

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK**

Original Application No. 265 of 1993

Date of Decision: 19.4.1994

Narayan Choudhury

Applicant

Versus

Union of India & Others

Respondents

For the applicant

Mr. Maheswar Satpathy
Advocate

For the respondents

Mr. U. B. Mohapatra,
Standing Counsel
(Central)

C O R A M:

THE HONOURABLE MR. K. P. ACHARYA, VICE - CHAIRMAN

AND

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN)

JUDGMENT

MR. H. RAJENDRA PRASAD, MEMBER (ADMN) : The applicant, Shri Narayan Choudhury, joined the Aviation Research Centre as Radio Operator in March, 1970. He was subsequently promoted as Assistant Technical Officer (Communication) on 8th August, 1988. On promotion, the initial period of his probation was fixed for three years. During the year 1991, certain adverse remarks, reportedly made in his six-monthly probation report, were communicated to him on 5th April (Annexure-1). The next day, i.e., on 6th April, certain other adverse remarks, reportedly made in his ACR for 1990-91, were again communicated to him. The applicant thereupon submitted an appeal to the Operations Manager, A.R.C., on 4th May, 1991, in which he submitted that :-

a) the period of two years of his probation had actually ended on 8th August, 1990;

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- b) if Annexure-1 was construed as a barrier for the successful completion of his probation, the same could/should have been extended suitably;
- c) as the period of his probation had not been extended, the presumption was that there was nothing against him which prevented a successful completion of probation, and a further presumption was that he had in fact successfully completed his probation;
- d) Annexure-1 did not indicate the period to which the adverse remarks actually relate;
- e) the contents of Annexure-2 (communicating the adverse entries in his CRs for 1990-91) v no more than an exact replica of Annexure-1, were
- f) Annexure-2 was totally silent on the aspect of counselling by the concerned authority/authorities;
- g) his ACRs are to be initiated by either a Senior Radio Officer or a Technical Officer, whereas these were in this case initiated by CC Flying-cum-Air Traffic Control.

On consideration of the above-stated representation, the Director, ARC (Res.3), decided to expunge the adverse remarks contained in the six-monthly probation report (Annex.1) but upheld the adverse remarks in Annexure-2 (ACRs for 1990-91) on the ground, *inter alia*, that these remarks were recorded after due warnings and counselling (Annexure-4). On receiving this decision the applicant represented once again to the Director explaining the circumstances under which he had come to incur the displeasure of his immediate superiors which had resulted in the impugned adverse remarks in his ACRs. He pleaded that there was little point in retaining the adverse entries in his ACR ^{for} 90-91 while at the same time expunging those contained in the six-monthly probation report because one is merely a reflection and replica of

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of the other. While the matters stood thus, it was intimated on behalf of the D.G. (Security) that all the adverse remarks recorded in the official's ACRs for 1988-89 and 1989-90 also stood expunged. The adverse remarks in ACR for 1990-91, however, remained unchanged. Following this, the applicant sent an appeal to the D.G. (Security) for the expunction of the remaining adverse remarks for the year 1990-91. A reply was received that these remarks cannot be expunged.

Subsequently, another memo was received by the applicant communicating some more adverse remarks in his ACRs for the period 1991-92. The applicant points out that while these (latest set of) adverse remarks pertain to the period ending 31st March, 1991, and although these were required to be communicated immediately thereafter within a specified time, they were actually communicated only on 27.2.93 viz. almost towards the fag-end of the next ACR year. Upon this, the applicant sent a further representation to the Director, ARC on 30th March, 93, and again on 2.7.93. However, no reply had been received by him until the date of filing of this application.

2. The applicant's main grievances are that:

- a) ^{the period of} his probation was incorrectly fixed initially;
- b) the probation was neither terminated on successful completion at the end of the usual period, nor was it extended;
- c) his ACRs were initiated by an officer who was not authorised to do so;
- d) the adverse remarks in his six-monthly probation reports and those in his ACRs for 1991 were exactly identical and cannot, therefore, be logically expunged or upheld to the exclusion of one another;
- e) certain adverse remarks said to have been made in 1988-89 and 1989-90, (never in fact

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were expunged

communicated) even when there had been no representation from him in this regard (because he was unaware of the existence of any such remarks);

- f) his final representation remained unattended;
- g) he was due to cross Efficiency Bar in October, 1992, but he has not yet been permitted to do so;
- h) his confirmation as Asstt. Technical Officer has been held up although he joined the post in August, 1988.

Under the circumstances, the applicant prays that

- i) the adverse remarks in his ACRs for 1990-91 be quashed on the ground that the corresponding set of identical entries in the six-monthly probation report had been duly expunged;
- ii) the adverse remarks for 1991-92 be also quashed since these were communicated to him with inordinate delay;
- iii) he may be permitted to cross the EB with effect from the date it became due in October, 1992; and
- iv) to confirm him as A.T.O. with all consequential service and monetary benefits from the date such confirmation became due on the successful termination of his probation.

The respondents in their counter-affidavit state that the period of probation of the applicant was three years, and not two, as claimed by him, and that he came for adverse notice during his probation, and accordingly certain entries have had to be made in the six-monthly probation report. However, it was decided to expunge these remarks on consideration of the officials' representation. They add that despite this concession, the performance and conduct of the applicant did not improve. The respondents assert that the

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six-monthly probation report and ACRs are separate documents designed to serve two different purposes and that one is unconnected and independent of the other.

There is no merit in the applicant's plea that ^{the} expunction of one set of remarks in one document should automatically result in ^{the} expunction of another set of remarks in the second document. They further assert that in April, 91,

the official was duly apprised of his weaknesses but he did not register any improvement in his performance.

Explaining the context of the initiation of ACRs, the respondents state that, since the ARC did not have a Senior Radio Officer or Technical Officer in its

establishment, OIC Flying, who was detailed as officer

^{Air} in-charge of ^{the} Traffic Control, was asked to initiate this.

They add that OIC Flying, who had ^{thus} initiated the ACRs, possessed a vast experience in flying as well as of administration and air traffic control, having been for long in the Air Force. They also say that this officer has in fact initiated several ACRs of officials under him and that his remarks were based on a close observation of the official's work and progress. They point out that OIC Flying was in fact in a rank higher than Sr. Radio Officer/

Technical Officer, who is to initiate the ACRs of ATOs.

They deny any harrassment or vengeance, ^{as} alleged by the applicant. On the contrary, they state that several oral and written warnings administered to the applicant have had no visible effect on him and his performance continued

to remain below par. Explaining the reasons for expunging adverse remarks in the applicant's ACRs for earlier years, the respondents state that, while reviewing his representations, certain adverse entries for the years 1988-89 and 1989-90 were discovered to have not been communicated at all to him. It was, therefore, decided to expunge them even without any representations from the applicant to spare him an underserved stigma.

3. In a rejoinder to the counter, the applicant maintains that the officer who initiated his ACRs (and recorded certain adverse entries) was in fact an ex-Cadre officer, not competent to initiate his CRs. He laments that the authorities, instead of providing opportunities to him to improve his work chose instead to punish him and adds that he was neither given a clear idea of his tasks nor was he provided with the resources to perform those tasks, ~~nor~~ that the impugned adverse entries ^{were} in the nature of vague, omnibus expressions, thereby defeating the basic objective that ACRs ought to be development-oriented and not judgmental. He finally contends that according to a circular earlier issued by the authorities themselves, the period of his probation should have been fixed at two, and not three, years as has been incorrectly done in his case.

4. The issues involved in this case fall under the following three broad heads:

- i) initiation of A.C.Rs.
- ii) ACRs and the six-monthly progress reports during the period of probation, the adverse remarks pertaining thereto; and
- iii) period of probation

5. It is the contention of the applicant that Commander, Air Wing, is not really the competent authority to initiate his ACRs. According to him, the same should have been done either by Senior Radio Officer or Technical Officer. The respondents have explained the circumstances under which the officer was called upon to initiate the ACRs of the applicant. I find this explanation adequate and satisfactory. Under certain situations ACRs may have to be initiated by officers who are otherwise not ordinarily required to do so, provided that an Officer thus initiating the ACRs has had adequate opportunities to observe the work and conduct of the official reported upon, and provided also that he is not lower in rank to the Officer(s) ordinarily expected to initiate the ACRs. In the instant case both these conditions are fulfilled. I do not, therefore find any impropriety to have been committed.

6. Coming to the adverse remarks in two different types of documents viz., six-monthly probation reports and ACRs, it is noticed that some observations and comments, and especially certain expressions, recur often in both, and make a parallel appearance in these documents. The following are examples:

Six-monthly Probation Report :

- Apt to ignore and constantly violates orders
- Insubordinate and arrogant
- Strained relationship with colleagues
- Lacks direction
- 'Suffers with complex'
- Arrogant and disobedient
- Cannot be relied on his words

ACR :

- In habit to ignore and violates orders
- Arrogant and disobedient
- Relationship with colleagues are strained
- Lacks direction
- 'Suffers with complex'
- Insubordinate. Arrogant
- Cannot be relied on his words

It is thus seen that many of the remarks in the ACRs for 1990-91 are identical to those contained in six-monthly report. All these remarks are exact repetitions of one another.

Now, the applicant argues with considerable validity that the basic pattern of remarks in both the documents is exactly alike and for that very reason it will be odd if these remarks are expunged in one kind of document and similar remarks are allowed to remain in a parallel document. I find some force in this argument, specially when it is remembered that both these assessments made in two different documents relate to the same period under review. Seen from this specific perspective, it would indeed be illogical to expunge some remarks from the probation report and retain like remarks in the ACRs for the same period. I hold, therefore, that the adverse remarks recorded in his ACRs for 1990-91, in the following terms, are misplaced and need deletion:

Insubordination and arrogance, lack of direction 'suffering from' a complex, disobedience and lack of reliability

The last issue involved in this case concerns the period of probation.

6. It is seen that, by their order dated 18th July, 88

the authorities fixed the period of probation in respect of the applicant for three years. It is, therefore, their contention that his probation was to continue till 7.8.91.

This is seriously disputed by the applicant, who has produced two documents in respect of his claim that the period of his probation ought to be two, -and not three, - years:

- 1) Deptt. of Personnel and Administrative Reforms, Ministry of Home Affairs, OM No.21011/2/80-Estt (C) dated 19th May, 1983. Para 3 and 5 of this OM deal with the question of (i) the duration of probationary period (ii) confirmation on satisfactory completion of the prescribed period of probation.
- 2) Notification No.A-12018/4/86-DO-1 by the Cabinet Secretariat which embodies the ARC (AIR Wing) Staff Recruitment (Amendment) Rules, 1987, and stipulates that the Assistant Technical Officers (Communication) shall have the period of their probation fixed for two years after being promoted from communication Assistants having at least five years of regular service in the grade, subject to passing a departmental qualifying examination.

It is seen that both the above cited communication pre-date the order of promotion-cum-probation dated 18.7.88 issued by Respondent no.2. In view of the evident contradiction between the documents produced by the applicant and the orders issued by the Respondent, Mr.U.B.Mohapatra, learned Additional Standing Counsel, was specifically asked to state as to whether - (a) any special consideration governed the case of Shri Narayan Choudhury in fixing his period of probation for three years; (b) whether the rule relating to two-years probation stood amended on the date of issue of the said promotion order of the applicant; and

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(c) the specific authority based on which his period of probation was fixed at three years. Mr. Mohapatra, was unable to satisfy us on any of these three points; he only reiterated the statement contained in the counter-affidavit to the effect that it was clearly mentioned in the promotion order the applicant will be on probation for three years, and he did not object to the said order when it was issued. The explanation is hardly adequate or satisfactory.

It is also noticed that there has been no communication or order regarding the extension of the applicant's probation (which according to the applicant ended on 8.8.90, and, as per the respondents, till 7.8.91), nor has there been any indication as to whether or not he has successfully completed the period of probation, no matter whether it was for two years or for three. Resultantly, the applicant, who joined the post of Asstt. Technical Officer (Communication) on 8.8.88, continues to be in state of uncertainty right upto now. It is not known whether his period of probation ended satisfactorily after two years (or after three years), and if not, whether the same stood extended. This is an omission or flaw which vitally affects the career-interests of the applicant. Since no definite stand has been taken by the respondents on the aspect of the precise duration of applicant's probation, the balance of convenience in such circumstance shall have to go in favour of the applicant. And as the adverse observations contained

in the six-monthly probation report were duly expunged by a competent authority, it has to be concluded that there was nothing at all on record which would, or possibly could, warrant an extension of the initial period of probation. The applicant is therefore regarded as having successfully completed the probation.

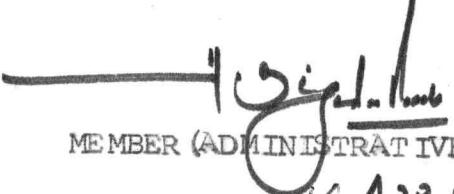
To sum up, my findings in this case are:

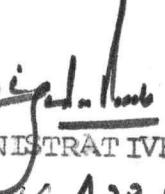
- i) the grievance of the applicant with regard to the O.C. Flying-cum-Air Traffic Control initiating his ACRs is mis-placed and unacceptable. There is nothing inherently objectionable about the manner in which ACRs have been initiated.
- ii) The adverse remarks contained in the ACRs 90-91 are required to be deleted in view of the fact that exactly identical entries contained in the relevant six-monthly probation period have already been ordered to be expunged by the competent authority;
- iii) the period of the applicant's probation on promotion to Asstt. Technical Officer is deemed to have ended successfully on 7.8.90.
- iv) In the light of the findings listed above, it shall now be necessary for the authorities to review and determine the applicant's eligibility for (i) confirmation (ii) crossing the efficiency bar from the date the same became due. The respondents shall accordingly re-examine the official's representation in the light of these observations and also of the relevant rules and instructions on the subject, within 60 days from the receipt of these orders. The applicant shall also be given the consequential monetary and service benefits, if and as entitled within 120 days, provided he makes

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a proper representation to the authorities for such consequential benefits. Thus the application is disposed of. No costs.


19.4.94
VICE-CHAIRMAN


MEMBER (ADMINISTRATIVE)


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Central Administrative Tribunal
Cuttack Bench Cuttack
dated the 19.4.1994, B.K.Sahoo