

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 147 of 2006

Monday....., this the 26th day of March, 2007

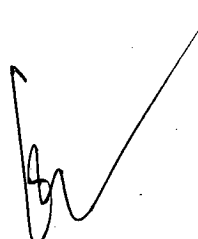
C O R A M :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

Joseph George,
S/o. Shri George Joseph,
Assistant Finance & Accounts Officer,
Central Marine Fisheries Research Institute,
Mandapam, Ramnad Dt.. Tamil Nadu,
(Presently residing at Type III/4 Quarters,
CMFRI Residential Complex, Kochi) ... Applicant.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Indian Council of Agricultural Research,
through its Secretary, Krishi Bhavan,
New Delhi.
 2. Director, Central Marine Fisheries Research
Institute, Post Box No. 1603,
North Post Office, Kochi
 3. The Scientist Incharge,
CMFRI Regional Centre, Marine Fisheries Post,
Mandapam (Ramnad District), Tamil Nadu.
 4. Dr. Mohan Joseph Modayil,
Director, Central Marine Fisheries Research
Institute, Post Box No. 1603,
North Post Office, Kochi
 5. Shri N. Viswambharan, Administrative Officer,
Central Marine Fisheries Research
Institute, Post Box No. 1603,
North Post Office, Kochi
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6. Dr. N. Kaliaperumal, Scientist Incharge,
Regional Centre of CMFRI, Fisheries Post,
Mandapam (Ramnathaouram District),
Tamil Nadu. ... Respondents.

(By Advocate Mr. T.P. Sajan for R1-3 and Mr. P. Sathosh Kumar for R4 and R5.)

The Original application having been heard on 14.03.07, this Tribunal on 26-3-07 delivered the following :

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

ACR is a curve corrector. The precise purpose of communication of adverse remarks, as specified in the Apex Court Judgment in the case of ***Brij Mohan Singh Chopra v. State of Punjab, (1987) 2 SCC 188*** "Is to afford an opportunity to the employee to improve his work and conduct and to make representation to the authority concerned against those entries. If such a representation is made it is imperative that the authority should consider the representation with a view to determine as to whether the contents of the adverse entries are justified or not."

2. In the instant case, the applicant has challenged the recording of the adverse remarks, on the ground that what was communicated is not that of the reporting officer but by the accepting authority and the procedure for communication of remarks and authority to consider the representation have not been kept in mind in communicating the adverse remarks.

3. Briefly, the applicant, working as Asst. Finance and Accounts Officer, had

been communicated the following adverse remarks respectively pertaining to the year 2003 -2004 and 2004-2005 respectively:-

During the year 2003-04 :

1	Part – III – a. Nature and quality of work 1. Please comment on Part II as filled in by the Officer and specifically state whether you agree with the answer relating to targets and objectives, achievements and shortfalls. Also specify constraints, if any, in achieving the objectives.	The official has made irrelevant statement regarding targets and objectives in Col.2A of Part II. The statement of the official reflects his ignorance of the responsibilities.
2	Part – III - a.2. Quality of Output - Please comment on the officer's quality of performance having regard to work and programme objectives and constraints, if any.	The official has not realized the duties and responsibilities assigned to him in the Regional Centre which is evident from his own statements at Col. 2A, 2B and 3A. These statements also indicate his ignorance, arrogance and indiscipline.

During the year 2004 – 05:

1	Part – III – a. Nature and quality of work.	The official has furnished irrelevant information in his self appraisal column against II (1), 2A, 2B, 3A and 3B which are not based on facts and records.
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4. The applicant represented against the adverse remarks, vide Annexure A/12 letter dated 27-06-2005 and the same was considered by the Director, Central Marine Fisheries Research Institute but rejected, vide Annexure A/13 order dated 28th October, 2005. The aforesaid orders have been challenged in this O.A.



5. Not much of discussion is required in dealing with this OA as the original records were perused where manifest errors have been located.

6. In so far as 2003-2004 report is concerned, reporting officer had endorsed his remarks on 26-04-2004 grading the applicant as 'Good'. The Director, who is the accepting officer, disagreed with the same and downgraded to 'Average'. While downgrading, it is the Director who had remarked as under:-

Sl No.	Column	Entry
2	Integrity (Please see note below instructions)	His integrity is beyond doubt.
3	General Assessment - Please give an overall assessment of the officer with reference to his strengths and shortcomings and also by drawing attention to the qualities, if any, not covered by the entries above	The overall performance of the officer is good.
4	Grading - Outstanding/Very Good/Good/ Average/ Below Average an officer should not be graded outstanding unless exceptional qualities and performance have been noticed; grounds for giving such a grading should be clearly brought out	"Average"

7. The Impugned order dated 4th June, 2005 contains ^{matter} as stated in para 3 above, whereas on a perusal of the report, entry against the concerned columns is as under:-

"Part III - (a) : Nature and quality of Work: *In the Part II filled in by the officer, I agree with the answers relating to targets and achievements. There were not constraints in achieving the objectives.*"

Part III: (a) (2): Quality of Output: *"The quality of officer's*



performance with regard to standard of work and performance objectives is good."

Now the manifest errors:

(a) The report pertaining to 2003-2004, written as early as on 01.06.2004 was communicated only in June, 2005, i.e. after full one year! Rules on the subject would go to show that communication **should be within one month of their being recorded** (vide DPA&R OM No. 21011/1/77-Estt dated 30-01-1978).

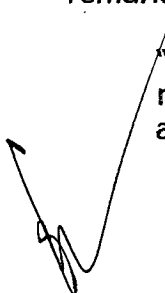
(b) Again, the communication should, vide the order *ibid*, contain, all entries in the confidential report both on performance as well as on basic qualities and potential **"along with a mention of good points"** Here only adverse remarks (and that too not as found in the ACR) *have been communicated* -

(c) It was the Director who had communicated the adverse remarks to the applicant, and the communication reflects, "following adverse remarks ... have been brought to the notice of the undersigned." This gives the impression as if the remarks were written by some other authority, whereas, the remarks as contained in the communication vide Annexure A-10 were actually that of the Accepting Officer, i.e. the Director.

(d) Representation against adverse report is to be made to the authority higher than the countersigning/accepting authority, vide order *ibid*. Here, the Director himself has called for representation, vide the last para of Annexure A-11. In other words, the Director wants that appeal should be from Caesar to Caesar! This is impermissible.

8. In so far as adverse remarks for the year 2004-2005 is concerned the remark of the reporting officer in respect of Part III - (a) : Nature and quality of Work, the remarks is: *In the Part II filled in by the officer, I agree with the answers relating to targets and achievements. There were not constraints in achieving the objectives.*" This being so, the Director could pick up the words, as contained in the impugned order at Annexure A-10 which seem to be his own remarks in part V (2) which read as under:-

2. Is the Reviewing Officer satisfied that the Reporting Officer has made his report with due care and attention and after taking into account all the relevant material?



No. The reporting officer has casually reported on the performance of the official. The official has not reported his work at 11(1), 2A, 2B, 3A and 3B. The observations of reporting officer are not based on records."

9. When in para 4M, the applicant has clearly stated that after having confirmed from the 3rd/6th respondent that he had not made any such remarks, the applicant made his submissions dated 27th June, 2005, the fourth and fifth respondent, i.e. the Director has not denied the same in his counter.

10. Rejection of the representation is by the very same officer who had recorded the adverse remarks. This is Impermissible.

11. It cannot be that the Director is not aware of the procedure prescribed for recording adverse remarks, communication of the same and consideration of representation against the adverse remarks. Despite full knowledge about the same, the Director seems to have handled the matter in this case in the fashion as stated above. It appears that personal feuds fouled the air! The director seems to have abused his powers which, It is appropriate to cite the observations of the Apex Court in the case of ***State of Punjab v. Gurdial Singh, (1980) 2 SCC 471***, wherein the Apex Court has held:

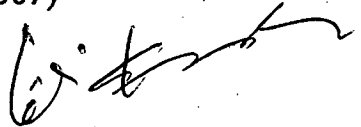
"Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or



catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated: □I repeat . . . that all power is a trust □ that we are accountable for its exercise that, from the people, and for the people, all springs, and all must exist . Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. I f the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, mala fides or fraud on power vitiates the acquisition or other official act.

12. In view of the above discussion, the **application fully succeeds.** Annexure A-10, A-11 and A-13 orders are liable to be quashed and set aside. The adverse remarks endorsed by the Accepting authority, i.e. the Director, CMFRI for the years 2003-2004 and 2004-2005 are obliterated and the same shall not be taken into account while considering the ACR by the authorities for the purpose of promotion etc. The applicant is entitled to cost, quantified at Rs 3,000/-.

(Dated, the 26th March, 2007)



Dr. K B S RAJAN
JUDICIAL MEMBER

cvr.