

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No.1065 of 1996

Present: Hon'ble Mr. D. Purkayastha, Judicial Member

Atul Kumar, S/o Sri O.P. Mittal, working
for gain as Dy. Controller of Stores(I)
S.E. Rly., Calcutta-43 residing at Flat
No.10, Building No.20, S.E. Rly. Colony
(North), Garden Reach, P.S. S.D.P.P.,
Calcutta-700 043

.... Applicant

VS

1. Union of India, service through
General Manager, Western Railway,
Churchgate, Bombay-20

2. Controller of Stores, Western
Railway, Churchgate, Bombay-20

3. General Manager, S.E. Railway,
Garden Reach, Calcutta-43

4. Controller of Stores, S.E. Railway
Garden Reach, Calcutta-43

... Respondents

For the Applicant(s): Mr. Samir Ghosh, counsel

For the Respondents : Mr. K. Chakraborty, counsel

Heard on 18.12.2000 : : Date of order: 18.12.2000

O R D E R

Heard the learned advocates, Mr. Ghosh on behalf of the applicant and Mr. Chakraborty on behalf of the official respondents. One Shri Atul Kumar, Deputy Controller of Stores (I), S.E. Railway, Calcutta-43 filed this application challenging the validity of the adverse remarks relating to the period for the year ending 31.3.1994 communicated on 29.8.95 vide letter dated 17.4.95 issued by the EA to COS, for Controller of Stores of S.E. Railway, Garden Reach, Calcutta, Annexure 'A/1' to the application. The following adverse remarks recorded in the confidential report for the year ending 31.3.94 were communicated vide letter dated 17.4.1995, Annexure 'A/1' to the application:

"Part III"

A. Nature and Quality of work.

1. "The officer has not filled Part II".
3. "There was no output. He did not work to any set objective. His performance during the year is NIL."
4. "There is nothing worth mentioning".

Part IV

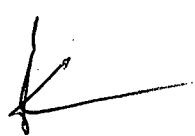
3. "He did not show interest to function as responsible JA grade office, despite counselling by me."
4. "He was warned by COS/GM for non performance".

The applicant made a representation to the General Manager, S.E. Railway, Garden Reach vide letter dated 12.5.95, Annexure 'A/3' to the application and the said representation dated 12.5.95, Annexure 'A/3' has been disposed of by a confidential letter dated 16.08.1995, Annexure 'A/4' to the application, where it is mentioned that his representation dated 12.5.95 has been considered by the competent authority. However, the adverse remarks have been allowed to stand. Feeling aggrieved by and dissatisfied with the said order the applicant approached this Tribunal challenging the validity of the order dated 29.08.95 on the adverse remarks recorded by the Reporting Officer which have been affirmed by the Reviewing Officer on the ground that the procedure adopted by the official respondents in the matter of writing adverse remarks is violative of the rules and regulations maintained by the Department and therefore, the entire adverse remarks for the year ending 31.3.1994 and the subsequent all orders of the authorities are liable to be quashed.

2. The respondents filed a reply to the OA on 27.1.98. In the reply they denied the allegations made by the applicant in the application. It is stated by the respondents that adverse remarks recorded in the ACR for the year ending 31.3.1994 were communicated to the applicant by the Controller of Stores vide Western Railway confidential letter No.CON/E-245/9/85-1 dated 31.3.95 in order to help him to know his shortcomings and improve



his performance. Meanwhile, the applicant came on transfer to S.E. Railway on 2.2.94. So, the above confidential letter dated 31.3.95 of the Western Railway was communicated to him vide South Eastern Railway letter (Confidential) No.CON/COS/22/Pt.VI/248 dated 17.4.95, Annexure 'A/1' to the OA. In the ACR for the year ending 31.3.94, the Reporting Officer was Sri G. Sivasankar, Ex.CMM (E&G)/W. Railway, the Reviewing Officer was Sri C. Bijlani, COS/W. Railway and the Accepting Authority was the G.M., Western Railway. The said Shri G. Sivasankar who was the reporting officer has not been made a party respondent. He is a necessary party in the matter under adjudication. Other necessary respondents that is the reviewing Officer, should be named in such cases. However, on receipt of the said adverse remarks, the applicant had submitted a representation dated 12.5.95 to G.M. of S.E. Railway with the request to expunge the adverse remarks in the ACRs during the year ending 31.3.94 which was not in order. Since the applicant worked as Dy. Controller of Stores, Western Railway during the period 1993-94, the representation dated 12.5.95 was forwarded to G.M., Western Railway for taking necessary action. His representation dated 12.5.95 was carefully considered by the G.M., Western Railway who came to the conclusion that the adverse remarks during the year ending 31.3.94 should stand. Accordingly, G.M., Western Railway's confidential letter No. Con.E245/9/85-1 dated 16.8.95 was communicated to the applicant vide Secretary to G.M. of the S.E. Railway confidential letter No.Secy/G/4/Pt.I dated 29.8.95 (Annexure 'A/4' to the O.A.). It is stated by the respondents that the alleged delay was due to sheer administrative reasons. It was neither intentional nor malicious nor motivated nor malafide. During the said period of delay as caused, was due to Secretarial process and procedure, nothing was done against the applicant. Therefore, the allegations contained vide para 4.5 of the application are denied. It is also stated by the respondents



that the representation of the applicant was duly considered by the competent authorities viz. the G.M., Western Railway. So, the application is devoid of merit and liable to be dismissed.

3. Learned advocate, Mr. Ghosh appearing on behalf of the applicant contended that the ACR of the applicant relates to the year ending 31.3.94 and that has been communicated to the applicant vide letter dated 17.4.95 i.e., after a lapse of 13 months. Such delay frustrates the very purpose of communication of the adverse remarks and he further submits that the rejection order of the representation of the applicant communicated vide letter dated 16.8.95, Annexure 'a/4' to the application is devoid of ~~reason~~ ^{merit} and therefore, the said order is arbitrary, illegal and liable to be quashed.

4. Mr. Chakraborty, learned advocate appearing on behalf of the respondents contended that the representation of the applicant was duly considered by the authority and a reasoned order has been passed by the competent authority i.e., the General Manager, Western Railway in the file. So, the letter dated 16.8.95 does not bear the reason and there cannot be a good ground for quashing the rejection order dated 16.8.95. He further submits that the delay does not cause any harm or prejudice to the applicant since the applicant was apprised of the shortfall recorded in the ACR.

5. I have considered the submissions of the learned advocates of both the parties. It is found that the respondents were directed to produce the records relating to the recording of the ACR of the applicant for the year ending 31.3.94. The respondents did not produce any record except the ACR for the concerned period written by the reporting officer, which has been affirmed by the reviewing officer under confidential cover and that has been opened in the court in the presence of the learned advocate of the applicant. I have gone through the ACR Form No.1 produced by the respondents. I find that Part-II of the said



form has to be filled up by the officer reported upon. Part-III of the form is to be filled up by the reporting authority and Part-IV General should also be filled up by the reporting authority and Part-V should be filled up by the reviewing authority and Part-VI would bear the remarks of the accepting authority. On a perusal of the ACR for the year 31.3.94 produced by the respondents I find that the ACR has been written by Shri G. Sivasankar, Ex.CMM (E&G) who is the reporting officer. The applicant did not fill up the Part-II form and that has been filled up by the reporting officer himself. In this connection I have gone through the order dated 31.3.95 passed by the General Manager of Western Railway regarding communication of the adverse remarks to the applicant. In the said order it is stated by the General Manager, Western Railway that the delay has been caused as Part II, which is required to be filled by the applicant, has not been filled despite being told to do so more than once. The applicant now works on S.E. Rly. Neither the General Manager, Western Railway nor the Controller of Stores, Western Railway, respondent No.2 separately filed any written reply to the OA. None of the respondents has been able to produce any scrap of paper before me to show that the delay was caused due to nonfilling up of the Part-II form, as required under the rules, by the applicant despite being he was asked to fill up the same in time before recording the ACR on 24.3.95. It is found that the applicant has been transferred from the Western Railway to South Eastern Railway on 2.2.94. In the absence of any paper regarding the delay in submitting the Part-II form by the applicant, as required under the rules, it is the bounden duty of the respondents to produce the record to show that the applicant has been asked to fill up the Part-II form of the ACR as required under the rules. Since no scrap of paper has been produced by the respondents I have no other alternative but to hold that the applicant was never asked to fill up Part-II form. Moreover, it



is found that after transfer of the applicant to South Eastern Railway the ACR has been written on 24.3.95. As per instructions contained in the Government of India, D.P.&A.R., O.M. No.21011/1/77-Estt. dated 30.1.78 the annual report should be recorded within one month of the expiry of the report period and delay in this regard on the part of the reporting officer should be adversely commented upon; if the officer to be reported upon delays submission of self-appraisal, this should be adversely commented upon by the reporting officer. I find that the reporting officer did not make any comment for non-filling up Part-II form by the applicant. I do not know where from the General Manager got the evidence to record to ^{hold} ~~show~~ that the delay has been caused as Part-II, which is required to be filed by Shri Atul Kumar, has not been filled despite being told to do so more than once. I find that the reviewing authority did not consider this fact at the time of making remarks by him as reviewing authority. No separate affidavit has been filed by the Controller of Stores, Western Railway, Bombay-22 relating to the delay in writing the ACR for the year ending 31.3.94 on 24.3.95. Since the ACR has been written after a lapse of one year from the date it ^{was} ~~is~~ due, there is no doubt that the applicant has been adversely affected in this case. That point has not been considered by the General Manager, Western Railway; rather he imported allegation against the applicant without any basic document before him. In view of this I am of the view that the adverse remarks in the ACR for the year ending 31.3.94 are not sustainable in law due to wrong procedure and violation of the rules. Moreover, I find that the General Manager, Western Railway while disposing of the representation of the applicant dated 12.5.95 did not apply his mind; rather he disposed of it in a very simple manner.

6. In view of the aforesaid circumstances I am of the view that the adverse remarks in the ACR for the year ending 31.3.94



are not sustainable in law and are liable to be quashed. Accordingly all adverse remarks by the reporting officer and reviewing officer are liable to be quashed. I also ~~of letter~~ ^{hold} ~~order~~ that the order dated 31.3.95 which has been communicated to the applicant by a letter dated 16.8.95 is also liable to be quashed. Accordingly all the aforesaid orders are quashed and set aside and the application is allowed. No cost.

H C Das 18/11/2002
(D. Purkayastha)

MEMBER (J)