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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 605 OF 1996
Cuttack this the 18th day of October/2000

K. Vasudev Rao

...

Applicant(s)

-VERSUS-

Union of India & Others

...

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

18.10.2000
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 605 OF 1996
Cuttack this the 18th day of October / 2000

CORAM:

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

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Sri K.Vasudev Rao
aged about 57 years,
S/o. Late K.Ananta Rao, resident of
House No. MIG-293, Madhuban Colony
PO - Kattedar, Hyderabad-500252(A.P.)

...

Applicant

By the Advocates

M/s.Ganeswar Rath
S.N.Mishra

-VERSUS-

1. Union of India represented by it's Chairman, Central Water Commission, Sewa Bhawan, R.K.Puram, New Delhi-66
2. Chief Engineer, Mahanadi and Eastern Rivers, Central Water Commission, Sahid Nagar, Bhubaneswar
3. Superintending Engineer, Hydrological Observation Circle, Central Water Commission, Plot No.25-R, Sahid Nagar Bhubaneswar-7

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Respondents

By the Advocates

Mr.B. Dash
Addl.Standing Counsel

O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL): In this Application filed on 12.8.1996, applicant, a Circle Superintendent in Central Water Commission Office under Respondent No.3 prays for expunction of adverse remarks communicated to him under Annexure-1 dated 30.8.1995. His case is that he is a member of the Central Water Commission Employees' Association, Orissa Circle, Bhubaneswar. This Association discussed several times with the Superintending Engineer (Respondent No.3) regarding non-closure/non-conversion of the Brahmani - Subarnarekha Division and non-transfer of any employee working in that Division owing to such closure/conversion.

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When the transfer of a number of such employees were almost certain, almost all the employees of the Association staged a peaceful Dharana during lunch hour at the Gate of the Office on 18.2.1995 registering their protest against the contemplated transfers. Due to this Dharana, Respondent No.3 became verymuch vindictive and tried his best to damage service career of the applicant. Accordingly he communicated 13 adverse entries under Annexure-1, which are vague, cryptic and baseless. The applicant then preferred representation on 25.9.1995 under Annexure-2. This representation was rejected by Respondent No.2 in order dated 7.12.1995 under Annexure-3. It is urged by the applicant that these adverse remarks were passed by Respondent No.3, displaying vindictive attitude inasmuch as during 38 years of his service career, there was no occasion for him to receive a single Memo or a letter of reprimand or any explanation from the higher authority and so on. The remarks, according to him, have been made arbitrarily without any degree of impartiality and only with a view to spoil the career of the applicant at the fag end of his service.

2. Respondents in their counter while justifying the passing of adverse remarks, stated that the applicant along with others staged demonstration shouting slogans against the officers and blocked the Main Gate of the Office ^{premises} from 1.00 P.M. to 11.00 P.M. on 18.2.1995 and thus prevented the officers and staff members from going out. They also disrupted the normal functioning of the office. These remarks passed by Respondent No.3 have been accepted by the higher authority and the Chief Engineer (Respondent No.2) on perusing the representation of the applicant not only dismissed the prayer made in that rep

representation but also cautioned him for making uncalled for remarks against the higher authorities in his representation and advised him to desist in future in making such remarks. Thus the Department took the stand that no vindictive attitude was displayed in passing these adverse remarks, which were justified by the conduct and official performance of the applicant. It is also denied by the Respondents ^{that} to the averments made by the applicant in the Original Application that preceding 38 years of service he had no occasion to receive any letter of reprimand or any memo of caution, and so on. In fact C.R.s of preceding five years would negative the same.

3. No rejoinder has been filed by the applicant refuting the averment of the Department that he had actively participated in the Dharana, shouted slogans against the officers and participated in blocking the Main Gate of the office premises from 1.00 P.M. to 11.00 P.M.

4. We have heard Shri Ganeswar Rath, the learned counsel for the applicant and Shri B. Dash, the learned Addl. Standing Counsel appearing for the respondents. Also perused the records.

5. There is no denial to the averment in the counter with regard to applicant's character and behaviour ~~though~~ entries made in his C.R.s during the preceding five years through any rejoinder and these belie his averment in the Original Application in regard to his good performance all through. It is also not his case in the Original Application that he did not participate in this Dharana, which according to him was peaceful.

6. Be that as it may, the adverse entries were made by Respondent No. 3, the higher authority of the applicant and

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the same were accepted by the next higher authority and were ultimately confirmed by the Chief Engineer (Respondent No.2). It is not the case of the applicant that even the Chief Engineer (Respondent No.2) had displayed a vindictive attitude against him. The grievance of the applicant, in sum and substance is that the adverse remarks passed by Respondent No.3 are tainted with malice. This is all the more apparent from his averments made in his representation addressed to Respondent No.2 under Annexure-2. Law is well settled, if there is any allegation of malice against an authority, specially in service jurisprudence that authority has also to be impleaded by name, so that he can have an independent scope and opportunity to counter those allegations of malice. The applicant having not impleaded Respondent No.3 by name as party-respondent, allegations against Respondent No.3, as urged in this Original Application need no consideration. This Tribunal is not an appellate authority over Respondent Nos. 2/3 to reassess character and performance of the applicant and take an independent view. Nonetheless, we have gone through the remarks made in Annexure-1. None of these 13 remarks contained in Annexure-1 is personal and/or unconnected with his official conduct. All are connected with his official performance and conduct. We, therefore, do not agree that these are vague and baseless.

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In the result, we do not see any merit in this Application which is accordingly dismissed, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN. 2010

28-10-2000
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//