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CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH.

O.A. 212 of 1996.

Present : Hon'ble Mr. D. Purkayastha, Member (J)

PARESH CHANDRA GANGULY

VS.

1. Union of India, through the Secretary, Ministry of Defence, New Delhi- 110 001.

2. General Manager, Gun & Shell Factory, Cossipore, Calcutta.

3. Additional General Manager (Admn.), Gun & Shell Factory, Cossipore, Calcutta.

4. Works Manager (ER), Gun & Shell Factory, Cossipore, Calcutta.

5. Junior Works Manager (ER), Gun & Shell Factory, Cossipore, Calcutta - 700 002.

... Respondents.

For applicant : Mr. M.K. Bondyopadhyay, counsel.
Mr. T.K. Biswas, counsel.

for respondents: Mr. B.K. Chatterjee, counsel.

heard on : 3.10.97 :: ordered on : 3.10.97.

O R D E R

The applicant is a holder of the post of Telephoneoperator in the Gun & Shell Factory, Cossipore. He approached this Tribunal for expunging the adverse remarks communicated to him vide letter dated 29.11.94 (annexure A) on the ground that he has been serving in the department for the last 28 years, but he was surprised when such adverse remarks was communicated to him for the first time in the year 1993 and thereafter in the year 1994 (annexure A2). The applicant did not challenge the earlier one, but he challenged the communication (annexure A1) stating, inter alia, that the adverse remarks was recorded by the officer who had some personal grudge against him. Second allegation is that adverse remarks was communicated on 29.11.94 after ten months

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from the date of expiry of one month from 31st December, 1993. According to the applicant, he made representation to the authorities concerned on 7.2.95 (annexure A4) which has been disposed of by the Addl. General Manager for the General Manager by a letter dated 24.3.95 wherein it has been stated that "Your application under reference has carefully been examined and it appears that you have been verbally advised by the WM/Engg. several times and also you had been issued with an advisory letter by the JWM/ER due to your dissatisfactory performance. The contention as made in your above application appears to be not correct." Feeling aggrieved by the said order, the applicant has filed this application praying for the reliefs mentioned above.

2. The case has been resisted by the respondents by filing a reply. They denied all the allegation made in the application and it is stated that as per rule entry into the ACR is made on the basis of the annual assessment of work performed by the government employee by an officer who has personal knowledge of the performance of the employee concerned and after the entries recorded by the reporting officer, the said entry are being reviewed by the other higher officer concerned, namely, Dy. General Manager (E), Addtl. General Manager (E&M), Addl. General Manager (E&MM) and finally by the General Manager. The respondents submit that the allegations made in the application are baseless and unwarranted. It is also stated that before writing the ACR, the applicant was verbally advised by the WM/E on several occasion to improve himself and the said fact was also intimated in the letter dated 24.3.95 (annexure A5). They have, therefore, submitted that the application is devoid of merit and liable to be dismissed.

3. Ld. counsel Mr. M.K.Bondyopadhyay, leading Mr. T.K.Biseas, ld. counsel, relies on the decision of the

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Hon'ble Supreme Court reported in AIR 1987 SC 1201 (State of Haryana Vs. P.C.Wadhwa) wherein Their Lordships held that whole object of the making and communication of adverse remarks is to give to the officer concerned an opportunity to improve his performances, conduct or character, as the case may be. The adverse remarks should not be understood in terms of punishment, but really it should be taken as an advice to the officer concerned, so that he can act in accordance with the advice and improve his service career. The whole object of the making of adverse remarks would be lost if they are communicated to the officer concerned after an inordinate delay. In the instant case, it was communicated to the respondents after twenty seven months. It is true that the provisions of rules 5,6,6A and 7 are directory and not mandatory, but that does not mean that the directory provisions need not be complied with even substantially. Such provisions may not be complied with strictly, and substantial compliance will be sufficient. But, where compliance after an inordinate delay would be against the spirit and object of the directory provisions, such compliance would not be substantial compliance. In the instant case, while the provisions of Rules 5,6,6A and 7 require that everything including the communication of the adverse remarks should be completed within a period of seven months, this period cannot be stretched to twenty seven months, simply because these Rules are directory, without serving any purpose consistent with the spirit and objectives of these Rules. We need not, however, dilate upon the question any more and consider whether on the ground of inordinate and unreasonably delay, the adverse remarks against the respondents should be struck down or not, and suffice it to say that we do not approve of the inordinate delay made in communicating the adverse remarks to the respondent. Referring to the above decision, Mr.

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Bondyopadhyay, Id. counsel, invited my attention to the Swamy's Compilation on Confidential Report of Central Govt. Employees, Third Edition - 1993, which contains various instructions regarding maintenance of the ACRs by the department concerned. He submits that in the instant case ACR was supposed to be recorded within the month of January on completion of the year of assessment of 1993 and that communication has been made in the month of November, 1994 after expiry of eleven month. Such inordinate delay itself makes the said ACR ineffective as the object and purpose of the ACR ~~is career advancement~~ ^{has been frustrated} and thereby, that should be struck down.

4. Ld. counsel Mr. B.K.Chatterjee, Id. counsel for the respondents, strenuously argued before me stating, inter alia, that the judgement cited by the Id. counsel for the applicant has no manner of application in this case because the said judgement relates to the service rules of IPS officers. Mr. Chatterjee also has drawn my attention at page 12 of the said Swamy's Compilation wherein it has been stated that prescribed limit for communication of the adverse remarks is not mandatory but directory. If adverse entry is ^{not} communicated in time it is not wiped out. Referring to the said provision, Mr. Chatterjee submitted that mere delay in communication of the adverse remarks cannot wipe out the entries made in the ACR. So, the application is liable to be dismissed.


5. Coming down to the rival contentions of both the parties, I cannot accept the contention of Mr. Chatterjee on this score. If I consider the very object of maintaining the ACR in the Police department and in the other departments of the Central Govt., I do not find any different ingredient to conclude that the object of maintaining the ACRs in ~~all~~ ^{the} department ~~are~~ ^{is} different. the very object of maintaining the ACR is for career advancement, and ~~the~~ ^{to} this purpose annual

assessment is recorded in the confidential report. The confidential report provides the basic and vital inputs for assessing the performance of an officer and his advancement of service career. So the guideline framed for maintaining the ACR of the government servant according to different instructions cannot be overlooked by the authorities without any reasonable explanation. In the instruction contained in DP&AR OM No.21011/1/77-Estt., dated 3.1.78 it is stated that 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. Delayed submission of the self appraisal report should be adversely commented upon by the reporting officer. By another instruction of even number dated 13.1.78 it has been stated that adverse entry in the confidential report both by on performance as well as behaviour should be communicated within one month of their being recorded. This communication should be in writing and record to that effect should be kept in the CR dossier of the govt. servant concerned. In view of the aforesaid specific instruction regarding the maintenance of the ACR, I am unable to hold that there is different object of making communication of adverse remarks. The very object of maintenance of the ACR has been clearly enunciated by the Hon'ble Apex Court and in view of the aforesaid judgement of the Hon'ble Apex court, I have no ^{hesitation} ~~alternative~~ but to accept the contention of the applicant that there has been inordinate delay in the ~~matter~~ ^{of} communication of adverse remarks made against him and communicated by a letter dated 29.11.94.

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6. I have gone through the Annexure A5 to the application whereby the representation of the applicant has been rejected. In the said letter it is stated that the applicant had been verbally advised by the WM-Engg. on several times and an advisory letter was issued for his unsatisfactory performance.

* Ld. counsel Mr. Bondypodhyay submitted that the fact of issuing the advisory letter to the applicant is not correct. No denial has been made by the department annexing the said letter in the reply in support of their contention, which should have been done. In view of the position, it can be safely presumed that while rejecting his representation the Addl. General Manager did not apply his mind properly.

7. In view of the above discussions, I allow the application and expunge the adverse remarks contained in the letter at annexure A1 to the application. Accordingly the application is disposed of awarding no costs.


(D. Purkayastha)

MEMBER(J).