

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH.

Original Application No.5 of 1993.

Date of decision : August 30 , 1993.

Pitambar Sethi

...

Applicant.

Versus

Union of India and others ...

Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ?

K. P. Acharya
(K. P. ACHARYA)
VICE-CHAIRMAN

30.8.93

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Respondents.

For the applicant ...

M/s. Aswini Kumar Misra,
S.K.Das,
S.B.Jena, Advocates.

For the respondents 1 & 4 ..

Mr. Akhyaya Kr. Misra,
Addl. Standing Counsel
(Central)

For the respondents 2 & 3 ..

Mr. K.C. Mohanty,
Government Advocate (State)

C O R A M:

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

JUDGMENT

K. P. ACHARYA, V.C., In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to quash the adverse remarks communicated to the applicant under Annexures 1 to 3 and he further prayed that the orders contained in Annexures 7 to 9 rejecting the representations of the applicant be also quashed.

2. Shortly stated, the case of the applicant is that he is a member of the Indian Forest Service. While functioning as the Divisional Forest Officer at Rairakhol Forest Division the applicant was communicated with the adverse remarks for the years 1985-86, 1986-87 and 1987-88. On receipt of the same, the applicant had made representations to the concerned authorities and

those representations having been dismissed, this application has been filed with the aforesaid prayer.

3. Counter has been filed on behalf of the Respondents 2 & 3 namely, State of Orissa, represented through Secretary to Government in General Administration Department and Secretary to Government of Orissa, Forest and Environment Department respectively. NO counter has been filed on behalf of the Respondents 1 and 4 namely, Union of India, represented through Secretary to Govt. of India, Ministry of Forest and Environment and Union Public Service Commission respectively.

Mr. Akhyaya Misra, learned Addl. Standing Counsel(Central) prayed for an adjournment on 6.8.1993. The prayer was refused for the reasons recorded in the ordersheet. In the counter filed on behalf of the Respondents 2 & 3, it is maintained that the performance of the applicant has been rightly assessed by the reporting officer and the reviewing authority. The plea taken by the applicant that the reporting authority, Shri Pradhan had prejudice and bias against the applicant is devoid of any merit especially because the reviewing authority was of the same opinion and after consideration of the representations made by the applicant, they were rightly rejected. In such circumstances, the case being devoid of merit is liable to be dismissed.

4. I have heard Mr. Aswini Kumar Misra, learned counsel for the applicant, Mr. K.C. Mohanty, learned Government Advocate (State) for the Respondents 2 & 3 and Mr. Akhyaya Kumar Misra, learned Additional Standing Counsel(Central)

8. appearing for the Respondents 1 and 4 at a considerable length.

5. Annexures 1 to 3 are sought to be quashed. Annexure-1 is a letter dated 22.4.1988 addressed to the applicant by the Special Secretary to Government, General Administration Department. Therein it is stated as follows:

" A review of the confidential report on your work for the year 1985-86 reveals that your performance was of average standard. You were calm and easy going. Your practical knowledge in technical matters needed improvement.

Government hope, you will try to improve."

Annexure-2 is a letter dated 20.4.1988 addressed to the applicant by the Special Secretary to Government of Orissa, General Administration Department. Therein it is stated as follows:

" A review of the confidential report on your work for the year 1986-87 reveals that you were an average officer. Your actions to prevent in-roads through forest roads in your division needed improvement.

Government hope, you will try to improve."

Annexure-3 is a letter sent to the applicant by the Special Secretary to Government of Orissa, General Administration Department containing the following:

" Review of the confidential report on your work for 87-88 reveals that your authority was questionable in respect of some of achievements furnished by you. Likewise, a number of irregularities could have been saved in your Division had you followed the rules and regulations and instructions. Your quality of performances deteriorated because of your gradual lethargy and lack of interest and personal involvements in official matters. Your dedications and motivations and your willingness and initiative to learn and systematise your works were not upto mark. You were easy going and often furnished incorrect informations and reports. You could have done a lot more to improve the management of reserve

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forests in Rairakhol Division. You were not upto mark.

Government hope you will try to improve."

On receipt of these three communications the applicant had made representations to the Government vide his D.O. letter Nos. 7, 8 and 58 dated 16.6.1988, 16.6.1988 and 16.8.1989 respectively contained in Annexures 4, 5 and 6. In all these three letters the applicant pointed out the number of vehicles seized by him under section 56 of the Orissa Forest Act, total amount of royalty collected by him from the Orissa Forest Corporation, the details of the demarcation and reservation made in different forests, effective checks in encroachments detected by him, and the details of salvaging forest produces etc.. The representations did not yield any fruitful result.

6. The moot question that needs determination is as to whether this Bench has any scope to judge the correctness or otherwise regarding the assessment made of this officer by the reporting authority or the reviewing authority. The superior authority has ample opportunity of watching the performance of his subordinate officer and accordingly has a duty to assess the performance of his subordinate officer and record his views. No Court can ever usurp the position of an authority who has an opportunity of assessing ⁱⁿ the performance especially in technical matters involved in the present case. In my opinion, the superior authority is the best judge. The Court can lay its hands for interference only when malafide is pleaded against the reporting officer or the reviewing authority.

7. While trying to assail the adverse remarks communicated to the applicant, Mr. Aswini Kumar Misra, learned counsel for the applicant submitted that the adverse remarks are liable to be quashed for the following reasons :

- i) Confidential reports are meant to be remedial in character and not meant to be punitive ;
- ii) Ephemeral character roll was not maintained;
- iii) Delay in communication of the confidential report; and
- iv) reasons for coming to such conclusions by the reporting authority and the reviewing authority not stated.

In support of his contention, Mr. Aswini Kumar Misra, learned counsel for the applicant relied upon a Division Bench decision of the Central Administrative Tribunal, Ernakulam Bench reported in 1991(4)SLR 383 (Alphonse Louis Earayil vrs. Secretary to Government of India and another). In this judgment the Bench was more concerned with the contradictory opinion expressed at different stages in the confidential report in which opinion expressed by the reporting authority in the latter portion was in conflict with the opinion expressed at the beginning stage of the report, and therefore, rightly the Bench held that contradictory opinion expressed in the same report for the same year cannot be acted upon. Such position does not appear in the present case. Mr. Aswini Kumar Misra, next contended that the principles of natural justice have been violated

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while disposing of the representations made by the applicant for expunction of the adverse remarks. In the case of Gurdial Singh Fijji vrs. The State of Punjab and others reported in 1979(1)SLR 804 Their Lordships held as follows:

" The principle is well-settled that in accordance with the rules of natural justice, and adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified. .. "

In the case of Siemens Engineering & Manufacturing Co. of India Limited case reported in AIR 1976 SC 1785 Their Lordships observed as follows:

" If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative law they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders by them. Then alone administrative authorities and tribunals, exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. 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 its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. "

In the case of A.K.Kraipak . v. Union of India reported in AIR 1970 SC 150 the Supreme Court observed as follows:

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" The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely (i) no one shall be a Judge in his own cause (namo debet esse judex propria causa) and (ii) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. "

The ratio decidendi of all these judgments taken together boils down to the position that to prevent miscarriage of justice and to secure fair play are the objects underlining the rules of natural justice. The requirement of recording reasons for its decision by an administrative authority exercising quasi-judicial function is to achieve the object of avoiding chances of arbitrariness and securing fairness in adjudication. In the present case, the applicant while filing his representation for expunction of the adverse remarks has specifically mentioned the achievements made by him at different stages and the different matters guarding the interest of the Government. These things have not at all been dealt in the communication made by the Special Secretary to Government of Orissa in the General Administration Department, with the present applicant contained in Annexure-7 conveying the orders of the Government that adequate grounds did not exist for expunction of the adverse remarks. I think there is substantial force in the contention of Mr. Aswini Kumar Misra, that the applicant not having been informed regarding the grounds for which the representation

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stood dismissed amounts to non-application of mind by the competent authority. In the abovementioned judgments Their Lordships have categorically held that reasons must be assigned after giving personal hearing to the concerned person. Annexure-7 clearly indicates that reasons have not been given. Admittedly, the applicant has not been given personal hearing. Therefore, while applying the principles laid down by Their Lordships to the facts of the present case there is no escape from the conclusion that the principles of natural justice have not been complied.

8. I refrain myself from expressing any opinion including malafide pleaded against the reporting authority on the other contentions/put forward by learned counsel for the applicant because of the order I propose to pass hereunder.

In view of the non-compliance of the principles of natural justice this matter is remanded with a direction that within 30 days from the date of receipt of a copy of this judgment the concerned authority in the Government, would give a personal hearing to the applicant on the questions raised by him in the representation and a speaking order must be passed which would be in conformity with the principles of natural justice.

9. Other contentions put forward by Mr. Aswini Kumar Misra are kept open for expressing of opinion in future if occasion arises.

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10. This application is accordingly disposed of leaving the parties to bear their own costs.

Kejariwala 30.8.93

VICE-CHAIRMAN.

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
August 30, 1993/Sarangi.