

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 29.03.2000

O.A. No. 400/1997

Vikram Singh Bhati son of Shri Budh Singh aged about 38 years resident of A-D-53, Labour Colony, Pali District, Pali-Marwar, at present employed on the post of Sub Divisional Engineer in the office of TDM, Pali.

... Applicant.

v e r s u s

1. Union of India through the Secretary to Government of India, Ministry of Communication, Department of Telecom, Sanchar Bhawan, New Delhi.
2. The Chairman, Telecom Commission, Department of Telecom, Sanchar Bhawan, Ashoka Road, New Delhi.
3. Chief General Manager Telecom, Rajasthan Circle, Jaipur.

... Respondents.

Mr. J.K. Kaushik, Counsel for the applicant.

Mr. K.S. Nahar, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman.

Hon'ble Mr. Gopal Singh, Administrative Member.

O R D E R

(Per Hon'ble Mr. Justice B.S. Raikote)

This application is filed for a direction to the respondents to set aside the adverse entries made in the service records to the effect that "पर्याप्त निष्ठा से इस्ती नहीं करते, क्योंकि छुट्टी ज्यादा लेते हैं।"

2. Learned counsel appearing for the applicant submits that since he preferred an appeal against this adverse remarks before the Director Telecom (South), Udaipur, and that appeal has been rejected vide letter No. STA/37-214/DTU/91-92/2 dated 17/21.10.91. The relevant para of the said order is extracted below:-



[Signature]

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"CONCLUSION:

On perusal of the evidences on record, i.e., the warning issued to the official by AE Phones, Ajmer regarding availing leave without intimation or prior sanction, resulting lack of devotion to duty, the leave memos of EOL issued by TDE, Ajmer, the C.R. Dossier of the official, the appeal submitted by the official, the parawise comments offered by the reviewing authority and the details of earned leave/commuted leave/EOL availed by the official, the undersigned has come to the conclusion that the adverse entries recorded in the ACR of Shri V.S. Bhati, JTO, Ajmer for the reporting period 1989-90 are factual and need not be expunged or even toned down.

FINAL ORDER:

I, Arun Kumar, Director Telecom (South), Udaipur, in exercise of powers conferred on the undersigned vide Rule 174 of P&T Manual Volume III, hereby REJECT the appeal dated 13.12.90 of Shri V.S. Bhati, JTO, Ajmer, submitted against the adverse entries communicated to him by TDE, Ajmer vide his office Memo No. X-2/CR/Adverse/89-90 dated 24.11.90."



He submitted that the adverse entries in question has been made only on the basis of the letter No. STA/1-107/Genl dated 31.1.86 circulated by the General Manager Telecom and we found that this letter has been adjudicated upon in a case filed by All India Telephone Traffic Employees Association, ATR 1989 (2) C.A.T. 137, decided on 2.6.1989, and ultimately was quashed by this Bench of the Tribunal. If that is so, the said letter could not be the basis for making impugned adverse entries against the applicant. Therefore, the adverse entries made in the ACR of the applicant and the order dated 17/21.10.1991 (Annexure A/2) passed by the appellate authority are liable to be set aside. He further submits that the applicant no doubt took some leave, but they were permitted and only because of taking such leave for more than 14 spells in the year 1989, the same could not be used as basis for adverse entry against the applicant so as to deny him further promotion. On the other hand, learned counsel appearing for the respondents supported the adverse entries made in the ACR of the applicant as well as the order (Annexure A/2) of the appellate authority.

3. We have heard the learned counsel for the parties and have given very anxious consideration to the facts of the case.

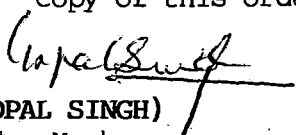
4. In order to appreciate the rival contentions, we have to note certain admitted facts. It is an admitted fact that the applicant took leave more than 14 spells. It has been explained to us that a 'spell' means 'at a time'. In all, the applicant took leave for

14 times in the year 1989 and those leaves were sanctioned by the authorities. But the adverse entries were made only because of the guidelines issued by the General Manager Telecom vide letter No. STA/1-107/Genl dated 31.1.86, directing that no person should take leave for more than 14 spells. In fact, that letter was called in question before this Tribunal in A.T.R. 1989 (2) C.A.T. 137 and this Bench of the Tribunal quashed that letter on the ground that these guidelines was issued only in Jaipur circle, but in other circles there were no such guidelines at all. If at all any condition should be imposed, it should be on the basis of rule made under Article 309 of the Constitution, and the Central Civil Services (Leave) Rules, 1972, also has not been amended so as to incorporate guidelines contemplated by the letter dated 31.1.1986 of the General Manager Telecom, Jaipur. Consequently, this Tribunal declared that the said letter dated 31.3.86 is illegal. But to our surprise, it is the same letter that is being used as the basis for making adverse entries against the applicant. If that is so, the very basis of adverse entry falls to the ground. The said letter dated 31.1.1986 was quashed by this Tribunal as far back as 2.6.89 and it was not open to the respondents to rely on the letter again. In this view of the matter, we are of the opinion that the applicant has genuine grievances when he submits that his further promotions are denied only on the basis of this entry. If that is so, the applicant was entitled to promotions whenever an occasion arises by ignoring the impugned adverse entries. It is stated that in the meantime, some promotions are effected and those have been denied to the applicant only because of these adverse remarks.



5. In this view of the matter, we pass the order as under:-

The application is allowed. The adverse entries recorded in the ACR of the applicant for the year 1989-90, communicating the official vide office Memo dated 24.11.90 is hereby set aside. Consequently, the order of appellate authority dated 17/21.10.1991 (Annexure A/2) is also set aside with further directions to the respondents to consider the case of the applicant for promotions, if any, ignoring this adverse entry, keeping in view the principles of law applicable to the facts of the case. This exercise shall be done by the respondents within a period of three months from the date of receipt of a copy of this order. No order as to costs.


(GOPAL SINGH)
Adm. Member


(B.S. RAIKOTE)
Vice Chairman

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3/4/2006

ALC
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Part II and III destroyed
in my presence on 13.12.06
under the supervision of
section officer U as per
order dated 23/8/06

Section officer (Records)