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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.835 OF 1996
Cuttack this the 25th day of May, 2000

Asim Kumar Chakraborty ... Applicants
and Others

-VERSUS-

Union of India & Ors. ... Respondents

(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 ? NO

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
25.5.2000

J.S. Dhaliwal
(J.S.DHALIWAL)
MEMBER (JUDICIAL)
25.5.2000

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 835 OF 1996
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CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND

THE HON'BLE SHRI J.S. DHALIWAL, MEMBER (JUDICIAL)

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1. Asim Kumar Chakraborty, aged about 44 years,
S/o. of Late Amarendra Chakraborty
of Aparnanagari, Chauliaganj, Cuttack
2. Sambhunath Biswas, aged about 36 years,
S/o. Late Suresh Chandra Biswas of
Village - Papile, PO: Daksinchutra,
Dist : 24, North Praganas (W.B.)
3. Indramano Oram,, aged about 46 years,
S/o. Premchand Oram, of Barpank
PO: Kuchinda, Dist: Sambalpur
4. Nirman Chandra Dash, aged about 28 years,
S/o. Prafulla Chandra Dash, At/PO: Giria
Via : Rajkanika, Dist: Kendrapara

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Applicants

By the Advocates

M/s.Ganeswar Rath
S.N. Mishra
A.K. Panda
S.R.Mohanty

-VERSUS-

1. Union of India represented by its
Chairman, Central Water Commission
Sewa Bhawan, R.K.Puram, New Delhi
 2. Chief Engineer, Mahanadi and Eastern
Rivers, Central Water Commission,
Bhubaneswar
 3. The Superintending Engineer
Hydrological Observation Circle
Central Water Commission,
Saheed Nagar, Bhubaneswar
 4. The Executive Engineer
Eastern Rivers Division,
Central Water Commission,
Near Sahid Nagar P.S.,
Vani Vihar, Bhubaneswar-4
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- ..

5. Deputy Director
Office of Chief Engineer
Central Water Commission
Mahanadi & Eastern Rivers,
Bhubaneswar

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Respondents

By the Advocates

Mr. B. Dash
Addl. Standing
Counsel (Central)

...

O R D E R

MR. J. S. DHALIWAL, MEMBER (JUDICIAL): Applicant Asim Kumar

Chakraborty and three others have filed the present Original Application being aggrieved by the adverse entries communicated to them by Respondents 4 and 5 vide Annexures-1 to 1/4, which are regarding behaving with superior officers in a manner which could not be ignored and appreciated on an incident of 18.2.1995 and regarding the fact that applicant Nos. 1 to 3 had been suspended w.e.f. 6.3.1995 and applicant No. 4 w.e.f. 7.3.1995 on disciplinary grounds because of their behaviour on 18.2.1995. It was further mentioned that they may submit their representations against adverse remarks.

They plead that they are the Members of Central Water Commission Employees Association, Orissa Circle. Government of India had decided in March, 1994 to close down the B.S. Division at Bhubaneswar which had been functioning for about 25 years. The members and office bearers of the Employees Association had discussed with the S.E. Hydrological Observation Circle, C.W.C. regarding non closure of the said office and requested for non transfer of any employees working in Bramhani - Subarna-rekha Division. When transfer of employees appeared to be imminent they set on a dharana at lunch hour in the Division Office on 18.2.1995 to register their protest. The applicants in the present O.A. challenge the adverse entries made in



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their C.R.s for the period ending on 6.3.1995(1994-1995), which were devided into two phases in so far as applicant No.4 is concerned, i.e. for the period from 1.4.1994 to 12.7.1994 and from 13.7.1994 to 6.3.1995 for the year 1994-95. They claim that they had also filed representations against the adverse remarks but the same were rejected by Res.2, Chief Engineer. They claim that applicant Nos. 2 and 3 along with others of employees were sitting on a dharana without indulging ⁱⁿ any criminal activities at the gate, while S.E. was sitting on the 1st floor with other officers. They claim that applicant Nos. 1 and 4 are not members of the Association. The remarks by the S.E. after the incident of 18.2.1995 are ^{due to} the malicious intention, in order to spoil their service records and/or the remarks are influenced by the S.E. by getting the same recorded through his subordinate officers. In subsequent para the applicants claim that the remarks are without justification, baseless and out of whims and caprice, without any degree of objectiveness and so on. They claim that under the rules the Reporting Officer is to act as a guide, adviser and is required to assist his subordinate for improving and correcting their faults and short comings. The remarks have been recorded due to the applicants being put under suspension and for having been chargesheeted for the incident of 18.2.1995 and the same is subjudice before the Tribunal in O.A.511/95, ⁵¹⁰⁴⁵¹² ^{2/1995} They have prayed for quashing the orders at Annexures 1 to 1/4 with the direction to respondents to expunge the same from the C.R.s of the applicants.

2. Respondents plead that adverse remarks against the applicants for the relevant period have been made by their

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respective reviewing officers basing on actual performance and activities. They plead that C.W.C. Employees Association is not a recognised association of the Department. B.S. Division was not closed as alleged, but was only converted into monitoring and appraisal unit under the reorganisation programme of the Department. It did not involve any retrenchment of the staff and the transfers and postings are routine. The remarks as alleged have been correctly made under the rules and no malafides or vindictiveness is involved. Denying that the applicants along with others were sitting in a peaceful Dharana, it has been mentioned that the employees and the applicants had staged demonstration raising slogans against the S.E. and other officers from 1300 hrs. upto 2300 hrs. Applicants along with others had disrupted the official functioning concluding the three day Hindi Workshop organised by the Official Language Implementation Joint Committee and had gheraoed. Officers who were gheraoed could not take their food and an ailing Govt. servant who was confined had not been allowed to leave office premises. Applicant No.1 is one the members of Wireless Operators Association of C.W.C. and was responsible for instigating the staff against the superior officers and that his activities on 18.2.1995 cannot be appreciated. The remarks are on the actual performance and activities of the applicants. It is specifically pleaded that Res.3, viz., S.E. has neither entered adverse remarks in the C.R.s nor he is the Reviewing Officer for the applicants (except applicant No.3) who agreed upon the remarks of the Reporting Officer. It is mentioned that the applicants and others were reprimanded verbally on a number of occasion for their indulgence in activities like

demonstration, shouting slogans every now and then. Remarks were entered when no case was pending in any Court or Tribunal.

3. No rejoinder has been filed by the applicants.

Pleadings being complete with the consent of learned counsel for the parties we have heard the case on merits and have considered the materials on record.

4. Learned counsel for the applicants has mentioned that the present applicants had earlier filed O.A.509/95 along with similarly situated other persons, who are parties in O.A. Nos. 510, 511 and 512 of 1995. It is mentioned that those O.A.s were disposed of keeping in view the fact that orders of suspension and charge sheets, subject matter of those cases had been withdrawn. It is argued that the adverse remarks mentioned above are based on placing the applicants under suspension and the fact that they were charged sheeted. Once the very basis of these adverse remarks goes, ~~thus~~ it cannot be sustained and should be ordered to be expunged. We have examined the records of those O.A.s. Learned counsel for Respondents has very strenuously urged that earlier O.A.s were disposed of as infructuous as charge sheets as served on the applicants and other persons had been withdrawn for the purpose of modifying the same and chargesheeting them with fresh Memos. It is claimed that they have been served with fresh articles of charges with modification of the earlier charge sheets including the present applicants. It thus cannot be said that the remarks are baseless or should be expunged merely because, earlier chargesheets were withdrawn.

5. Considering the facts as placed before the Bench, we take note of the fact that the applicants were served with the fresh charge sheet. In any case, the chargesheets themselves,

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either the earlier or the subsequent have not been adjudicated upon by this Court nor it has been held that the facts mentioned therein were false. The purpose of charge sheets and the subsequent disciplinary proceedings is to find out as to whether the Government servant has committed any misconduct, as to whether such acts as alleged in the article of charges are proved, that the charged official is given fair opportunity of defending himself and then for arriving at a conclusion. Considering the nature of remarks in Annexures - 1, 1/1, 1/2, 1/3 and 1/4, it cannot be said that these are not factual. If one would consider the challenge of the applicants against part of remarks recorded under Annexures - 1 to 1/4 with regard to involvement of applicants in the Association work, one could say that such remarks should either be not taken to be adverse or should not have been recorded at all. But here we find that remarks cannot be ^{held to} just ⁱⁿnocuous by the mention of involving with the Association work, but the part of factual remarks recorded is that while involving with the Association work they very often instigated the staff against the officers' orders/instructions and that ~~they~~ way they behaved with the superior officers on 13.2.1995 cannot be appreciated.

Even though allegations of mala fides and vindictiveness have been made in the O.A., but nothing has been shown to us which may indicate any ill will or malice on the part of the S.E. against whom such allegations have been made. That the incident of 13.2.1995 did take place is not even in dispute but there are variations in the version of respondents and the applicants. Since the averments made in the written reply have not even been traversed by the applicants, one can accept


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the version of the respondents safely that officers were confined in the office premises for a very long time against their will. We ^{record in} it as a fact that there is no evidence on record to substantiate the allegation of either malice or vindictiveness nor anything is shown to us that Res. 3 wanted to spoil the service record of the applicants for any specific reason.

Learned counsel for the applicants has drawn our attention to Swamy's Compilation of Seniority and Promotion and mentioned that the procedure for making entries in the C.R. was not strictly followed. It is also mentioned that the Reporting Officer and the reviewing authority have not acted as counsel or advised to cope up the short comings of the applicants. We find from the written reply that ~~S.E. was not the reporting~~ officer. We find no material to accept the plea that he may have influenced his subordinate officer for making adverse entries. From the nature of remarks recorded we find that these are remarks based on certain facts. We have considered the procedure for filling up A.C.Rs which was mentioned, as under O.M. dated 20th May, 1972 given in Swamy's Compilation on Seniority and Promotion in 4th Edition of 1994 as given at Page-32. This in fact details that the procedure for filling of the Columns relating to Integrity for which certain guidelines have been given. In the present case nothing regarding integrity has been recorded. The incident of 18.2.1995 and certain other similar incidents of Slogans, Shouting etc. were considered. The challenge on the basis of Item At ^{decision} Sl. No. 10 in Swamy's Compilation based on D.G. P & T letter dated 21.1.1983 is also not correct. The remarks in the present case were not recorded

as Reviewing Officer by the S.E.R

For the reasons discussed above, we find the present O.A. is devoid of merits and it is accordingly dismissed, but no order as to costs.


(SOMNATH SOM)
VICE-CHAIRMAN


(J.S.DHALIWAL)
MEMBER (JUDICIAL)

25.5.2000

B.K.SAHOO//