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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 376 of 2003
Cuttack, this the 3rd day of Sept', 2004

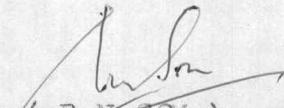
Mahendra Nath Applicant

Vrs.

Union of India & Others Respondents

FOR INSTRUCTIONS

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


(B.N. Sasmal)
VICE-CHAIRMAN

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CORAM :
HON'BLE SHRI B.N.SQM, VICE-CHAIRMAN

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Shri Mahendra Nath, aged about 49 years, son of Late Bairagi Nath, at present working as Upper Division Clerk, Eastern Rivers Division, C.W.C., Ministry of Water Resources, Government of India, Plot No. A-13/14, Bhoi Nagar, Bhubaneswar, Dist:- Khurda, Orissa :-751022.

..... Applicant

Advocates for the applicant - Mr. T.Rath.

Vrs.

1. Union of India represented through its Secretary, Ministry of Water Resources, Government of India, Shram Shakti Bhawan, Rafi Marg, New Delhi : 110001.
2. The Chairman, Central Water Commission, Government of India Sewa Bhawan, R.K.Puram, New Delhi:110066.
3. The Chief Engineer, Mahanadi Bhawan, Bhoi Nagar, Bhubaneswar, 751022.
4. The Superintending Engineer, Hydrological Observation Circle, C.W.C., Government of India, Mahanadi Bhawan, Bhoi Nagar, Bhubaneswar, 751022.
5. The Executive Engineer, Eastern Rivers Division, C.W.C., Government of India, Plot No. A-13/14, Bhoi Nagar, Bhubaneswar, 751022.

..... Respondents

Advocates for the Respondents - Mr. A.K.Bose.

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ORDER

SHRI B.N.SQM, VICE-CHAIRMAN

Sri Mahendra Nath, presently working as Upper Division Clerk (in short UDC), Eastern River Division, Central Water Commission has filed this O.A. being aggrieved by the orders of the Respondents rejecting his representation for expunction of adverse remarks in his Annual Confidential Report (ACR in short) for the years from 1.4.95 to 31.3.96 and 1.4.96 to 31.3.97. He has also prayed for setting aside the orders under Annexures-5, 6, 9, 10, 12 and 14 of the O.A.

2. The facts of the case in a short compass are that, while the applicant was working as U.D.C. in the office of Eastern Gauging Division, C.W.C., Bhubaneswar, on 2.6.95, he had received a phone call from one Sri K.L.Tripathy, the then Executive Engineer, Mahanadi Division, C.W.C., Bhubaneswar to meet the Chief Engineer with a bill file. The applicant being neither the custodian nor having any authority to carry such file, without prior permission of Respondent No.5, requested Sri Tripathy to give written instruction; but no such instruction was given by Sri Tripathy in writing. Thereafter, on 3.6.95, he received a memo from the Deputy Director, Office of the Chief Engineer, Mahanadi and Eastern Rivers, Bhubaneswar calling upon him to produce a copy of such Government directive/instruction which stipulates that for presenting himself before an officer for taking instructions, a subordinate needs written instruction. The applicant submitted his explanation on 3.6.95 followed by another on 5.6.95, but those explanations were brushed aside and at the

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same time he was warned to be careful in future to avoid this kind of incident. Later on, adverse remarks appeared in A.C.R. for the year 1995-96 and for the year 1996-97. He represented against these adverse comments to Respondent No.4, Respondent No.3 and to Respondent No.2, but no one paid any heed to his prayers and therefore, the adverse remarks were allowed to stand in his ACPs, which resulted in denial of second financial upgradation under ACP Scheme to him.

3. By filing a detailed counter the Respondents have contested the O.A. and have opposed the prayer of the applicant on the ground of limitation. They have admitted that the adverse comments made in his ACR for the years 1995-96 and the year 1996-97 are based on the assessment of the reviewing officer about the quality of performance of the applicant. They have also admitted that he had submitted representations against the remarks one on 27.12.96 and the other on 28.3.97 to Respondent No.4, who had rejected the same under intimation to him vide letter dated ^{respectively} 26.2.97 and 22.11.97. Thereafter, applicant filed a review application dated 11.9.01 to Respondent No.2, which was rejected on the ground that six month time had elapsed since the rejection of his representation to the appellate authority in terms of Government of India, Department of Personnel O.M. No. 21011/1/77 Estt. dated 31.7.02, according to which, no memorial or appeal against the rejection of the representation or against adverse entries should be allowed six month's after such rejection. This was communicated by Respondent No.1 to Respondent No.4 in November, 2001. Thereafter, the applicant has filed this O.A. indicating his grievance on 6.5.03, far beyond the date of

limitation seeking relief in terms of the provisions of Administrative Tribunal Act, 1985.

4. The objection raised by the Respondents is that this application is barred by limitation. However, I do not feel inclined to dismiss it on that technical ground as the issue raised in this O.A. has far reaching impact on administration and ^{on} governance.

5. On the merit of the case, I would, therefore, like to observe that before recording adverse comments about the work and attitude of the applicant in the ACR, two memos were served on him pointing out deficiencies in his work and conduct. A letter of counselling dated 19.6.95 was also issued calling upon him to improve his sense of responsibility and adherence to discipline.

6. The whole controversy erupted on an oral order, when one of the senior officers from the Circle Office communicated to the applicant that he had been called upon by the Chief Engineer to come to his office for some official business. Instead of complying with the said order, the applicant made a pedantic comment that instead of a verbal order he would require a written order to act on it. This action of the applicant who being a subordinate employee was construed as an act of breach of discipline by the said authority. The Ld. Counsel for the applicant has drawn my notice both to the rejoinder as well as to the provision of para 26(A) of Manual of Office Procedure, published by the Government of India to prove not only the correctness of the action of the applicant, but also to prove his innocence. He has also drawn my notice to the provision of

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Rule 3(CCA(Conduct) Rules 1964) in support of the stand taken by the applicant.

7. I have perused para 26(A) and also Rule 3(iv), para 26(A) is of no relevance to this case, on the other hand, Rule 3(iv) is of little help to his case. Because, in terms of Rule 3(iv), the applicant was duty bound to respond to the call of the senior officer. In the instant case, Chief Engineer, whose message was communicated to him through Shri K.Tripathy, Executive Engineer. The said Rule reads as follows :-

"A Government Servant who has received oral direction from his official superior shall seek confirmation of the same in writing as early as possible, whereupon it shall be the duty of the official superior to confirm the direction in writing".

8. The Rule, therefore, provides that a Government Servant may receive oral order and on receipt of a verbal direction from his official superior, he shall comply with it and thereafter he is entitled to put it in writing seeking confirmation. In this case, the applicant had received only a summon to meet the Chief Engineer with some file. Had he complied with that order and then would have put it in writing for confirmation of the oral direction of the Chief Engineer, he would not have been found guilty of disobeying order of the superior officer. In this particular case, he was simply asked to appear before the Chief Engineer, which he refused to do. It appears that the applicant had made a wrong meaning of the provision of Rule 3(iv), ^{The} meaning he has made of Rule 3(iv) is that oral decision is first to be reduced to writing before it can be

complied with. This is wholly a wrong understanding of this rule. Oral directions are also valid orders and are ^{to be} complied with liberty to seek confirmation. He also failed to receive the counselling which was given to him through the letter issued by Deputy Director, Mr. M.N.Dey, office of Chief Engineer, dated 19.6.95 in its proper perspective. He did not obey the order and had paid scant regard towards the Senior Officer, who was no less than the Chief Engineer, as would be evidenced from the language that he used while addressing his representation dated 23.1.296 (Annexure-7), to the Superintending Engineer, which reads as under :-

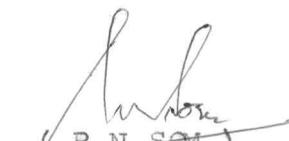
".....on the other hand the C.E's. Office Memorandum No. 213-15 dated 19.6.95 is an arbitrary exercise of power. As my letter dated 5.6.95 has not been considered, I feel that the Hon'ble C.E. has tried to blackmail me and to exploit me over a telephone call on 2.6.95 and it is evident from the attitude of the C.E. office aforesaid two memorandum. I am absolutely right acting on my best judgement not to obey the said telephonic call in the name of Chief Engineer because the C.E. has no courage to give me written instructions what he wanted to be done by me".

(Emphasis supplied)

The language that he used in his representation addressed to the Superintending Engineer, who is subordinate to the Chief Engineer is, to say the least, deplorable because it is in bad taste and gives out his mindset, which is nothing but petulant, rigid and to some extent supercilious.

9. From the above discussion, it would be clear that on merit this case fails, as the applicant failed to act within the four corners of the rules laid down in this regard under CCS(Conduct) Rules and also in the Manual of Office Procedure, para 25(a). The caselaw cited by the Ld. Counsel for the applicant is also of no avail.

10. Having regard to the facts and circumstances of the case, this application fails. This O.A. is disposed of accordingly. No costs.



(B.N. Srinivasan)
VICE-CHAIRMAN

RK/SD