

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 161/92 ~~xxxx~~

DATE OF DECISION 8.3.1993

Shri M Bhaskaran Applicant (x)

Shri MR Rajendran Nair Advocate for the Applicant (x)

Versus

Union of India (Secy., Ministry of Broadcasting) & 3 others Respondent (s)

Shri George Joseph, ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. AV Haridasan, Judicial Member

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1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

In this application, the applicant Shri M Bhaskaran working as Programme Executive, All India Radio, Kochi, has sought to quash the communication of adverse entry in his ACR for the year 1989-90 and the rejection of his representation for expunction of the adverse remarks communicated to him by the Station Director on 3.1.1992 (Annexure III).

2. The applicant while working as Programme Executive, All India Radio, Thiruvananthapuram, was transferred to Kochi where he joined on 1.10.1989. While working at Kochi he received memo dated 26.4.1990 (Annexure I) communicating to him the following adverse entries in his ACR for the year 1989-90:-

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- "1. He was not interested in additional work as and when expected during the course of work. He did not take adequate steps to avoid over and wrong broadcast of spots at the stations.
2. During the financial year 1989-90, he was not succeeded in bookings for Calicut Station's spot programmes.
3. The officer's work was perfunctory."

The applicant states that within 30 years of his service, there had never been an occasion for his superior to make an adverse entry in his ACR and that the adverse entries in his ACR communicated to him under Annexure I was made without basis solely on account of personal grudge of the Reporting Officer. Aggrieved by the adverse remarks in his ACR, the applicant submitted a detailed representation on 14.5.1990 at Annexure II to the Director General, All India Radio. In this representation, he had stated that there had never been an occasion when he had shown lack of interest in additional work, that there was no instance of wrong and over broadcasts of spots, that in fact the instances of wrong and over broadcasts of spots had actually come down to almost nil during the period he worked under the Commercial Broadcast Service, that during the period 1989-90, while he was holding charge the booking for Calicut Station's spot programmes had actually improved when compared to the corresponding period of the previous year, that there had never been any instance when he had been informed of any shortcoming on his part and that, therefore, as the adverse entry in the ACR was not warranted, the same may be expunged. Though the representation was made on 14.5.1990, the same was disposed of only in December, 1991 and by the impugned communication at Annexure III dated 3.1.1992 the applicant was informed that his representation for expunction of adverse remarks, though was carefully considered by the competent authority, it was regretted that it could not be found possible to expunge the same. It is aggrieved by the rejection of

his representation that the applicant has filed this application praying that the impugned orders may be set aside. He has in the application stated that his service under the organisation ever since he joined in the year 1961 till the date on which the Annexure I was served on him has been blemishless and clear and that the impugned adverse entries happened to be recorded in his ACR without any bonafides. He is aggrieved by the fact that his representation has not been carefully considered and that the criptic order at Annexure III is devoid of application of mind.

3. The 2nd respondent in this case, the Assistant Station Director, Commercial Broadcasting Centre, Thiruvananthapuram, is the reporting officer responsible for the impugned adverse entries in the applicant's ACR. It was to the 4th respondent that the applicant had submitted the representation against the adverse entries in the ACR and it was he who disposed of the same with the remarks mentioned in Annexure III. The incumbent in the office of the 2nd respondent at the time when the adverse entries were made was one Shri V Rasaih. The reply statement in this case, said to have been filed on behalf of ^{all} the respondents, had been prepared and signed by the present incumbent in the office of the 2nd respondent. The respondents contend that the adverse entries in the ACR were made on the basis of facts, that the Reporting Officer had in his comments on the representation of the applicant indicated that the applicant was very blunt in telling him that he was not prepared to do the work of other persons and that the 4th respondent has disposed of the representation after careful consideration. It is further contended that as the adverse remarks recorded in the ACR have been communicated only with the intention of improving the work and conduct of the applicant, the applicant has no reason for any legitimate grievance. The respondents, therefore, pray that the application may be dismissed.



4. In a rejoinder filed by him, the applicant has reiterated the fact that there is absolutely no basis for the adverse remarks and that not much value can be attached to what is stated in the reply statement by the present incumbent in the office of the 2nd respondent who has no personal knowledge about what transpired during the period in question.

5. I have very carefully gone through the pleadings and documents and have also heard the arguments of the counsel on either side. Shri MR Rajendran Nair, the learned counsel appearing for the applicant argued that the impugned adverse entries in the ACR of the applicant, who had a blemishless record of service for 30 years, were made by the Reporting Officer, Shri V Rasaih purely out of oblique motives since there is no factual foundation for the adverse comments. In this context, he invited my attention to the entry No.2 among the adverse entries which related to the applicant's alleged failure in booking for Calicut Station's spot programmes during the financial year 1989-90 and the facts and figures given in his representation to the 4th respondent against the adverse entries making a comparison between the booking of spots programme for Calicut Station during April to September, 1989 and April to September, 1990 (the latter period being the period under assessment) which would show that during the period in question, there was an improvement in the booking than the corresponding period of the previous year. Shri Nair argued that this would show that the adverse entry No.2 was made against facts. Similarly, referring to the adverse entries one and three, i.e. regarding the alleged lack of interest shown by the applicant in shouldering additional responsibilities as and when called upon, the learned counsel referred to the applicant's averment in his representation

that at no point of time he had shown any reluctance to shoulder additional responsibilities and that during the period in question, instances of over/wrong broadcast had gone down almost to nil~~y~~. Shri Nair, the learned counsel for the applicant, referring to the reply statement filed by the respondents argued that the very fact that the averments in the representation submitted by the applicant that booking of spot programmes for Calicut had improved while he was incharge during the period in question and that over/wrong broadcast had gone down to nil~~y~~ has not been denied, would amply establish the hollowness of the adverse entries made in the applicant's ACR. He further argued that the 4th respondent has not taken care to call for the relevant details from the 2nd respondent and to apply his mind to facts before deciding that the adverse entries in the ACR of the applicant cannot be expunged. The only fact which was considered by the 4th respondent, argued the learned counsel, was the alleged comment of the Reporting Officer that the applicant had orally told him that he was not ready to do others work as he was paid only to look after his own section's work when he was requested to shoulder additional responsibilities. This comment of the Reporting Officer purportedly reproduced from the memory of the Reporting Officer, Shri Nair argued, could not have been based on reality/for if it were so, as a superior controlling officer, the Reporting Officer would have on such blunt reply being given to him by the applicant who was his subordinate, issued him a memo or at least a letter intimating his displeasure. These circumstances, according to the learned counsel, are clearly indicative of the fact that the adverse entries in the ACR of the applicant for the relevant period was made with some oblique motive by Shri Rasaih who had an ill-feeling towards the applicant

and that the 4th respondent had failed in his duty in taking a just and proper decision applying his mind to the facts and figures given in the representation of the applicant. Replying to these arguments raised by the learned counsel for the applicant, Shri George Joseph, ACGSC, argued that as no specific reason for enmity for the Reporting Officer against the applicant having been suggested, it has to be presumed that the adverse entries made by the 2nd respondent were made on the basis of a proper assessment of the work and conduct of the applicant during the period under review and that as the adverse remarks were communicated to the applicant only with the intention of improving his work and conduct and since he has not been visited with any evil consequences by reason of the communication of the adverse entries, the applicant should not have any legitimate grievance. Shri George Joseph further argued that since in the impugned order at Annexure III turning down his representation for expunction of the adverse entries in the applicant's ACR, it has been stated that the competent authority had carefully considered the representation submitted by the applicant, there is no meaning in the applicant's arguing that there is no application of mind by the 4th respondent.

6. Entries in the ACR of Government employees have a very important role to play in the advancement of their career in service. The entries in the ACR assume importance especially at a time when the official comes within the zone of consideration for promotion to a higher post and when his case is being considered for crossing Efficiency Bar. If there are adverse entries in the ACR that may lead to his supersession in the matter of promotion or stoppage at Efficiency Bar. Therefore, the entries in the ACR of officials can make or mar their career. In an ideal situation, the superior officer who has to report about the work and conduct of his subordinates

will make an objective and dispassionate observation of the work and conduct of his subordinates and make entries in their ACRs which would reflect an unbiased and proper assessment of the same. But more often than not, this ideal situation is wanting. Man being what he is, it is likely that prejudices may creep in to the minds of Reporting Officers even unknowingly which may in some cases induce the Reporting Officer to make adverse comments about the work and conduct of his subordinate about whom he has a dislike or displeasure. It is with this in view and in order to safeguard the interest of the officials reported upon that a representation to a higher authority against the adverse entries in the ACR is prescribed. Therefore, the higher authority to whom a representation is made against the adverse entries is bound to call for the fact and figures in regard to the disputed entries as also the comments of the Reporting Officer with supporting documents justifying the controversial remarks and decide whether it would be necessary to tone down the remark or expunge it in toto or to reject the representation. The Government of India, Department of Personnel and Administrative Reforms have issued several instructions containing the principles to be observed by Reporting Officers in writing ACRs and as to how representations against adverse remarks are to be considered and disposed of. In OM No.21011/1/81-Est (A), dated 5th June, 1981 of the DP & AR, the following clear instructions have been issued about the necessity of giving warnings to subordinates in matters where the conduct of the officials deserve some formal action short of disciplinary proceedings and how in such cases to decide whether it should be entered in the ACR of the incumbent during the period in question:-

"There may be occasions when a superior officer may find it necessary to criticise adversely the work of an officer working under him or he may call for an explanation for some act of

omission or commission and taking all circumstances into consideration, it may be felt that while the matter is not serious enough to justify the imposition of the formal punishment of censure, it calls for some formal action such as the communication of a written warning/displeasure/reprimand. Where such a warning/displeasure/reprimand is issued, it should be placed in the personal file of the officer concerned. At the end of the year (or period of report), the reporting authority, while writing the confidential report of the officer, may decide not to make a reference in the confidential report to the warning/displeasure/reprimand, if, in the opinion of that authority, the performance of the officer reported on after the issue of the warning or displeasure or reprimand, as the case may be, had improved and has been found satisfactory. If, however, the reporting authority comes to the conclusion that despite such warning/displeasure/reprimand, the officer has not improved, it may make appropriate mention of such warning/displeasure/reprimand, as the case may be, in the relevant column in Part III of the form of confidential report relating to assessment by the reporting officer and, in that case, a copy of the warning/displeasure/reprimand referred to in the confidential report should be placed in the CR Dossier as an annexure to the confidential report for the relevant period. The adverse remark should also be conveyed to the officer and his representation, if any, against the same disposed of, in accordance with the procedure laid down in the instructions issued in this regard."

In this case, the applicant's case is that throughout his service career there had never been any occasion for his superior to make any adverse comment about his work and conduct that during the period in question, the 2nd respondent had never given him any warning about any shortcomings in his work or conduct and that the adverse entries in the ACR came like a bolt from the blue. According to the applicant, these adverse entries were baseless, intentional and mala fide. A careful appraisal of the averment in the application, the contentions in the reply statement of the respondents, the facts stated in the representation submitted by the applicant to the 4th respondent (Annexure II) and the impugned order at Annexure III, leads to the ^{irresistible} conclusion that the case of the applicant that the adverse entries in his ACR for the year

1989-90 were made without any factual basis and that the 4th respondent has not applied his mind to the facts while disposing of the applicant's representation against the adverse entries. Regarding the items 1 and 3 of the adverse entries while the applicant had categorically stated in his representation at Annexure II that he had never showed reluctance to shoulder additional responsibilities and that the over/wrong broadcast had gone down to almost nil during the period in question, even in the reply statement filed, the respondents have not been able to show that the case of the applicant is not correct. If the applicant had refused to shoulder additional responsibilities and had bluntly told to the 2nd respondent that he was not prepared to perform the duties of other Sections whenever called upon, the 2nd respondent should have framed a memorandum of charges or a show-cause notice or at least a warning or expression of displeasure and then if the applicant had not shown progress during the succeeding period, he should have taken a decision to make a report about it in the ACR. The instructions issued by the Department of Personnel impress upon the reporting officers the necessity of adopting such a course in matters like this. If a Government official who is bound to shoulder additional responsibilities as and when required in the exigencies of service ^{refuses to do so,} that itself is ^{an} adequate reason to take disciplinary action against him. ~~Government officials~~

~~who refuse additional responsibilities~~ The respondents have in the reply statement contended that the action of the applicant ^{to shoulder} in refusing ^{responsibilities} the additional ~~work~~ in fact deserved disciplinary action. To quote ⁱⁿ paragraph 5 of the reply statement it has been stated as follows:-

"Had disciplinary proceedings been initiated against the applicant, he would certainly have been awarded the penalty. However, his Reporting Officer thought it prudent only to advise him to improve his work and conduct by reflecting these shortcomings in his Confidential Report."

If this was the true state of affairs it is difficult to swallow it without a pinch of salt when it is stated that the reporting officer, the 2nd respondent did not even issue a show cause notice or a communication of displeasure to the applicant. Further, the facts and figures regarding the improvement in booking spot programmes for Calicut while the applicant was incharge, the case of the applicant that over/ wrong broadcast had gone down during the period in question to almost nil, are matters which could be verified with reference to the records maintained in the office of the 2nd respondent. No such record is seen to have been referred to in the reply given to the applicant to his representation against the adverse entries (Annexure II). Merely stating that the representation has been carefully considered by the competent authority, the consideration would not become careful unless care has been taken to see whether there is any substance in the representation submitted by the applicant against the impugned adverse entries in the ACR. This has obviously not been done by the 4th respondent. The impugned order at Annexure III turning down the representation of the applicant against the adverse entries in the ACR reads as follows:-

"The representation dated 17.11.90 of Shri M. Bhaskaran, PEX, AIR, Cochin requesting for expunction of adverse remarks communicated to him in his ACR for the period from 1.4.89 to 30.9.89 has carefully been considered by the competent authority but it is regretted that it has not been found possible to expunge these remarks in the ACR."

How the applicant has challenged the three different remarks in the ACR, how he has given facts and figures challenging these remarks in his representation and how the 4th respondent came to the conclusion that it was not possible to expunge these remarks in the ACR and what material was considered by him in reaching this conclusion have not been made clear in

this order. The order of the 4th respondent turning down the representation of the applicant is cryptic and non-speaking.

7. The disposal of the representation against the adverse entries in the ACR calls for taking a decision considering the materials for and against and, therefore, can be said to be of a quasi-judicial nature. It is well settled by now that even in administrative decisions, there should be fair play and justice. The principles of natural justice should not be violated while taking a decision of a quasi-judicial nature. In *AK Kraipak v. Union of India*, (1969)2 SCC 262: AIR 1970 SC 150, the Hon'ble Supreme Court observed:

"Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision, is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far-reaching effect than a decision in a quasi-judicial enquiry."

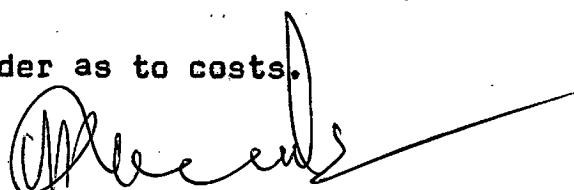
The principles of natural justice require that the person against whom a decision is taken is ^{enabled} ~~able~~ to know on what grounds the decision has been taken. Judged in that view, the impugned order at Annexure III which is cryptic and non-speaking can be said to have been passed violating the principles of natural justice. The Calcutta High Court in *Dr Gopeswar Dutta v. Union of India*, (1982) 1 SLJ 207, quashed the appellate order in a case of adverse entry on the ground that the appellate order did not indicate any reason for the order. The Court observed:

"the rule requiring reasons to be given in support of an order is like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in proper spirit and mere pretence of compliance with it would not satisfy the requirement of law."

In this case also, the impugned order at Annexure III turning down the representation of the applicant for expunction of the adverse entries without disclosing application of mind and without showing the reason for the decision is liable to be quashed. The adverse entries made in the ACR of the applicant communicated to him vide letter dated 26.4.1990 at Annexure I in the conspectus of facts and circumstances discussed above, is absolutely unjustified.

8. In the result, in the light of the above discussion, I find that the applicant is entitled to succeed in this application. The application is, therefore, allowed, the impugned orders at Annexure I and III are set aside and the respondents are directed to delete the impugned adverse entries in the ACR of the applicant for the year 1989-90.

9. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER
8.3.1993

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