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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 544 OF 2000
Cuttack this the 27th day of February/2003

P.K. Ray

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Applicant(s)

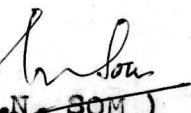
VERSUS

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 ? yes


(B.N. SOM)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 544 OF 2000
Cuttack this the 274 day of February/2003

CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN

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Sri Pramod Kumar Ray, aged about 45 years,
Son of Late Ghasiram Ray, presently working
as Draftsman, Office of the Director of Census
Operation, Orissa, Unit-9, Janpath,
Bhubaneswar-22, Dist-Khurda

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Applicant

By the Advocates

M/s .K.C.Kanungo
S.Behera
R.K.Singh

VERSUS

1. Union of India represented by
Registrar General, Census Operation,
2/A-Mansingh Road, New Delhi-11
2. Director of Census Operation, Orissa,
Janpath, Unit-9, Bhoiinagar, Bhubaneswar-22
Dist-Khurda

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Respondents

By the Advocates

Mr.A.K.Bose,
Sr.Standing Counsel
(Central)

O R D E R

MR.B.N.SOM, VICE-CHAIRMAN: This Original Application,
under Section, 19 of the A.T.Act, 1985, has been filed
by the applicant, Shri Pramod Kumar Ray, challenging
made
the adverse entries/in his A.C.R. for the year 1998-99
and communicated to him by order dated 24.4.2000 under
Annexure-1. The main grievance of the applicant is that
he had submitted a detailed representation against the
said adverse entries made in his A.C.R., but the same

was summarily rejected by Respondent No.2, without assigning any reason.

The applicant has submitted that the entries made by Respondent No.3 in his A.C.R. for the period from April, 1998 to 31st March, 1999 are subjective and not based on material evidence. He has also levelled allegation of bias and prejudice against the Reporting and Reviewing Officers. In support of his contention, he has stated that Annexure-R/2 series of the counter (from Pages 12 to 23), which is a statement of work in respect of eight employees of the office of the Respondents showing the performance of the applicant vis-a-vis the other employees, would reveal that although the quality of performance of the others are of the same level or less, the Reporting Officer had singled him out for adverse comments leaving the others untouched. During the oral arguments, the learned counsel for the applicant, Shri K.C. Kanungo, made a specific reference with regard to quality of performance of S/Shri G.M. Mohapatra and P.K. Behera against whom adverse entries were made and subsequently expunged on the basis of their representations. Shri Kanungo further stated that adverse remarks, "he has no zeal for work", in case of Shri P.K. Behera was expunged, but the same treatment was not meted out to the applicant. He strongly argued that the performance of those aforementioned two persons as reflected at Pages 21 and 22 of the counter substantiates that the applicant was discriminated. Shri Kanungo further stated that while a remark has

been made in his A.C.R. that "he has no interest to learrn new methods" his name was not, sponsored for computer training, that he has been described as "very slow in disposal of work" whereas there are other employees, viz., S/Shri P.K.Behera, G.M.Mohapatra and J.N.Acharya, whose quality and quantity of performances were less than him were not given such entries. The learned counsel for the applicant, relying on the judgment of Hon'ble Supreme Court in the case of High Court of Judicature at Allahabad vs. Sarnam Singh & Another, reported in 2000 SCC(L&S) 258 submitted that no remarks would be made on mere hunch. He also assailed that disposal of applicant's representation dated 11.5.2000 for expunction of adverse remarks in his A.C.R. was nonspeaking, bald and cryptic and by placing reliance on the judgment in the case of R.K.Mahavar vs. Union -of India & Ors. (reported in Swamy's Case Law Digest 1995/2 at Page-311) submitted "mere recording in the file that the representation has been carefully considered would not constitute proper examination". Having regard to this subjective nature of the adverse entries made in the A.C.R. of the applicant and rejection of his representation without application of mind, Shri Kanungo prayed for quashing Annexures-1 and 2, respectively.

2. The Respondents have opposed the Original Application by filing counter. Shri A.K.Bose, the learned Senior Standing Counsel appearing on behalf of the Respondents submitted that the entry in the A.C.R.

of the applicant were made on objective basis and that all procedures had been followed in the matter of making adverse entries in the A.C.R. Shri Bose further stated that the adverse entries were based on the performance report and other relevant materials, maintained for adjudging the performance of each individual. He further submitted that the representation of the applicant was rejected after obtaining views of the Reporting Officer on the point raised in his representation of the applicant and after considering all the facts and circumstances of the case. It was further stated by Shri Bose that the Reporting Officer relied on a number of letters in which explanation from the applicant had been called for on account of his negligence in duty, carelessness, leaving the office for hours together without information etc. Shri Bose further submitted that on 20.7.1998 a Memo was issued to the applicant for slow progress in his work. The Respondents have emphasized that applicant cannot claim expunction of adverse remarks as a matter of right and the analogy given by the applicant in respect of other incumbents is not germane to the facts of the instant case.

3. I have carefully gone through the records placed before me by both the parties. While I agree that the applicant cannot claim, as a matter of right, ~~that his representation should have been favourably disposed of, as has been done in the case of two other colleagues of his, it has to be~~

always kept in view that justice should not only be done, but should seem to have been done. There may be good reasons available with the controlling authorities to have expunged remarks 'lack of zeal' in case of S/Shri P.K.Behera and G.M.Mohapatra and not to describe Shri J.N.Acharya, as a slow worker although on one occasion he took 57 days to complete a map and on another occasion 40 days, whereas applicant, Shri P.K. Ray, only on one occasion took 50 days to complete a map and was called a slow worker. These uneven entries of in the standard evaluation the performance of the colleagues and his has created a feeling of grievance in the mind of the applicant that the Reporting Officer/Reviewing Officer was bias against him. If the applicant is rearing such a grievance in his mind, from the facts and circumstances of the case as discussed briefly earlier, I cannot say that the said grievance is nothing but wild imagination on the part of the applicant. The feeling of unevenness has gained ground in the mind of the applicant more, because of the manner in which his representation was disposed of by Respondent No. 2 at Annexure-2. The said Annexure-2 reads as follows.

" After careful consideration, his representation dated 11.5.2000 for expunction of the adverse remarks in his A.C.R. for the year 1998-99 has been rejected".

3. The learned counsel for the applicant argued that the representation was disposed of with a non-speaking order which reflected non-application of mind of the competent authority. We have carefully examined the matter

and we are unable to disagree with the view expressed by the learned counsel for the applicant. Jaipur Bench of this Tribunal has already held in the case between R.K.Mahavar and Union of India & Ors. that mere recording that the representation has been "carefully considered" does not constitute proper examination. It was held that it is the duty of the concerned authority to consider such representation on merits. It is our view that communication sent to the applicant regarding his representation ought to have been a reasoned one, because, ~~uncomplimentary~~ remark made in the A.C.R. is done with the objective of creating conscience in the mind of the Government employee about the gaps in his performance and to help him to realise that he is to work better and harder to overcome those shortcomings. Any cryptic disposal of representation would defeat the purpose of communicating adverse comments, because, the Government servant will be unable to realise his shortcomings and will not have the positive frame of mind to take the things in proper perspective. We feel, it is the duty of the concerned authority to justify the remarks with adequate reasoning to tell the applicant where he has gone wrong and where he can do better. Such a transparent and positive approach alone can bring about the desired result expected out of communication of adverse remarks to the Government servant concerned.

4. In the aforesaid circumstances, I direct the Respondents to consider the representation of the applicant at Annexure-3 afresh, in accordance with law

and rules and communicate the decision of the competent authority to the applicant with a reasoned and speaking one.

5. In the result, this Original Application is partially allowed, leaving the parties to bear their own costs.


(B.N. SOM)
VICE-CHAIRMAN

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