communicated adverse entries recorded in his CR for different years and his representations have been rejected and against that he has filed the appeals before Accountant General and on such appeals being disposed of, he has filed further representations to Comptroller & Auditor General. In the context of the above facts, the applicant has come up with the prayers referred to earlier.

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3. Respondents in their counter have pointed out that the applicant has filed the O.A. for quashing all the adverse entries made in his Confidential Rolls from the year 1982 to 1991. The adverse entries were recorded at different times in different years and have been communicated to him in different years by letters enclosed by the applicant. The applicant has preferred representations for expunging the adverse entries which have been considered at different times. Some of the representations have been rejected and some have been allowed and some adverse entries have been expunged. The respondents have stated that the applicant should have approached the Tribunal at the relevant time. But instead of doing so, he has come up after lapse of many years and therefore, the O.A. is barred by limitation. It is further stated that in spite of communication of the adverse entries the applicant never tried to improve his conduct. The grounds urged by him for expunging the adverse entries were not found satisfactory and most of the adverse entries could not be expunged and the decision was communicated to him in time. The respondents have made further averments with regard to communication of adverse entries for the period 1.4.1986 to 9.2.1987 and for the period August 1988 and March 1989, the representations filed by the applicant, and the orders passed thereon. It is not necessary to repeat these averments because these have already been covered in our earlier recital. As regards the stand of the applicant that the orders rejecting his representations for expunction of adverse entries are not speaking orders, the respondents have stated that on his representations, views of reporting/reviewing officers were obtained and after going through the relevant records, orders were passed on his representations and the applicant was communicated accordingly. The respondents have pointed out that there is no provision in the Rules that in the

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communication to the applicant rejecting his representations, reasons for rejection should be indicated. The respondents in their counter have referred to the adverse entries communicated to the applicant in different years and have stated that his representations have been dealt with strictly in accordance with rules. On the above grounds, the respondents have opposed the prayer of the applicant.

4. We have heard Shri C.A.Rao, the learned counsel for the petitioner and Shri U.B.Mohapatra, the learned Additional Standing Counsel appearing for the respondents. The learned counsel for the petitioner has filed a date-chart which has also been taken note of.

5. Before going into the various submissions made by the learned counsels for both sides, two general observations have to be made. Firstly, it must be noted that adverse entries are communicated to Government servant for his guidance to enable him to improve his work and conduct. The purpose of communicating adverse entries is not for filing representations. If the Government servant concerned feels that some entry recorded in his CR in a particular year is not well-founded, then he has a right to represent for expunging that adverse entry. But writing of CR, communication of adverse entries, filing of representations against such adverse entries seeking expunction, and passing orders on such representations are guided by specific instructions. Though the Courts have held that the time limit fixed for different stages of writing the CR and communicating the adverse entries is directory and not mandatory, but it is necessary that broadly the time-frame should be followed by all concerned. The second aspect of the matter is that in a case like this dealing with expunging of adverse entries in the CR of a Government servant, the Tribunal does not act as an appellate authority and cannot substitute its judgment for the conclusions and decisions

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arrived at by the departmental authorities unless the same are patently wrong.

6. In this OA the petitioner has prayed for quashing the adverse entries recorded in his CR for five years 1981-82, 1982-83, 1983-84, 1986-87 and 1988-89. So far as the adverse entries for the year 1981-82 and 1982-83 are concerned, his representations were rejected in order dated 29.3.1985 at Annexure-11. Against this order, he filed a representation in letter dated 26.4.1985 before the Comptroller & Auditor General. The applicant has not made any averment as to what orders, if any, were passed by the Comptroller & Auditor General on his representation dated 26.4.1985. The respondents have pointed out that against the order rejecting his representation an appeal does not lie to Comptroller & Auditor General. Whatever it may be, after rejection of his representation in letter dated 29.3.1985 at Annexure-11 he should have approached the Tribunal with regard to adverse entries for the years 1981-82 and 1982-83. But he has not done so. He has come up only in 1992 after a lapse of seven years. In view of this, it is clear that his prayer for expunging the adverse entries for the years 1982-82 and 1982-83 is barred by limitation. Coming to the entries for these two years and his representations against the adverse entries, it is noted that against the adverse entries for 1981-82 in his first representation at Annexure-2 he merely asked for expunging the adverse entries on the ground that the remarks have not been correctly written. He was advised to file representation specifically contesting the adverse remarks communicated to him. This was in letter dated 22.2.1983. Thereafter in his detailed representation at Annexure-4 he merely stated that his lapses have not been communicated to him earlier. Going through the representation we do not feel that the order at Annexure-11 rejecting the representation is perverse. The adverse remarks for the year

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1982-83 also note many of the deficiencies which have been noted in 1981-82 like lacking punctuality, relationship with colleagues, insubordination and his argumentative nature. In his representation at Annexure-8 he has stated that adverse entries have been given because he wanted to stop loss of Government property and funds and has simply denied the adverse entries without giving any reasoning in support of his denial. In view of this, we also do not find anything perverse in the order rejecting his representation.

7. The adverse entries for the year 1983-84 were communicated in Annexure-9 and his representation for expunging that at Annexure-10 was rejected in order dated 14.2.1986 at Annexure-13. It has been mentioned that his ability in drafting letters and presenting cases is very poor. The applicant in his representation has stated that he had no occasion to present a case and he was only submitting notes in files and therefore, this entry is not well founded. Presenting a case does not mean presenting a case orally. While submitting notes also the applicant puts up a case and therefore, his reasoning for expunging the adverse entries cannot be taken to be sound. It is further recorded in the CR for that year that he is irregular and unpunctual in attendance. He avails long lunch intervals. This entry he had earned for the earlier year as well. Going through the CR as a whole it is seen that the reporting officer has assessed the applicant as indisciplined, lethargic, argumentative, and insubordinative. The representation at Annexure-10 is merely a denial of the adverse remarks and no case has been made out which would merit expunging the adverse entries. Next year is 1986-87. For this year in Annexure-15 it was indicated that he was not prompt and was non-cooperative and he was behind the rest by two months in his work. In his representation at

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Annexure-16 he has once again merely denied the adverse entries by stating that he has been doing his work in time. He has not indicated specifically that how he had completed his work within time. The authorities have rejected his representation in the order at Annexure-17 and we see no scope for interference in the matter. As regards the adverse entries for 1988-89 communicated to him, his representation has been gone into in detail in the order at Annexure-26. The adverse entries that he is irregular in attendance has been expunged. The entry regarding his relation with fellow employees has been changed from "not cordial" to "cordial". The adverse remark recorded in item No.12 about the occasion to reprimand the applicant has also been expunged. Certain other adverse entries have been allowed to stand and in the order at Annexure-26 the concerned officer has given detailed reasons for rejecting the representation with regard to those adverse entries. We do not see any scope for interference with regard to adverse entries for the year 1988-89.

8. It has been submitted by the learned counsel for the petitioner that in the orders rejecting the representations of the applicant for expunging the adverse entries in the CRs for different years, no reasons have been recorded. In the case of Union of India and others v. E.G.Nambudiri, AIR 1991 SC 1216, the Apex Court have laid down that if the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons. In the absence of any statutory or administrative provision requiring the competent authority to record reasons or to communicate reasons, no exception can be taken to the order rejecting representation merely on the ground of absence of reasons. That was a case dealing with representation for expunging the adverse entries. This contention of the applicant is therefore held to be without any merit.

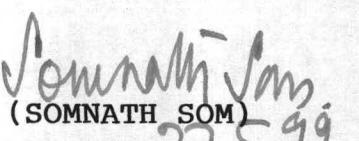
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9. It has been further submitted that from Annexure-29 it appears that Comptroller & Auditor General had rejected his representation with regard to adverse entries in the CR for 1986-87 and that is why the applicant had sent his representation for expunging the adverse entries in the CR for the year 1988-89 to the Comptroller & Auditor General. But his representation relating to the year 1988-89 was not forwarded wrongly to the office of Comptroller & Auditor General. From the order at Annexure-29 it is clear that his representation filed before the Comptroller & Auditor General for expunging the adverse entries in the CR for 1986-87 was rejected as no appeal could be filed before the Comptroller & Auditor General. In view of this, it cannot be said that the Comptroller & Auditor General entertained his appeal and rejected the same. This contention is also held to be without any merit.

10. In the result, we hold that the applicant has not been able to make out a case for any of the reliefs claimed by him. The Original Application is therefore held to be without any merit and is rejected but without any order as to costs.


(G.NARASIMHAM)

MEMBER(JUDICIAL)


(SOMNATH SOM)
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VICE-CHAIRMAN