

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. 600 of 97

Present : Hon'ble Mr. D. Purkayastha, Judicial Member.

Badal Chandra Naskar, Section Officer, attached to V.R. Branch Subsidiary Intelligence Bureau, Calcutta 9/1, Gariahat Road, Calcutta-19.

...Applicant

-v e r s u s -

1. Union of India, service through the Secretary, Ministry of Home Affairs, New Delhi.
2. The Secretary to the President Secretariat, Government of India, Rashtrapati Bhawan, New Delhi.
3. The Director, Intelligence Bureau, Ministry of Home Affairs, Government of India, New Delhi.
4. The Assistant Director, Intelligence Bureau, Ministry of Home Affairs, Government of India, New Delhi.

...Respondents.

For the applicant : Mr. A.N. Dhole, counsel.

For the respondents : Ms. K. Banerjee, counsel.

Heard on 11.3.98

Order on 11.3.98

O R D E R

D. Purkayastha, JM

Feeling aggrieved by and dissatisfied with the impugned memorandum dated 23.4.97 (Annexure-N to the application) rejecting the appeal regarding expunction of adverse remarks recorded in his ACR for the period 1993-94, the applicant has filed this application with the prayer for quashing the impugned order dated 23.4.97 on the ground that the said impugned order is devoid of consideration and reasons thereof and it is a violative of the principle of natural justice, hence it should be struck down.

2. The case of the applicant in short that he joined in the service as Assistant in the Department of Indian Bureau. Later he was promoted to the post of Section Officer and was posted at Tejpur. Subsequently he was transferred to Kohima in the month of July '93. While he was at Kohima, the Assistant Director, S.I.B. made the ~~following~~ adverse remarks against him stating "just to adequate for routine mater; needs updation in specialised areas, needs effective training on Accounts matters and the officer was noticed to have not paid adequate caution while scrutinising some bills resulting in some over payment; he was advised

to be careful in future." On receipt of the memorandum dated 1.12.94 (Annexure-A to the application), the applicant preferred representation to the Joint Director, S.I.B. Kohima on 4.1.95 (Annexure-B to the application). The Asstt. Director vide his memorandum dated 20.1.95 rejected his representation stating inter-alia that remarks cannot be expunged. The applicant thereafter preferred appeal before the Director of Intelligence Bureau, Min. of Home Affairs for getting redressal of his representation 4.1.95; but that was also rejected by the competent authority on 29.9.95 (Annexure-E).

3. Feeling aggrieved by the said order dated 29.9.95 (Annexure-E to the application), the applicant made another appeal to the President of India. He was intimated later by the authority that under the rules on the subject and according to clarification provided by the DOP&T UO NO. 2021/91-Estt.(A) dated 5.8.91, no appeal against the rejection of representation by the competent authority lies to any authority in the Department. Only a memorial or appeal to the President against rejection of the representation could be allowed within six months after such rejection. Thereafter he submitted the memo of appeal to the President of India against the order of rejection of his representation through the Assistant Director. But that has also been rejected by the competent authority by a letter dated 23.4.97. Hence this petition.

4. The respondents filed written statement denying the allegations of the applicant and it is stated that the applicant as a Drawing and Disbursing Officer had failed to detect the duplicate payment of a huge amount and that shortcoming has been recorded in his A.C.R. and it has also been communicated to the applicant with an opportunity to make representation. He made representations but those were rejected. It is also stated in the reply that the claim of Shri Naskar that the adverse remarks in his ACR for the year 1993-94 should be expunged as these were communicated to him by JD., SIB Kohima after 9 months instead of one month as per instructions laid down by the Government. Hence it cannot be accepted that the period of one month as stated thereon is ~~not~~ mandatory and thereby that cannot be ground for expunction of the ACR. It is also stated that the authority is not bound to pass the reasoned order as contemplated by the applicant. Thereby the application is devoid of merit and liable to be dismissed.

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5. Ld. counsel for the applicant submits that the applicant being aggrieved by the impugned adverse remarks (Annexure-A) made representation to the authorities and that representation ought to have been disposed of by the authority with reasoned or speaking order, but, order of rejection dated 23.4.97 (Annexure-N to the application) ~~is devoid of reasons~~ is devoid of reasons, so the order is liable to be struck down. Ld. counsel for the applicant cited the decisions of the Hon'ble Apex Court reported in A.I.R. 1983 SC 109 ~~Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendra Nadkarni and A.I.R. 1986 (1) SLR 470 R.P. Bhat Vs. Union of India and Ors.~~ Referring to these decisions, the Id. counsel submits that this is an obligation on the part of the authority to pass a speaking order in the matter of disposal of the representation, if any, filed by the applicant. The memorandum dated 23.4.97 (Annexure-N to the application) is devoid of reasoned order and thereby, the said order has been issued by the authority without having any application of mind. The expression of the word, "careful consideration" ~~is not~~ as mentioned in the order does not fulfil the requirement of passing reasoned order to be passed by the authority and does not constitute proper consideration. The Id. counsel for the applicant further submits that the matter may be sent back to the competent authority to decide the representation on merits and with speaking order.

6. Ld. counsel Mrs. Banerjee appearing on behalf of the respondents submits that the time limit for communication of adverse remarks is not mandatory but only directory and delay in communicating the adverse remarks to the applicant ~~can~~ be a good ground for expunction of the said remarks. Secondly, Id. counsel, Mrs. Banerjee submits that the competent authority is not bound to disclose the reasons in all circumstances except the case is made out that authority has acted malafide. Mrs. Banerjee further submits that whatever reasons were recorded in the file for rejection of the representation need not be communicated to the applicant. So, his representation was duly considered & rejected.

7. I have considered the submission of the Id. counsel for both the parties. Before entering into the question of principle of natural justice as raised by both the parties, it is found that the delay of communicating of adverse remarks in the ACR of the Govt. servants has been considered

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by the Hon'ble Supreme Court in case of State of Haryana Vs. P.C. Bedha 1987 Vol SCJ 115 where it has been held that the whole object of making communication of adverse remarks is to give to the officer concerned an opportunity to improve his performance, conduct and character as the case may be. The adverse remarks should not be necessarily be termed as the punishment but really it should be taken as advice to the officer concerned, so that he may act with the advice and improve his service career. The object of making the adverse remarks would be lost if they are communicated to the officer concerned after an inordinate delay. In the instant case, admittedly adverse remarks recorded in the year of 1993 and communicated to the applicant after eight months vide memorandum dated 1.12.94 (Annexure-A to the application) and accordingly the applicant made representation to the authorities so it remains no doubt that as per instructions contained in page 10 of Swamy's Compilation on Confidential report of Central Govt. Employees as corrected upto February 1995, that adverse remarks had to be communicated within a period of one month from the date it was recorded, which should in turn be done within one month of the expiry of the report period. So the delay of eight months by the Administration as alleged by the applicant ~~cannot~~ be said to be an inordinate delay on the part of the respondents for the purpose of communication.

Because it was held by the Hon'ble Apex Court in the case of Gurdial Singh Vs. State of Punjab (1979) 2 SCC 638 which has been followed by Baikunta Nath Das's case (1992) 2 SCC 299 that adverse remarks which is not communicated to the Govt. servant ~~or~~ if he is denied opportunity of making representation to the superior authority cannot be ~~enacted~~ against him. So, inordinate delay in communication of adverse remarks cannot be overlooked in all circumstances.

8. Regarding speaking order, I find that his representation was rejected by an order dated 20.1.95 (Annexure-C to the application) where it is stated that Shri Naskar is informed that his representation has been carefully considered by the competent authority and regret that the remarks cannot be expunged or modified. His representation dated 27.12.95 relates to appeal addressed to the Hon'ble President of India for consideration, that has been rejected by the authority vide order dated 23.4.97 (Annexure-N to the application). In the case of The Board

of Trustees of the Port of Bombay vs. Dilipkumar Raghavendranath Nadkarni and Ors. reported in AIR 1983 SC 109 where there Lordships held-

"Justice must not only be done but must seem to be done is not an euphemism for Courts alone, it applies with equal vigour and rigour to all those who must responsible for fair play in action."

Similar view has been taken by the Hon'ble Apex Court in R.P. Bhat Vs. Union of India reported in 1986 (1) SLR 470 where their Lordship has held-

" the legal affect of the speaking order against the order of removal from service dismissed with the remarks that the order is just and in accordance to the rules applicable and the said order was found by the Hon'ble Apex Court is not tenable in view of the facts that the order of appellate authority must apply his mind to all the factors mentioned in the rule."

I have gone through the impugned order (Annexure-N to the application). On careful scrutiny of the said order, I note that the said letters also did not disclose the reasons for which his representation was not found to be considered by them. Ld. Ms. Banerjee submits that order has been recorded in the file and it need not be communicated to the party. So, order of rejection cannot be said to be bad in law.

9. In view of the aforesaid circumstances, I find that it is a fit case to send back to the respondent No.2 who would decide the representation of the applicant afresh with a speaking order or reasoned order in accordance with the law in the light of the decision of the Hon'ble Supreme Court within 3 (three months) from the date of communication of this order. Accordingly, the application is disposed of awarding no costs.


 11/3/98
 (D. Purkayastha)
 Member (J)