

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

I/9

O.A. No. 47/2001. 199
T.A. No.

DATE OF DECISION 12-03-03

A.S.Tariyal

Petitioner

Mr. Kamal Dave

Advocate for the Petitioner (s)

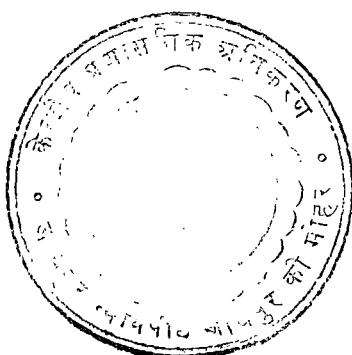
Versus

UOI and two others.

Respondent

Mr. N.M.Lodha

Advocate for the Respondent (s)



CORAM :

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

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
- ✓ 2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

G.L.Gupta
(G.L.Gupta)
Vice Chairman.

CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH: JODHPUR.

O.A. No. 47/2001Date of decision: 12.03.03

A.S. Tariyal, S/o Shri A.S. Tariyal, r/o 134, Mahadev Nagar Jodhpur, at present posted on the post of Inspector in the Office of Superintendent of Police, CBI, Jodhpur. (presently under suspension with Hqrs at SCB, CBI, Mumbai.

: Applicant.

rep. by Mr. Kamal Dave: Counsel for the applicant.

-versus-

1. Union of India through Secretary
to Department of Personnel and Training
North Block, New Delhi.

2. Special Director,
CBI, CGO Complex, Block No. 3 Lodi Road, New Delhi.

3. Shri K.L. Meena, Dy Inspector General of Police, CBI, Tilak Marg,
JAIPUR

: Respondents.

rep. by Mr. N.M. Lodha: Counsel for the respondents.

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


ORDER

Per Mr. Justice G.L.Gupta:

The following reliefs have been claimed in this O.A.:

(i) the impugned order dated 12.7.2000 Annex. A.1, communicating adverse entries in ACR order dated 19.12.2000, Annex. A.2, rejection of representation, may be declared illegal and the same may be quashed and the applicant allowed all consequential benefits.

(iii) the costs of this application may be awarded.

2. It is averred that the applicant was initially appointed as Sub-Inspector of Police, CBI, at New Delhi and was promoted as Inspector in 1990 and in the year 1997 he was posted at Jodhpur. He was entrusted with the job of investigating the CBI cases. He worked on that post from 1.1.99 to 22.10.99 and he was placed under suspension thereafter. It is stated that the applicant submitted his self appraisal for the period 1.1.99 to 22.10.99 in his ACR along with a complaint made against the 3rd respondent, who was his Reviewing Officer. It is further averred that to the knowledge of the applicant, the Reporting Officer, recorded good remarks, but the 3rd respondent, who was Reviewing Officer, differed with the remarks made by the Reporting Officer and made his own remarks which were communicated to the applicant vide communication dated 12.7.2000(Annex. A.1). The applicant made a detailed representation against the said adverse remarks, vide Annex. A.5. His representation was rejected by a non-speaking order Annex. A.2, dated 19.12.2000. It is the further case for the applicant that the applicant was never given any advice or communicated any instructions or issued any warning during the period under report

instructions

for improving his performance. On the contrary, it is averred, he was given four rewards in different occasions during the period under report. It is also the case for the applicant that the Reviewing Officer travelled beyond the period under report as he has taken into consideration the incidents which took place in the year 2000. It is stated that the Reviewing Officer has taken into consideration the extraneous material due to malice, and the representation for the applicant has been rejected with closed mind by passing a stereo type order.

3. In the counter, the respondents 1 to 3 have stated that incidents beyond the period under report have not been considered and that the applicant had been given necessary advice/instructions during the period under review to improve his performances. It is further stated that the complaint made by the applicant against respondent No. 3 was investigated by the Joint Director and it was found that the allegations had no foundation.

4. In the separate reply filed by the respondent No. 3, who had recorded the adverse remarks in the ACR, it is stated that many a times the applicant was advised to improve his performances. It is further stated that the remarks had been made on the basis of the performances and conduct of the applicant and his representation was rejected after thorough consideration.

5. Heard the learned counsel for the parties and perused the documents placed on record.

6. Mr. Dave, learned counsel for the applicant, contended that the Reporting Officer had given good remarks to the applicant but the Reviewing Officer, i.e. Respondent No. 3, who had malice



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against the applicant, disagreed with the remarks of the Reporting Officer and recorded adverse remarks. He pointed out that most of the facts stated in the memorandum, Annex. A.1 pertain to the year 2000, and therefore the adverse remarks could not have been recorded in the ACR for the period 1.1.99 to 22.10.99. He argued out that the representation filed against the adverse remarks indicated that the applicant had completed major part of investigation in some cases.

7. On the other hand, the learned counsel for the respondents contended that the adverse remarks were correctly recorded by the Reviewing Officer. He, pointing out that the applicant in his representation Annex. A.5, filed against the adverse remarks had used unsavoury words, submitted that on this ground alone the O.A should be dismissed.

8. I have given the matter my thoughtful consideration. I have also gone through the CR dossier of the applicant, which was produced by the learned counsel for the respondents on 10.1.2003, but was taken back and re-submitted on 4.3.2003.

9. A perusal of the C.R. dossier, shows that the Reporting Officer had graded the applicant as "very good officer", by further saying that nothing adverse against the integrity of the officer had come to the knowledge of the Reporting Officer. However, the Reviewing Officer did not agree with the remarks of the Reporting Officer. He recorded a separate note and at the same time graded the applicant as "Below average". It is, however, seen that the significant adverse remarks "Below average" were not communicated to the applicant when the memorandum Annex. A.1 was sent to him. It is rather surprising that the adverse remarks "Below average"



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which was the over-all assessment of the Officer were not communicated to him and, instead a summary of the note recorded by the Reviewing Officer was sent to him. Be that as it may, it is made clear that since the grading "Below average" is not the subject matter of this O.A., it cannot be used against the applicant unless conveyed to him by the respondents.

10. The facts stated in the memorandum Annex. A.1, shall be considered one by one.

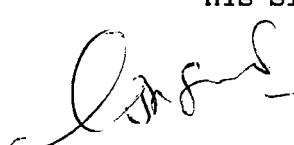
11. At para 1 of the memorandum it was stated as follows:-

"Shri A.S. Tariyal, has mentioned in his self appraisal part I in the ACR that, he was attached with CBI Jodhpur Br. from 1.1.1999 to 22.10.1999 whereas he was attached with CBI, Jodhpur from 11.99 to 31.10.99. This shows that he has misrepresented/supressed his period of suspension (w.e.f. 23.10.99 to 31.10.99) at CBI Jodhpur Branch."

It is seen that though at page one of the self appraisal, the applicant had stated the period under Report as 1.1.99 to 22.10.99, but at para 9 he had clearly stated that he was under suspension from 23.10.99 with Headquarters at Bombay. When the applicant had stated that he was under suspension how can it be said that he had tried to mis-represent/supress the period of suspension. As a matter of fact no such adverse remarks ought to have been recorded. They are liable to be quashed.

12. At para 2 of the memorandum, it was stated as follows:-

"In the year 1999 (from January to October) although Shri Tariyal was attached with CBI Jodhpur branch but he did not dispose of even a single case from under investigation cases which indicates adversely regarding his sincerity towards works"



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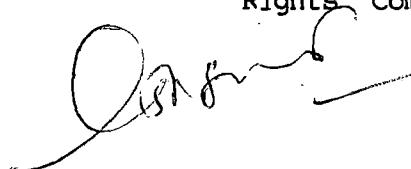
In the reply to Annex. A.1, the applicant had stated that he was entrusted four cases only for investigation i.e. R.C No.6, R.C.No. 9, R.C. No.13 and R.C. No. 14. It was further stated that R.C. No. 13 and 14 were entrusted to him on 15.9.99 and R.C. No. 9 on 12.8.99 and R.C. No. 6 was entrusted to him in July, 1999.

It is settled legal position that the scope of judicial review in such matters is very limited. The Court cannot interfere in the decision of the competent authority in such matters. Judicial review is permissible only to the extent that whether the process in reaching such decision was observed correctly. If the competent authority was not satisfied with the performances of the applicant as regards the progress of investigation of the cases, this Court cannot be justified in interfering with the remarks recorded in that regard.

It is significant to point out that the counter filed by the respondents indicate that time to time the applicant was asked to improve his performance. Therefore, the respondent No. 3 who was Reviewing Officer, cannot be said to have faulted for recording such adverse entry that the applicant did not dispose of even a single case of investigation which indicated adversely regarding his sincerity towards work .

13. At para 3 of the memorandum it was stated as follows:-

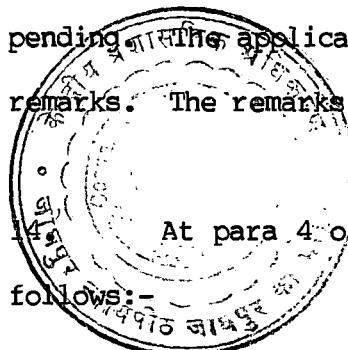
"on 18.10.99 during office hours at CBI Jodhpur Br. Shri Tariyal unnecessarily interfered in the enquiry of PE No. 7 (A)/99-JDP in which Shri Amit Srivastav, the then SI, CBI, Jodhpur (now U/S) was Enquiry Officer, and allegedly misbehaved with Shri Tarun Gopalia and misbehaved/manhandled with Shri Deepak Gopalia with the result, he was suspended w.e.f. 23.10.99 (AN) and Charge Sheet was issued to him on 7.3.2000 for major penalty proceedings. Subsequently, on intervention of Human Rights Commission, PS Mahamandir, Jodhpur, has also



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registered Case No. 39/2000 dated 21.1.2000 against him. Due to his such type of mis conduct, not only the image of CBI Jodhpur but the image of organization as a whole adversely affected. "

It is seen that for the alleged misbehaviour departmental inquiry was initiated against the applicant and a charge sheet was issued to him on 7.3.2000, for major penalty. Before the inquiry was completed the alleged misbehaviour ought not to have been made the subject matter of adverse remarks in the ACR. The Reviewing Officer, could not be justified in recording adverse remarks against the applicant on the alleged incident when the inquiry was pending. ~~the applicant is justified in assailing the said adverse remarks.~~ The remarks are liable to be quashed.



At para 4 of the memorandum 'Annex. A.1 it was stated as follows:-

"He is in habit of sending false malicious/distorted and baseless complaints against Sr. Officers."

In his representation, the applicant had stated that it could not be subject matter of the ACR of 1999 as the complaint had been sent in 2000. It is not stated in the counter that the applicant had sent complaint against senior officers during the period under report. Therefore, it has to be accepted that such adverse remarks ought not to have been recorded in the ACR of the applicant for the year of 1999.

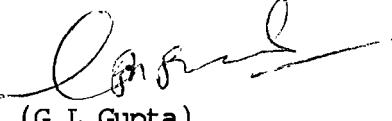
15. At para 5 of the memorandum it was stated as follows:-

"How Shri Tariyal came to know that ALA Shri Saxena opined that PE No. 7(A)/99-JDP (now pending for final

In his representation, the applicant has admitted that he had used the information in public interest. It was further stated that the information was leaked to expose corruption prevailing in the CBI. It is manifest that the applicant does not dispute that he had leaked the information unauthorisedly. In such circumstances the Court cannot interfere in the remark recorded at para 5 of the memorandum.

16. Having considered the entire material on record, this O.A is partly allowed. The adverse remarks recorded at para 1, 3 and 4 of memorandum Annex. A.1 are hereby expunged. In other aspects, the O.A fails and dismissed.

17. No order as to costs.


(G.L.Gupta)

Vice Chairman.

jsv.

Recd. 21/3/03
C.P.S. (Ranjan)

Record Spntgthmical
21/3/03

Part II and III destroyed
in my presence on 13-6-08
under the supervision of
section officer (J) as per
order dated 5/1/08

N.G.S.
Section officer (Record)