

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
XIXXXDX

388 1990

DATE OF DECISION 15.2.1991

E.Saraswathy Ammal Applicant (s)

M/s KL Narasimhan & Advocate for the Applicant (s)
Shaji P Chali
Versus

The Director General of Telecom Respondent (s)
GOI, M/o Commns., Deptt. of Telecom.,
Sanchar Bhavan, New Delhi & Another

Mr.N.N.Sugunapalan, SCGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P. Mukerji - Vice Chairman

and

The Hon'ble Mr. A.V.Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *N O*
3. Whether their Lordships wish to see the fair copy of the Judgement? *N O*
4. To be circulated to all Benches of the Tribunal? *N O*

JUDGEMENT

(Mr.A.V.Haridasan, Judicial Member)

The applicant, E.Saraswathy Ammal, Accounts Officer (I.C.), in the Office of the Chief General Manager, Telecommunication Circle, Kerala, Trivandrum has filed this application under Section 19 of the Administrative Tribunals Act, praying that the adverse entries in her Annual Confidential Report (ACR for short) for the year, 1988-89, communicated to her by letter of the Chief General Manager, Telecommunications, Trivandrum, dated 28.4.1989, at Annexure-I and the order dated 8.2.1990 of the Chief General Manager rejecting her representation against the adverse entry may be quashed.

2. The facts of the case can be briefly stated as follows. In the ACR relating to the applicant for the year 1988-89, the Reporting Officer in para 3 of the form made the following entry:

"1(a) Does the Reporting Officer agree with all that is recorded under Part II by the Officer? If not, enumerated precisely the extent of disagreement with the reason therefore.

3. Please indicate, if on any of the items in this part, the reporting Officer administered any written or oral warning or counselling and how the officer reacted thereafter.

I agree all items excepting the scrutiny of excess billing cases was not upto expectation.

Orally warned to take more care in checking EXC cases and the reaction was good."

This adverse entry was communicated to the applicant by the Chief General Manager by letter dated 28.4.1989, at Annexure-I. The applicant filed an appeal which was disposed of by Annexure-II order stating that the remarks being factual in nature could not be removed from the ACR. Aggrieved by the adverse entry and rejection of the appeal, the applicant has filed this application, praying that the impugned remarks may be directed to be expunged from the ACR. In the application it is stated that the adverse entry pertains to the matter covered by a show cause notice, Annexure-IV which itself would make it clear that there was only a solitary instance of a lapse in checking the records relating to rebate in an excess billing case, and that was a bonafide

omission for which the applicant was not really responsible. Therefore, the applicant claims that, making an adverse entry in the ACR was not warranted. It is further averred that, though there was only a solitary instance of lapse which was clearly explained by her in the explanation submitted for the show cause notice, the remarks in the ACR would make it appear that, there have been several instances of lapses, and that this has been done purposefully to spoil her career. In the rejoinder filed by the applicant, it has been averred that, during the previous years adverse entries made unjustifiably in her ACR were ordered to be expunged by this Tribunal in OA K-636/88. The applicant therefore prays that the adverse entry may be directed to be expunged.

3. The respondents in the reply statement have sought to justify the remarks made in the ACR and communicated to the applicant on the ground that the applicant being the Accounts Officer, she was expected to have a vigilant check on the rebate cases before putting up to the sanctioning authority, the Director of Telecom., that on account of her lapse, instead of Rs.1661/- a sum of Rs.2260/- ~~was~~ was ordered to be refunded, and that this being a serious omission, the action of the Reporting Officer in recording this in the ACR was necessary as it was intended only to improve the system, and the efficiency of the applicant.

4. We have heard the arguments of the counsel on either side and have also carefully perused the documents produced.

5. From the pleadings and from Annexure-IV, the memo issued to the applicant, it is seen that the case relating to rebate on excess billing in file AMS/337-4-/86 was dealt with without proper care and instead of Rs.1661/- recommended by the TED, Tiruvalla, a sum of Rs.2260/- was suggested as rebate by the DA and that this was initialled and put up by the applicant to the Director without actually verifying the file and rectifying the mistake. It is also seen that the Senior Superintendent being absent, the file was forwarded without being routed through the SS by the DA, and that the applicant initialled the file without verifying the correctness of the suggestion made. In the application, it is admitted that there has been such a lapse. Since the applicant as the Accounts Officer was duty bound to scrutinise the file before submitting the same to the Director, she cannot escape from the responsibility by saying that it was an inadvertent omission. In the show cause notice, Annexure-IV, as stated by the applicant in the application, it is not mentioned that it was ^a ~~bonafide~~ mistake committed by the applicant. It has been stated that the file has ~~been called for~~ ^{been} badly dealt with and the applicant's explanation has been ~~called for~~ ^{been} Therefore, the entry in the ACR that the scrutiny of excess billing cases was not upto expectation cannot be said to be baseless or unwarranted.

It has also been stated in the ACR that the applicant was orally warned to take more care in such cases and the reaction was good. The Reporting Officer felt that the lapse on the part of the applicant, the warning given and the reaction thereto were worth mentioning in the ACR and therefore he has entered the same in the ACR. It is the duty of the Reporting Officer to make a dispassionate assessment of work and conduct of his subordinates and to truthfully record the same in the ACR. In this case we are convinced that the Reporting Officer has done only that. The learned counsel for the applicant argued that since there was only a solitary instance of lapse and as the reaction to the warning was admittedly good, it was not necessary for the Reporting Officer to record this matter in the ACR. We are of the view that as long as the facts mentioned in the ACR is well founded, the discretion either to record in the ACR or not to do so should definitely rest with the Reporting Officer, and that judicial intervention in such matters is not at all justified especially when there is nothing to show that the Reporting Officer was motivated in maligning the career of the applicant. The averment in the rejoinder that there has been adverse entries in the ACR of the applicant in the previous years which were directed to be expunged by this Tribunal is not a reason why the adverse entry impugned in this case also should be directed to be expunged because the entries made were based on facts

3

which are not in dispute. The learned counsel for the applicant further invited our attention to the fact that while there was only one lapse in the matter of checking the excess billing case, the entry in the ACR would give an impression that there were several such cases, and that it has been done purposefully to injure the career of the applicant. It is worthwhile to extract the adverse entry which runs as follows:

" I agree all items excepting that scrutiny of excess billing cases was not upto expectation."

A careful reading of this remark would only reveal that the scrutiny of excess billing case was not upto the expectation. It does not mean that there has been several or even more than one lapse. It only means that the scrutiny of the excess billing cases was not upto expectation. Even if there was only one mistake, if the applicant was expected to scrutinise all the cases properly, one omission makes the performance not upto expectation. Therefore, on a careful consideration of the facts and circumstances of the case, we are of the view that we will not be justified in interfering with the entry in the ACR impugned in this case. The representation submitted by the applicant has been disposed of by Annexure-II order stating that as the entry in the ACR was based on the facts, the request for deletion of the same could not be acceded to. We find that this order also has been made after considering the

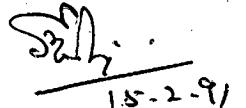


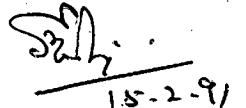
representation of the applicant and the facts leading to the entry in the ACR. Hence, we find no merit in the case of the applicant.

6. In view of what is stated in the foregoing paragraph, finding no merit in the application, we dismiss the same without any order as to costs.


(A.V. HARIDASAN)

JUDICIAL MEMBER


15/2/91


(S.P. MUKERJI)

VICE CHAIRMAN

15.2.1991