

12
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 461 Of 2000


Cuttack, this the 26th day of September, 2001

Shri Gopabandhu Biswal 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 26/9/2001

13
CENTRAL ADMINISTRATIVE TRIBUNAL,
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CORAM:

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

.....
Shri Gopabandhu Biswal, IPS, aged about 58 years, son of
late Gunanidhi Biswal, at present continuing as D.I.G.
of Police, Armed Police, Posted at Koraput
..... Applicant

Advocates for applicant - M/s A.K.Misra
B.B.Acharya
J.Sengupta
D.K.Panda
P.R.J.Dash
G.Sinha

Vrs.

1. Union of india, represented through Secretary,
Government of India, Home Department, North Block,
New Delhi-1.
2. State of Orissa, represented through its Special
Secretary, Government of Orissa, General
Administration Department, Secretariat, Bhubaneswar,
Dist.Khurda.
3. Commissioner-cum-Secretary to Government of Orissa,
Home Department, Secretariat, Bhubaneswar,
District-Khurda.
4. Director General-cum-Inspector General of Police,
Police Line, Buxi Bazar, Cuttack, Dist.Cuttack

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Respondents

Advocates for respondents - Mr.A.K.Bose
Sr.CGSC for R-1
&
Mr.K.C.Mohanty,
Government Advocate
for R-2 to 4

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

S.Som.
In this O.A. the petitioner, who is an
IPS officer of Orissa Cadre and is currently holding the
rank of D.I.G. of Police, has prayed for quashing the
order dated 13.1.2000 (Annexure-1) communicating adverse

14

entries in his C.R. for the period from 1.4.1998 to 24.3.1999 and the order dated 27.5.2000 (Annexure-4) rejecting his representation. State of Orissa represented by Special Secretary, General Administration Department (respondent no.2) have filed counter opposing the prayer of the applicant. The petitioner has filed rejoinder, and respondent no.2 has filed counter to the rejoinder. On the direction of the Tribunal, the learned Government Advocate has filed the original CR folder of the applicant, along with the file in which the representation of the applicant against the adverse entries was considered and disposed of and we have perused the same. We have heard Shri Aswini Kumar Mishra, the learned counsel for the petitioner, Shri A.K.Bose, the learned Senior Standing Counsel for respondent no.1-Union of India, and Shri K.C.Mohanty, the learned Government Advocate for the State of Orissa. The learned counsels of both sides have relied on the following decisions:

- 15
- (i) Union of India v. E.G.Nambudiri, AIR 1991 SC 1216;
 - (ii) N.Patnaik v. State of Orissa, AIR 1996 SC 3223;
 - (iii) State of U.P. v. Y.S.Misra, AIR 1997 SC 3671;
 - (iv) S.S.Venkata Rao v. State of Orissa, ILR 1974 Cutt.(F.B.) 227; and
 - (v) M.M.Khatua v. State of Orissa, XLIV (1977) CLT 490.

We have perused these decisions.

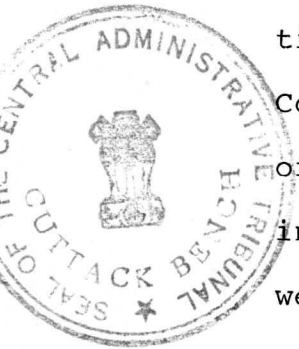
2. The case of the applicant is that he joined the Indian Army in 1964 and after released, joined the State Government as Assistant Commandant in 1972. The applicant has stated that he had approached the Tribunal for promotion to Indian Police Service and by virtue of the order of the Tribunal, which was upheld by the Hon'ble Supreme Court, he was promoted to IPS. The applicant has not mentioned the date of his promotion or year of his allotment. But it appears from the pleadings that in the IPS he was promoted to the rank of D.I.G. of Police. The applicant has stated that because he got promotion to IPS by fighting protracted litigation in which the stand of the Government was rejected, the IPS officers were prejudiced against him. He has further submitted that even after he was promoted to IPS, one IPS officer S.N.Swain filed OA No.630 of 1999 before this Bench challenging the applicant's appointment to IPS by promotion. It is stated that in that case, apart from the counter filed by the State Government, Director-General and Inspector General of Police had filed a separate counter and this shows the bias of Director General of Police against the applicant. The applicant has stated that he was intimated over telephone on 20.6.1998 to proceed to Chatrapur on law and order duty. It appears that at that time the applicant was posted as Commandant, Second Battalion, Jharsuguda. The applicant has stated that he proceeded to Chatrapur, but enroute he fell seriously ill and was under treatment of Medicine Specialist at Bhubaneswar. This was not believed by the authorities and he was



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called upon to appear before the Medical Board and efforts were made to place him under suspension and to start disciplinary proceedings against him even when the petitioner was bedridden. Only when his representation to Chief Minister was taken into consideration, the petitioner was saved from humiliation and departmental proceedings. The applicant has stated that throughout his service career, his work has been appreciated and commendation letter has been issued to him. The Armed Police Battalion of which he was in charge as Commandant have been adjudged as best Battalion for about eight times and he has also received State level awards. As Commandant, Second Battalion, Jharsuguda and in charge of Armed Police Training Centre at Jharsuguda he had introduced many improvement in the course and several welfare activities. The applicant has stated that he was within the zone of consideration for promotion to I.G. of Police and in order to block his promotion, adverse entries have been recorded in his CR and communicated to him in the impugned order and his representation was rejected without application of mind and through a non-speaking order. In the context of the above facts, the applicant has come up in this petition with the prayer referred to earlier.

3. It is not necessary to refer to the averments made by respondent no.2 in their counter and the applicant in his rejoinder and the respondent no.2 in their reply to the rejoinder because these will be taken note of while considering the submissions made by the learned counsel of both sides. It is only necessary to note that respondent no.2 in their counter and reply to the rejoinder have mentioned that against the order



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rejecting his representation, the applicant has not filed any appeal and therefore, the Original Application is not maintainable. On the factual aspects, respondent no.2 have mentioned in the reply to the rejoinder that Screening Committee meeting was held on 20.4.2000 to consider the cases of eligible officers for promotion to the rank of IG of Police. In this meeting the applicant's case was considered. The Committee noted that though adverse entries in the CR of the applicant for the year 1998-99 had been communicated to him, his representation has not been disposed of. Therefore, the Committee decided to defer consideration of his case till the representation was disposed of. The next Screening Committee meeting was held on 9.6.2000 by which time the representation of the applicant for expunging the adverse remarks for the year 1998-99 has been rejected and the order communicated to the applicant in the letter at Annexure-4. The Screening Committee in their meeting held on 9.6.2000 considered the case of the applicant and adjudged him unsuitable for promotion to the rank of IG of Police. It is further stated that consequently his junior in the IPS cadre has been promoted to the rank of IG of Police.

4. At this stage it is necessary to refer to the adverse remarks which were communicated to the applicant. We have also perused the CR folder of the applicant. In the letter at Annexure-1 the applicant has been informed that his dedication to duty should improve and that he had lost perspective and acted wayward at times. The applicant's representation against the adverse remarks was rejected in order dated 27.5.2000 in

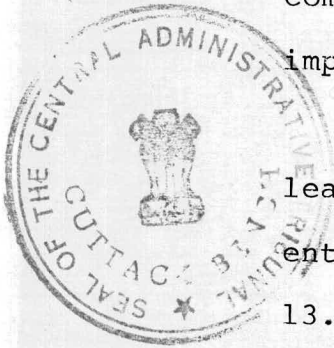


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which the applicant was informed that his representation has been carefully considered by Government and it has been found that there is no adequate ground for expunging or modifying the adverse entry and accordingly his representation was rejected. The applicant has challenged both these orders on various grounds which are discussed below. Before doing that it is necessary to note that the applicant's prayer for quashing the letter communicating the adverse entry is misconceived because adverse entries, if recorded, are required to be communicated to the officer concerned for his improvement.

5. The first ground urged by the learned counsel for the petitioner is that the adverse entries have been communicated after much delay on 13.1.2000 and this is violative of the rules for communicating adverse entries. It is necessary to note that the entries relate to the year 1998-99 and on a reference to the CR folder we find that the entries by the officers at different levels, i.e., reporting officer, reviewing officer and accepting officer were completed within six months from the close of the year in question and within four months thereof the adverse entries were communicated. In view of this, it cannot be said that the adverse entries have been made after much delay and on this ground the adverse entries should be expunged. The Hon'ble High Court of Orissa in their Full Bench decision in S.S.S.Venkatarao's case(supra) have held that in case of State Government, instructions regarding writing of CR and communicating adverse entries, if any, within certain period from the close of the year under report are merely directory and not



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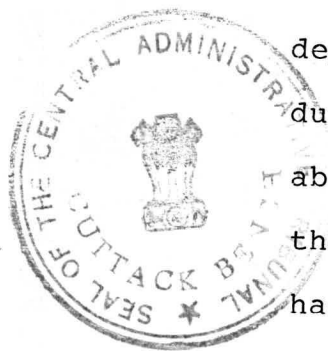
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mandatory in nature. It is submitted by the learned counsel for the petitioner that in case of All India Service officers, these instructions form part of All India Services (Confidential Roll) Rules, 1970 which have been promulgated under Section 3 of All India Services Act, 1951. Under Rule 5 of the above Rules the reporting officer is required to record his remarks ordinarily within two months from the close of the year under report. Under Rule 6 the reviewing officer is to record his remarks within one month of receipt of the confidential report by him, and the accepting officer has to give his remarks within one month from the review. Rule 8 provides that adverse entries should be communicated ordinarily within two months from the date of receipt of the confidential report. It is no doubt true that these instructions have been laid down under the above rules, but that does not mean that the remarks recorded after the period mentioned in the rules would be unauthorised or that the delay in communication of the adverse entries would entitle the concerned officer to claim expunction on the ground of such delay. This is borne out by the use of the word "ordinarily" in Rules 5, 6 and 8 of the All India Services (Confidential Roll) Rules, 1970. This contention is, therefore, held to be without any merit and is rejected.



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6. The next contention of the learned counsel for the petitioner is that the adverse entries have been recorded without any basis. We have very carefully gone through the CR of the applicant, voluminous representation submitted by the applicant with several enclosures some of which have been filed by

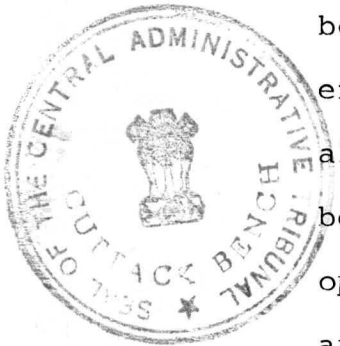
him along with the O.A. as also the substantiation report of the officer who has given the adverse remarks. The adverse remarks are of general nature and it is really not open for the Tribunal to go into the justification of making these entries because the general entries are given by the superior officer on his review of the work and conduct of the concerned officer. Even then it is necessary to note a few details of this aspect. The applicant has stated that the adverse entries have been given because when the applicant was deputed from Jharsuguda to Chatrapur on law and order duty he fell sick enroute at Bhubaneswar and remained absent because of his sickness. The applicant has stated that he was genuinely sick and because of his absence it has been recorded that his dedication to duty should improve. It is necessary to note that from the records we find that after getting the order of movement from Jharsuguda to Chatrapur on law and order duty, the applicant expressed his reluctance to proceed on law and order duty. It is also noted that the sickness which subjected him to remain on sick leave for five months was initially acute bronchitis. Moreover, this incident has not been taken note of while making adverse entries. There is no reference in the adverse entries that he avoided any duty. The reviewing officer had inspected the work of the applicant and found deficiencies which were communicated to the applicant in the inspection report and in view of this, it cannot be said that the adverse entry regarding need for improvement of his dedication to duty is unmerited. In the substantiation



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report also there is sufficient material to support the other entry of his being wayward at times. In view of this, it cannot be said that these entries should not have been recorded at all.

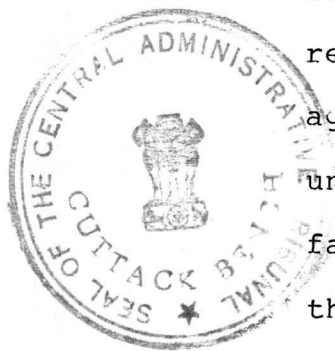
7. The next ground urged by the learned counsel for the petitioner is that these entries have been given due to prejudice as the applicant had filed case for promotion to IPS and his promotion was given only after he succeeded in the litigation. We have gone through the O.A. carefully and we find that in the OA not a whisper of any allegation of bias or prejudice has been made against the officer who had given the adverse entries. Moreover, the law is well settled that when allegation of bias is made, the concerned officer has to be impleaded as party by name so that he gets an opportunity to state his case before the Court. The applicant has stated that as he got promotion to IPS after litigation, the IPS officers were biased against him. It is not possible to accept such a bland assertion. Once he has been appointed to IPS by promotion, obviously other senior IPS officers would write in his CR. So far as Director-General of Police is concerned, we are not prepared to accept that just because on behalf of DG of Police a counter was filed in OA No.630 of 1999, the DG of Police must be taken to have bias/prejudice against him. For one thing the adverse entries have not been given by DG of Police. A party in a litigation has a right to file counter and a stand taken by that party to a litigation in the counter cannot go to show the bias of that party with regard to matters which are unconnected. Here also DG of Police



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has not been made party by name. Therefore, the allegation of bias is held to be without any merit and is rejected.

8. Lastly, it is submitted by the learned counsel for the petitioner that the order rejecting the representation of the applicant is a non-speaking order. This aspect has come up before the Hon'ble Supreme Court in E.G.Nambudiri's case (supra) where their Lordships have held that there is no rule or administrative order for recording reasons in rejecting a representation. The Hon'ble Supreme Court have held that in the absence of any statutory rule or instruction requiring the competent authority to record reasons in rejecting a representation made by a Government servant against adverse entries, the competent authority is not under any obligation to record reasons, but he must act fairly and in a just manner. It will be adequate if in the file reasons have been recorded while rejecting the representation and if such an order is challenged in a court of law, it is always open to the competent authority to place the reasons before the Court which may have led to the rejection of the representation. In this case, after going through the concerned file, we have no hesitation in holding that the representation of the applicant has been fairly considered. We have also gone through through N.Patnaik's case (supra). That was a case relating to compulsory retirement of a Chief Engineer on the basis of adverse remarks in his record when he was an Executive Engineer. Hon'ble Supreme Court held that as on the basis of subsequent good entries, he has got several promotions, the stale entries cannot be pressed into service to compulsorily retire him. That decision has no application to the case of the



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applicant. The facts of Y.S.Mishra's case (supra) are also widely different and it is not necessary to refer to the facts of that case.

9. In consideration of all the above, we hold that the application is without any merit and the petitioner is not entitled to the relief claim by him in the Original Application which is accordingly rejected but without any order as to costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

(SOMNATH SOM)

VICE-CHAIRMAN

AN/PS