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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR**

OA No. 569/2011

Dated this the 14th day of December, 2012

CORAM

HON'BLE MR. B K SINHA, ADMINISTRATIVE MEMBER

Prakash Chandra Bothra, S/o Shri Chitamani Dass
b/c Oswal R/o 208 Dhani Bazar, Dist. Barmer,
Office address: HO Churu (Postal Dept) Dist. Churu
Employed on the post of SPM at Churu HO.Applicant

(By Advocate Mr. S.P.Singh)

Vs.

Union of India through the Secretary,
Government of India, Ministry of Communication,
Department of Posts, Dak Tar Bhawan,
New Delhi.

The Director, Post Master General,
Western Region, Jodhpur-342001.

Superintendent of Post Offices
Barmer Division, Barmer-344001.Respondents

(By Advocate Mr. Vinit Mathur, ASGI with Advocate Mr. Anirudh Purohit)

ORDER

The instant OA has been filed by one Prakash Chandra Bothra against the order of Director Postal Services, Rajasthan Western Regional rejecting the application for expunging the adverse remarks recorded in his confidential report for the year 2008-09 by the reporting authority i.e. SPO Barmer Division

2. The applicant has sought the following relief(s):

(a) *By writ or direction the impugned order adverse remarks vide STA/WR/43(B)/06/10 dated 22.9.2011 except about para 13 of adverse entry, may kindly be declared illegal and same may be quashed and set aside.*

- (b) *The respondent may kindly be directed to expunge the adverse remarks for the period 2008-2009 from Confidential Report of the applicant.*
- (c) *That any other direction or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.*
- (d) *That the costs of this application may be awarded to the applicant.*

3. The case of the applicant, in brief, is that he was appointed on the post of Postal Assistant on 1.6.1972 and has since rendered unblemished service for a period of 38 years with full zeal and honesty. It was on account of his sincerity and honesty that he was transferred frequently and he earned the ire of the respondent No.3 Superintendent of Post Offices, Barmer Division. The applicant contends that it was in his 40th year of service i.e., in the year 2009 a number of adverse remarks were recorded without having afforded an opportunity to the applicant to remove his defects and without prior communication to the applicant. The applicant filed representation against the remarks within the prescribed time period. No documents were ever provided to him as per his request dated 13.4.2009 [A2]. This, the applicant claims, are against the provisions of Circular dated CS/CRs/2006-07/CR/Instns.dated 5.3.2007 para 8 "*the adverse entries recorded in the CRs are to be supported by earlier warnings/admonition/reprimands/punishments, accompanied by factual statements. Vague adverse entries not supported by relevant details have often to be expunged in the Directorate on appeal. Such eventualities should be avoided. The adverse remarks recorded should be very clear and should not give the impression of general remarks.*

There should be ambiguity in such remarks."

4. The learned counsel for the applicant submits that in the applicant's 40 years of service this is the first occasion when such adverse remarks have been recorded in his ACR. There has been no reply to his representation for expunging the remarks [A3]. He has submitted another representation dated 13.5.2009 vide A4. Still when no relief was forthcoming the applicant approached this Tribunal in OA 41/2010 in which it was ordered:

"After discussion at the bar with both the counsels and with the consent of both, I deem it proper that paragraph (13) of the Annexure A/1 regarding assessment of integrity of the applicant must be summarily removed from Annexure A/1 as there does not seem to be any supportive document and this high degree of allegation affecting the whole life of government servant seems to be made without adequate reason and rhyme. But relating to other charges, the applicant is allowed to file a revision before the appropriate authorities and said authorities is hereby directed to consider the adverse entries made against the applicant in relation to the proven charges against him and the situational matrix after him having been accorded a chance of being heard before findings are raised against him. The applicant is allowed to submit a revision petition within one month next and the revisional authority shall dispose of the said revision after affording a chance to be heard to the applicant within three months thereafter. The paragraph 13 of the Annexure A/1 is hereby quashed and the other parts of the documents are left to be considered by the revisional authority. OA is disposed of as stated above. No order as to costs."

Accordingly the respondents considered the case of the applicant and issued the impugned order at Annexure A1. The applicant, is here, in revision of that order pleading that he has already retired from service and these remarks are immaterial to him as that he has in receipt of all his dues and financial upgradations. However, he would like the expunction of these remarks to vindicate his honour.

5. The OA has been vehemently resisted y the learned counsel for the respondents saying that the remarks have been well deserved by the applicant. There is no procedural irregularities which mar the recording of the remarks. The respondents have also resisted the contention of the applicant that the adverse remarks were recorded only in the year 2008-09. In their reply to the OA respondents have asserted: *"After transfer of applicant from Siwana to Churu, no one is complaining about present Sub Post Master. All public complaints were raised during the period of applicant. This is also a glaring example of unsatisfactory service provided to public. No official was under direct control of applicant. The question of initiation appropriate action against those does not arise. The applicant should have disclosed such type of action. It can be said without any hesitation that applicant himself was damaging the fame of department by crushing tolerating the public in day-to-day work. Why respondent No.3 was hatred, bias, prejudice and animosity with the applicant? The applicant has not given a single reliable reason about that. It is duty of respondent No.3 to stop the arbitrary action of the applicant against public. All adverse entries were passed duly supported by earlier punishment accompanied by factual statements. The applicant joined his duty as Postal Assistant on 1.6.1972 and during his entire service career, he is awarded serious punishment on different occasions for various offences and misconduct. All was not happened in the year 2009.*

Therefore, all allegations alleged on Respondent No.3 are baseless and is to search the excuses."

6. The respondents have further submitted that the representation submitted by the applicant has been considered and decided by the competent authority and that alone is sufficient for the dismissal of the OA. During his entire service career he was awarded series of punishments for various misconduct including one reversion to a lower grade and one premature retirement. But on account of technical mistake he had to be taken back into service. These remarks have been occasioned by series of public complaints that are the basis of the remarks.

7. This application is to be considered in light of the fact that the applicant has already retired and expunction of the remarks are not going to make any difference to him or to the respondent organization. Therefore, it is only a sense of honour that occasions this context. The only issue to be decided here is that whether the remarks have been recorded as per the procedures or not. The basic character of confidential remarks has been provided in Rule 10 of the P&T Manual, Vol.III which states:

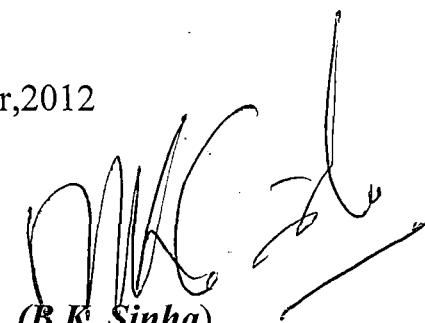
"It is the duty of a reporting officer not only to make an objective assessment of the work and qualities of his subordinate and also to give at all times the necessary guidance and assistance to correct his faults and deficiencies. While recording adverse remarks, the reporting officers should indicate the efforts made by him to get those defects removed. He should also provide necessary training wherever possible. The annual report should be based on such watchfulness and periodical inspections. Apart from comments on general qualities such as integrity, diligence, industry, conduct, attitude to superiors and subordinates relation

with fellow employees, work aptitude ,etc, of officer reported upon, the report should also contain a summing up in general terms of his good and bad qualities."

8. I find from the consideration of the documents that the earlier warnings have not been given nor the bases on which adverse remarks have been recorded. The very purpose of recording adverse remarks is that an employee should be able to improve his conduct. I find that in his order dated 22.9.2011 the Director, Postal Services while rejecting his application has cited a number of instances amounting to misconduct relating to the applicant in the past. However, I find that no materials which form the basis of the remarks in question being provided to the applicant. In absence of such materials the remarks fall into the error of being impressionistic and not based upon facts. Nor have adequate prior warnings have been given whereby the applicant could have improved his conduct. Both these infirmities serve to take away the validity of the remarks.

9. As already observed earlier, expunction of these entries are only of notional character, Therefore, in view of the infirmities noted above in respect of these entries, the OA is allowed without there being any order as to costs.

Dated the 14th day of December,2012



(B K Sinha)
Administrative Member