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**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH**

**ORIGINAL APPLICATION NO. 120/2007  
JODHPUR : THIS THE 26<sup>th</sup> DAY OF SEPTEMBER, 2008.**

**CORAM :**

**HON'BLE MR. K.V. SACHIDANANDAN, VICE CHAIRMAN (J)  
HON'BLE MR. TARSEM LAL, MEMBER (A)**

Jagmohan Singh Rawat S/o Shri Mukand Singh Ji, aged 47 years, Office Address : J.E. (Electrical), C.P.W.D., C/o W.R.S., I.M.D., Ashok Nagar, Sri Ganganagar, resident of 2E4, Jawahar Nagar, Sriganganagar.

.....Applicant.

**(By Mr. R.S.Saluja, Advocate, for applicant).**

**VERSUS**

1-Union of India through the Secretary, Ministry of Urban Development, Nirman Bhawan, New Delhi - 11.

2-The Superintending Engineer (Electrical), C.P.W.D., Jaipur Central Electrical Circle, Nirman Bhawan, Sector 10, Vidhyadhar Nagar, Jaipur.

3-Shri R.R. Meena, Executive Engineer (Electrical), C.P.W.D., Kendriya Sadan - 'A', Sector - 10, Vidhyadhar Nagar, Jaipur.

4--Shri K.C. Verma, Assistant Engineer (Electrical) at present posted C/o Chief Engineer (Electrical) C.P.W.D., North Zone, R.K.Puram, New Delhi.

.....Respondents.

**(By Mr. Mahendra Godara, Advocate, brief holder for Mr. Vineet Mathur, for respondents).**

**ORDER**

**[PER K.V.SACHIDANANDAN,V.C.(J)]**

The brief facts of the case are that the applicant after acquiring the qualification of Diploma in Electrical Engineering, was initially appointed as Junior Engineer (Electrical) in the respondent department on 13<sup>th</sup> March, 1981 and on date also, he is holding the same post. After introduction of the Assured Career Progression (in short 'ACR') Scheme in 1999, even the benefit of the same has not been extended

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to him on the ground that he earned adverse remarks in ACRs during 1997-1998. Further, in 2004, when the applicant again became eligible for ACP, but, this time again, the same has not been released. It is further pleaded in the application that now, having completed 24 years service, applicant is, as a matter of fact, due to be considered for extension of benefit of second ACP. It is submitted that applicant's work and conduct were satisfactory and nothing adverse was ever communicated to him still for the reasons known to respondents No. 3 and 4 who are Reviewing Officer and Reporting Officer, were annoyed and have intentionally spoiled the ACRs of the applicant by entering adverse remarks. A copy of the adverse entry communicated to the applicant vide letter dated 24<sup>th</sup> February, 2006 showing him to have performed 'Poor' in regard to Part-III S.No. 17 of the Confidential Report which pertains to 'Punctuality' is attached as Annex.A/1. The applicant remained under the same Officers from 2000 to 2004 and they had never found such short-comings in applicant's work and conduct and thereby, denied the benefit of I and II ACP as also the promotion Assistant Engineer which is due to be given very shortly, without any cogent and reasonable ground. Since the adverse remarks has been entered intentionally with mala fides, the OA has been filed for expunging the same. Applicant has mainly prayed for the following reliefs:-

"(i) that the Annexure A/1 dated 24.2.2006 and Annexure A/2 dated 21.8.2006 making adverse entry in applicant's confidential record and thereafter retention of the same by the Assessing Authority, respectively, may kindly be quashed and set aside;

(ii) that if for any reason 'stay sought is not granted and the applicant is superseded on the basis of aforesaid confidential report for promotion to the post of A.E. (Electrical) then at the time of ultimately allowing the OA the respondents may kindly be directed to reconsider the applicant's case for promotion as if such adverse confidential entry was never made;

(iii) that consequent to aforesaid the respondents may further be directed to confer upon applicant all consequential benefits on and from the date applicant's junior is promoted by ignoring applicant on account of Annexures A/1 & A/2 dated 24.2.2006 and 21.8.2006.

2. The respondents have filed a detailed reply statement admitting that applicant was appointed as Junior Engineer and he is continuously working under them. It is stated that as far as the C.A.T. Procedural Rules are concerned, the applicant is claiming multiple reliefs based on different cause of action and facts, thus, this O.A. is not maintainable. As regards the ACP benefits are concerned, his case was duly considered, however, he was not found fit. The Reviewing Officer has agreed with the remarks of the Reporting Officer as 'discipline and punctuality' of the applicant was not at all satisfactory and the same was conveyed to the applicant. There was no question of any annoyance against the applicant and the allegation made by him does not hold good. The indiscipline and poor performance of the applicant is also apparent with ref. to letter of 16.9.2004 sent by the Executive Engineer (E) Jodhpur showing that applicant was called-for an explanation regarding joining at Sriganganagar directly on transfer in the state of his sickness without relieving from his previous section at Bikaner which was fixed other than from Sriganganagar. This was not replied. Again, applicant's case was considered for ACP but, was rejected. The respondents have discharged their duties in accordance with the departmental rules and policy on the subject and instructions from the competent authority. The applicant submitted a representation dated 9<sup>th</sup> April, 2006 and which was rejected being devoid of merit and the same was communicated to the applicant. Hence, the applicant has not been able to make out a case and the OA be dismissed.

3- Heard the rival contentions of learned counsel Mr. R.S. Saluja, Advocate, representing the applicant and Mr. Mahendra Godara, Adv. holding brief of Mr. Vineet Mathur, for the respondents.

4- The learned counsel for applicant has taken us to various pleadings, evidence and the material placed on record.

5- Mr. Saluja, learned advocate for applicant, would submit that the adverse remarks has been entered into by the respondents only on mala fide intention and, therefore, it has to be expunged. The learned Counsel for respondents strenuously argued that the adverse remarks has been entered in the ACR/Service Book and communicated to the applicant and since his performance was not up-to-the-mark, therefore, the OA deserves to be thrown-out.

6- We have given due consideration to the arguments put forth by the learned counsel and material placed on record.

7- The cause of action arose to the applicant by letter dated 24<sup>th</sup> February, 2006 (Annex.A/1) wherein, performance of the applicant was shown as 'poor'. The relevant part of impugned order Annex.A/1 is reproduced as under :-

“उक्त अभ्युक्ति इस आशा में जारी की जा रही है कि वे इसके बाद अपनी कमियों को दूर करने का प्रयास करेंगे तथा इन्हें रचनात्मक दृष्टिकोण से अपनायेंगे आगे इस संबंध में उन्हें यह सुचित किया जाता है कि वह यहां तो इस पत्र के जारी होने के 45 दिनों के अन्दर अभ्यावेदन प्रस्तुत कर सकते हैं अन्यथा तत्पश्चात् इस संबंध में उनका कोई अभ्यावेदन स्वीकार नहीं किया जायेगा। वे अपना अभ्यावेदन दो प्रतियों में इस कार्यालय को प्रेषित करें।”

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A representation was given to the Reviewing Authority which was also rejected by Annex. A/2 dated; the same is quoted hereunder: :-

आपके उपरोक्त संदर्भित पत्र पर तक्षम अधिकारी आपकी 01.04.04 से 03.11.04 तक की गोपनीय रिपोर्ट के भाग तं0111 के क्रम संख्या 17 पर की गई अभ्युक्ति से सहमत है। अतः उनके द्वारा यह निर्णय लिया गया है कि आपके गोपनीय रिपोर्ट में की गई अभ्युक्ति को ध्यावत रखा जावे। यह आपकी सूचनार्थ प्रेषित है।

8. It is borne-out from the order Annex. A/3 letter that the ACP was rejected for non-receipt of confidential report of the applicant which was not communicated by-the reporting / reviewing officer. The applicant has made a representation for expunging the adverse remarks for the period from 1.1.2004 to 3.11.2004 to the Superintending Engineer (E), CPWD, Bikaner on 30<sup>th</sup> April, 2005 in which Annex. A/3 letter is referred and stated that the Assessment Report is delayed by the superior for the reasons are well known to them" and further submitted that that the adverse remarks given was due to external reasons which is unjustified and unacceptable and however, the same representation was rejected by the respondents.

9. In Para No. 2 of the reply statement of the respondents, it is stated that "indiscipline and poor performance of the applicant is also reflected in letter dated 16.9.2004 of the Executive Engineer (E), Jodhpur Central Electrical Division, C.P.W.D., Jodhpur, wherein, he was called for an explanation regarding joining at Sriganganagar directly on transfer in the State of his sickness without relieving from his previous section at Bikaner which was fixed other than from

Sriganganagar. This letter has not been replied so far by the applicant. This approach of the individual shows indiscipline.

10. We are at a loss to understand that such an alleged over-tacts on the side of the applicant has no relevance with his punctuality. This only reflects the adverse remarks have been made by the respondents on punctuality column for other reasons other than punctuality. It is a well settled position that if a person is not punctual, if there is attendance register, it should be reflected on it. Assuming for a moment that the respondent is not maintaining attendance register for the officers like the applicant; Junior Engineer, if he is consecutively flout the punctuality rules, naturally, the respondents superior officers are to issue a memo to him or deduct one Casual Leave for three continuous delay. No such procedure seems to have been followed by the respondents in this case and not even a single letter sent to the respondents at any point of time regarding his punctuality as doubtful. If the joining of the applicant at Sriganganagar on 10<sup>th</sup> September, 2004 has infuriated the respondent Nos. 3 and 4, they had different measures other than to spoiling applicant's ACR for such indiscipline.

11. The applicant has filed a rejoinder in which he has stated that "it is submitted leave for 19.8.2004 to 9.9.2004 & 18.10.2004 to 23.10.2004 has been sanctioned to applicant. Thus, the applicant after availing medical leave till 9.9.2004 has joined at Sriganganagar on 10.9.2004". The submission of the applicant that this joining has infuriated respondent Nos. 3 and 4 in particular is fortified from Annex. R/1. It is apparent from this para of the reply that despite his transfer the respondents', some how wanted to see that like in the past, this

time as well as same is not given effect to. Therefore, it is quite clear that in the absence of any malice or any such averments, it is clear that respondents have recorded adverse remarks willfully, deliberately and without any supporting materials. Only to deprive the legitimate right of the applicant by spoiling the ACR It is a clear act of mala fides. Hon'ble the Supreme Court in the decided case- 1997 (4) SCC 7 – as also in **1997 SCC (L&S) 903** in the case of State of UP Vs. Y.S. Mishra and Anr. has cautioned how to write ACR and what is object of writing ACRs of an employee. The object of writing the confidential reports and making entries in them is to give an opportunity to a public servant to improve excellence. Before forming an opinion to make adverse entries in confidential reports, the reporting/reviewing officers should share the information which is not a part of the record, with the officer concerned. This amounts to an opportunity given to the erring officer to correct his conduct, behaviour, integrity etc. and if despite giving such an opportunity the officer fails to perform the duty or correct his conduct or improve himself, necessarily the same is to be recorded in the confidential report.

12. On going through the material placed on record, we are of the considered view that no such objectivity and responsibility was shown by the higher officers in this case. In the circumstances, we are of the considered view that the adverse remarks that has been recorded in the Confidential Reports of the applicant has to be expunged. Since this exercise of power has been done in not under good faith we do so and we direct that Annexs. A/1 dated 24/02/06 and A/2 dated 21/08/06 making adverse entry in the Confidential Report/s, be quashed and set aside and the applicant shall be extended all consequential benefits as if there were

no such remarks and grant him consequential benefits within a period of three months from the date of receipt of a copy of this order.

13. The O.A. is allowed as aforesaid, but, in the circumstances of the case, the parties are left to bear their own costs.

Tarsem Lal  
(Tarsem Lal)  
Member (A)

  
(K.V. Sachidanandan)  
Vice Chairman (J)

Part II and III destroyed  
in my presence on 15/2/2014  
under the supervision of  
Section Officer ( ) as per  
order dated 19/8/2014

Section Officer (Record)

G. B. S.  
14/10/08  
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