

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of Decision : 29.4.03

O.A. NO. 182/2001.

A. K. Nagpal son of late Shri g. R. Nagpal, aged about 45 years, resident of 3-E-163, jai Narain Vyas colony Bikaner-334001, at present employed on the post of Senior Scientist, in the office of National Research Centre on Camel, Jorbeer, Bikaner.

.... APPLICANT.

VERSUS

1. Indian council of Agricultural Research, Krishi Bhavan, New Delhi through its Secretary.
2. The President, Indian council of Agricultural Research, Krishi Bhavan, New Delhi 110 001.
3. The Director, National Research Centre on Camel, Jorbeer, Bikaner.
4. Dr. M. S. Sahani, The Director, national Research Centre on Camel, Jorbeer, Bikaner.

.... RESPONDENTS.

Mr. B. Khan counsel for the applicant.

Mr. s. N. Trivedi counsel for the respondents.

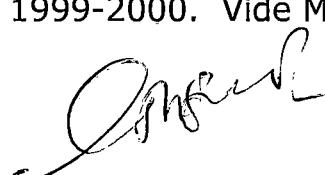
CORAM

Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.

O R D E R

(per Hon'ble Mr. Justice G. L. Gupta)

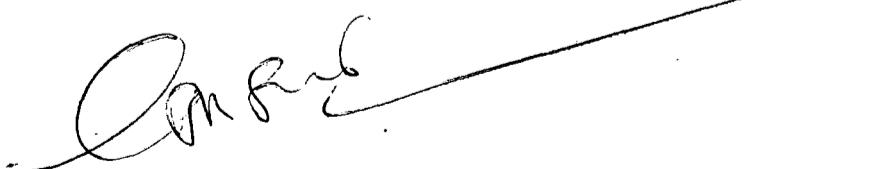
The applicant was working as Scientist (Nutrition) in the office of the National Research Centre On Camel, Jorbeer, during the year 1999-2000. Vide Memorandum dt. 10.7.2000 (Annexure A-1) some



remarks adverse/advisory appearing in his ACR for the year 1999-2000 were communicated to him. The applicant made representation on 8.7.2000 (Annexure A-13) against the said remarks. The representation of the applicant was rejected vide communication dt. 5.2.2001 (Annexure A-2). Through this OA, the applicant has called in question the Memorandum (Annexure A-1) and Order (Annexure A-2).

2. It is averred that Respondent No.4 who was Director of the Research Centre created peculiar situation for the applicant, inasmuch as, he gave financial powers to one Dr. G.P.Singh though he (applicant) was In-charge of the Project. It is stated that the applicant handed over the charge of the NCP Project Leader by 17.12.1999 and therefore, there could not be any occasion for communicating the dis-pleasures vide communication dt. 6.4.2000. It is further stated that a complaint was fabricated/procured against the applicant from Ms. Poonam Jayant, Scientist on 1.3.2000 and the 4th Respondent constituted a Committee consisting of four Officers, who were junior to the applicant for conducting preliminary enquiry. It is averred that the applicant requested the Director to get the matter inquired into by the Special Police, but no heed was given to his request.

3. The case of the applicant is that the adverse/advisory remarks were recorded without any basis and without giving him an opportunity of hearing. It is his further case that the Respondent No.4 has acted as Reporting and Reviewing Officer both and therefore, the Memorandum (Annexure A-1) and the order (Annexure A-2) are not sustainable.

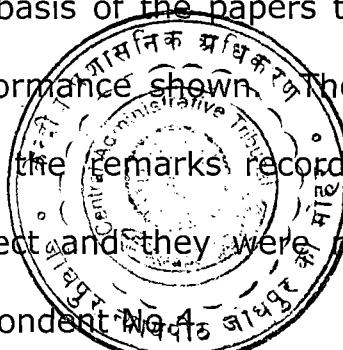


4. In the counter, the Respondents case is that the applicant is habitual in not discharging the duties efficiently and satisfactorily and prior to 1991 adverse remarks had been recorded in his ACRs. It is stated that the applicant had been pointed out his short-comings before recording of the entries in his ACRs. It is further stated that the applicant was In-charge of the Project all through the financial year and it is incorrect to state that he was no more In-charge after 17.12.1999. It is the further case for the respondents that on the complaint lodged by Ms.Poonam Jayant, a fact finding committee was constituted under the Chairmanship of Dr.Ammiudeen, Senior Scientist who was senior to the applicant. It is pointed out that the applicant became Senior Scientist w.e.f. 6.7.1999 vide communication dt.24.4.2000 and therefore, it is incorrect to say that persons junior to him held enquiry against him. It is denied that Respondent No.4 has acted as Reporting and the Reviewing Officer.

5. I have heard learned counsel for the parties and perused the documents placed on record. At the outset, it may be stated that it is nowhere the case for the applicant in the O.A. that the higher authorities had not pointed out the short-comings of the applicant before making entries in the ACR. The Respondents have come out with the case that during the year under report the applicant was informed about his short comings and he was advised to improve. They have placed on record the letter dt. 21.12.1999 (Annexure A-2), 25/29.1.2000 (Annexure R-8), 3.2.2000 (Annexure R-9), 27.3.2000 (Annexure R-10). The letters and the memorandums indicate that the applicant's attention was drawn about his non-functioning in the manner expected and he was advised to send the reports in time. It

Amr

is the case for the respondents that despite the communications aforesaid, the applicant did not improve. The applicant has not filed Rejoinder refuting the averments made in the counter in this regard. That being so, the decisions rendered in the case of Om Prakash Sharma Vs. Union of India & Ors. (O.A. No.122/2000 decided on 10.9.2002) and A.K.Yadav Vs. Union of India (O.A.No.431/2000 decided on 14.5.2002) do not assist the applicant.

6. It is settled legal position that the scope of judicial review in such matters is very limited. The Court cannot sit over as Appellate Authority over the remarks recorded in the ACR. It is the assessment of the Competent Authority, on the basis of which the remarks are recorded in the ACR. The Competent Authority makes assessment on the basis of the papers that are submitted by an employee and the performance shown. There is absolutely nothing on record to hold that the remarks recorded in the ACR of the applicant were not correct and they were recorded because of malice on the part of respondent No.4. 

7. There is no merit in the contention of learned Counsel for the applicant that Respondent No.4 has acted as a Reporting and Reviewing Officer both. A reading of the communication (Annexure A-2 shows that the decision on the representation of the applicant against the remarks was taken by the Competent Authority in the Council. It is different thing that the communication was made by the Assistant Administrative Officer with the approval of the Director. Since the Director was the head of the Project, it was natural that the communication of the Council was sent to him for onward



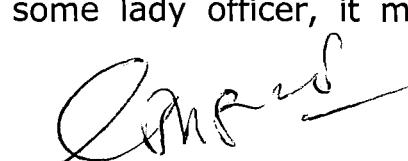
communication to the applicant. It cannot be said that the Director himself had rejected the representation of the applicant.

8. One of the contentions of Learned Counsel for the applicant was that he was no more Director after December, 1999 and therefore, the remarks ought not to have been recorded in the ACR. There is no documents placed on record by the applicant that he had handed over charge of the post of In-charge of the Project by December, 1999.

What was pointed out by learned counsel for the applicant was that vide letter dt. 13.8.1999 (Annexure A-6), the applicant was asked to work as In-charge upto September, 1999 only. In this connection, it is relevant to refer to the letter dt. 6.4.2000 (Annexure A-7). In that letter, it was clearly stated that the applicant was associated with the NCP as In-charge for the last four years, yet he had not participated in the meeting and that he was to continue as a Scientist in-charge NCP.

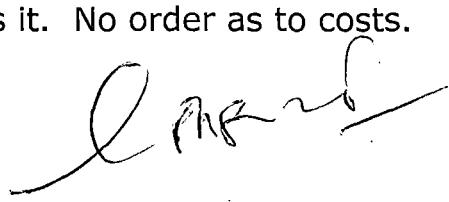
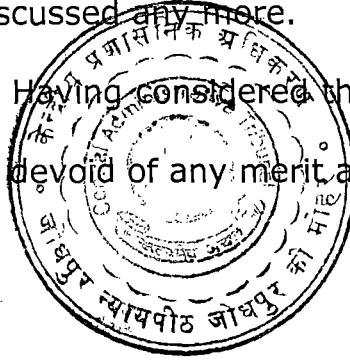
9. It may be that vide letter at Annexure A-6, the period of working as In-charge of the applicant was extended upto September, 1999 only, but it does not mean that the applicant had ceased to be In-charge in September, 1999. Even according to his own averment, the applicant continued as In-charge upto December, 1999. This goes to establish that the applicant was In-charge of the Project even after September, 1999. Without any document indicating the transfer of charge of the office of Incharge, it will be presumed that the applicant had continued as In-charge during the entire period.

10. As to the contention that the false report was procured from some lady officer, it may be stated that the lady had complained



against the applicant in her report (Annexure R-3) about his childish behaviour and for causing trouble to her. The fact finding inquiry was conducted by four officers. It has not been denied that the Chairman of the Committee was senior to the applicant. In any case, no adverse remarks had been recorded with regard to the misbehavior of the applicant against the lady officer and this fact is not required to be discussed ~~any more.~~

10. Having considered the entire material on record, I find this O.A. to be devoid of any merit and hence dismiss it. No order as to costs.



(G.L.GUPTA)
VICE - CHAIRMAN

B.

Part II and III destroyed
in my presence on 14.7.08
under the supervision of
section officer (), as per
order dated 5.12.08

VGNL
Section officer (Record)

Received Copy

for
Date

21/5/03

Copy of Judgement dated 29.4.03
Served to counsel for Respondent
S/o. S. N. Tammisai By Regd
Post Warar 59

dated 13-5-03

Copy
13-5-03