

CENTRAL ADMINISTRATIVE TRIBUNAL

Ernakulam Bench

Dated wednesday the 17th day of 1990

Present:

Hon'ble Shri N. Dharmadan, Member (Judicial)

ORIGINAL APPLICATION:197/89

K.R. Rajan

..the applicant

Versus

1. Chief Secretary, Government
of Kerala, Secretariat,
Trivandrum

2. V. Ramachandran, Chairman,
Kerala State Industrial
Development Corporation,
Trivandrum.

3. Union of India represented by
the Secretary, Ministry of Home
Affairs, Government of India,
New Delhi

....THE respondents

Mr. P. Gopalakrishnan Nair

...Counsel for the
applicant

Mr. P.V. Mohanan, Govt. Pleader

...Counsel for the
respondents 1 and 2

Mr. P.V. Madhavan Nambiar, SCGSC

...Counsel for the
respondent-3

JUDGMENT

The applicant, who is a member of the Indian Administrative Service, challenges Annexure-III, an order passed by the first respondent, the Chief Secretary, Government of Kerala, disposing of his representation, Annexure-II, filed against Annexure-I

WY

adverse remarks, for expunging the same.

2. The case of the applicant is that while he was working as Director of the Kerala State Industrial Enterprises Limited, the second respondent made Annexure-I adverse remarks pertaining to the period from 3.12.1986 to 31.3.1987. When this was communicated to him he filed Annexure-II representation under rule 10 of the All India Service (Confidential Rolls) Rules 1970 for expunging the adverse remarks.

3. In this representation he has stated that his work during the term as Managing Director of the Corporation was very much appreciated by the Government and all concerned since it was found very much beneficial to the Corporation for its progress and development. He contended that on a previous occasion for the period from 1.4.1985 to 31.3.1986 the same officer made some adverse remarks against his, but when he filed representation against the same under rule 10 of the aforesaid rules the entire remarks were expunged. He has a further case that all the remarks for the subsequent periods are also 'very good' and 'out standing' and

according to him there is no reason for retaining the last portion of the adverse remarks in Annexure-I viz. 'he is a very good officer whose performance in recent times has been lack lustre'. The applicant also alleged malafides against the second respondent and contended that it was due to the personal prejudice and grudge against the applicant that the second respondent has made repeated remarks against him in the confidential records.

4. The statements including the allegations of malafides are denied in the counter affidavit filed on behalf of the respondent 1 and 2. The respondents submitted that the applicant is not entitled to expung the remarks. According to them the only remedy open to the applicant is to file a memorial to the President under rule 25 of the All India Services Discipline and Appeal) Rules against the impugned order, if he is really aggrieved and that the present application is liable to be dismissed.

5. At the outset I will dispose of the last contention of the learned counsel for the respondents

that the only remedy for the applicant is to file a memorial to the President. This is based on the instructions of the Department of Personnel and Administrative Reforms letter No.11059/6/77-AIS(III) dated 9.11.1977. This instruction which was issued under rule 10-A of the aforesaid rules ^{cannot be} ~~override~~ rule 10(2) which says that any order passed under it is final. Sub-rule (2) of rule 10 reads as follows:

"Rule 10 (1)

(2) The order so passed on the representation shall be final and the member of the service concerned shall be informed suitably."

If the order is final under the All India Service (Confidential Rolls) Rules 1970, it cannot be reopened by considering the memorials under rule 25 of the All India Services (Discipline and Appeal) Rule 1969 which reads as follows:

25. Memorials (1)

A member of the service shall be entitled to submit a memorial to the President against any order of the Central Government or the State Government by which he is aggrieved within a period of three years from the date of the passing of such order...."

This is neither an appeal nor revision or ^{review} ~~review~~ against the impugned order. Hence it can now be considered as an effective statutory alternative

remedy capable of giving relief to the aggrieved Government servant as contended by the Government counsel. Having regard to the facts and circumstances of the case, I hold that there is no merit in the technical contention that the applicants only remedy is to file a memorial under the instructions before the President and I am of the view that this application is maintainable under Section 19 of the Administrative Tribunals Act 1985 against Annexure-III order notwithstanding the instructions referred to above.

6. On the merits, the applicant's case is that Annexure-I remarks are not supported by any facts. Relevant portion from Annexure-I can be extracted for reference. It reads as follows:

".....But it has also been observed that as regards the quality of performance and standard of work your output was limited to routine and the effort and follow up required for the improvement of subsidiary companies have been inadequate; that you have good knowledge of functions and related requirements - but application has been less than effective that your attitude to work is easy going and there is tendency to avoid or postpone unpleasant decisions; your decision making abilities are adequate, but subject to a tendency to avoid harsh or unpopular decisions; you get along well with subordinates but do not drive them to greater efforts, have a tendency run along with the current

and to avoid problems and to postpone inevitable; you are not strict enough with low performing subordinates and that you are easy going and not prone to innovation or extra efforts and your performance in recent times has been lack lustre...."

After the filing of the representation Annexure-II the Government passed Annexure-III, impugned order. Para 2 of the said order reads as follows:

".....Government have examined the representation under Rule 10 (1) of the AIS(CR) Rules 1970 and they order that all the adverse remarks except the remark that "he is a very good officer whose performance in recent times has been lack lustre" will be expunged...."

A close examination of both the orders will reveal that the Ist respondent while passing the impugned order stated in clear terms that the applicant is a very good officer. But this portion is not seen in Annexure-I adverse remarks. Major portions of the adverse remarks in Annexure-I has been removed and first respondent came to the conclusion that the applicant is very good officer; but he retains the last portion of the adverse remarks without giving any supporting materials. Since the first respondent had decided to expung the major portion of the adverse remarks, which contain more, harsh and disparaging adverse words than

the words retained by him by passing the impugned order, there is no basis to retain the last portion. Hence, I see no justifiable reason why the Government expunged the major portion of the adverse remarks retaining only the last sentence having the effect that the performance of the applicant 'in recent times has been lack lustre'.

7. The learned counsel for the applicant Shri Gopalakrishnan Nair vehemently contended that the statement in Annexure-I is not supported by any materials. Along with the rejoinder filed by him in this case he has produced Annexure-IV instructions. Relying on the instructions he contended that the confidential roll is a very important document and the methods to be followed while making the entries in the same had not been observed by the second respondent and hence Annexure-I itself is illegal. But I am not going into these details because they are not material at this stage. I am only concerned with the legality and validity of Annexure-III in this case. The only question to be examined now is whether there

are sufficient materials available to support the retention of the portion of the adverse remarks retained in Annexure-III order and that the retention of the passage will cause serious harm to the applicant, as laid down by the Supreme Court in the case of Rughbir Saran V. State of Bihar and another, AIR 1964 SC 1. The respondent have no case that ^{the} passage complained of is not very serious and harmful to the future prospectus of the applicant in the service. So it is to be assumed that it is an admitted fact that it is harmful to the future prospectus of the applicant. I have gone through the records and I am satisfied that there are no material to support the case that the applicant's performance during the relevant period has been such that it 'lack lustre'.

8. Having regard to the fact and circumstances of the case I feel that when the Government has already expunged major portion of adverse entries as shown in Annexure-I while considering Annexure-II representation, the prayer of the applicant should have been granted by expunging the adverse remarks in toto. There is no legal justification for retaining the last sentence of the adverse remarks and it is not supportable. Hence, in

the result, I allow the application and quash

Annexure-III. The respondents are directed to

expunge the adverse remarks for the period in question

in full as prayed for by the applicant.

There will be no order as to costs.



17.1.90

(N. Dharmadan)
Member (Judicial)
17.1.1990

ganga.