

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW

Date of decision

ORIGINAL APPLICATION No.100/91

Ashok Kumar
Shri A.P. Singh, Advocate

Applicant
for applicant

versus

1. State of U.P. through
Secretary, Appointment Deptt.
U.P. Civil Secretariat, Lucknow

2. Union of India through
Secretary, Deptt. of Personnel
& Training, New Delhi.

3. Sri Hari Mohan Singh, the then
Collector, Faizabad.

4. Sri V.K.Diwan, the then Commissioner, Faizabad Division, now posted as Zonal Manager, Food Corp. of India, New Delhi.

Respondents.

Shri Kapil Deo

for respondent No. 1

HON. MR. S. N. PRASAD, JUDICIAL MEMBER

The applicant has approached this Tribunal for quashing the adverse remarks contained in Annexure -4 and the orders contained in Annexures 6 and 8 respectively.

2. In nut shell, the facts of this case, interalia are that the applicant, ^{is} an I.A.S of the year 1982 batch, belonging to U.P. Cadre, and was confirmed in the service on 30th August, 1987 w.e.f. 1.9.84 and was promoted in the senior pay scale of Indian Administrative Service (hereinafter referred to as 'Service) on 18th October, 1986 and pursuant thereto he joined in the Senior Time Scale of service, as would be obvious from the perusal of Annexures 1 and 2 ; and while the applicant was posted at Faizabad, as Joint Magistrate, he was communicated adverse remarks for the year 1983-84 vide D.O. letter dated 8.4.85 and 16.4.85 against which he preferred a representation to the State Government under rule 9 of the All India Service (Confidential ^{RS11} Rules),1970(hereinafter referred to as Rules) for expunction of the above adverse remarks, but his representation was rejected by the

State Government and his Memorial was also rejected vide letter 29.10.90(vide Annexures 3 to 8). It has further been stated the applicant was allotted House No. 9 at Civil lines, Faizabad, but this house was under occupation of Shri Anirudh Upadhyaya, the ^{then} Sub Divisional Officer, Tanda, District Faizabad; and the applicant could not get possession of ~~the~~ this house. He was staying at Circuit House; and he also received a notice for vacation of accommodation in Circuit House and therefore approached the Collector, Faizabad with the representation dated 28.11.83 requesting him that he may be allotted another house and Collector Vide letter dated 3.12.93 informed the applicant that the applicant may make arrangement privately for his accommodation till the availability of government ^{in the meantime} No. 11 at civilians, Faizabad accommodation and ~~the~~ house fell vacant on 16.12.83. The applicant approached the Colloector for allotment of thesaid house, who verbally asked the applicant to occupy the said house and pointed out that the formal orders ^{for allotment} will be issued to him in due course; and accordingly, on the basis of the verbal orders of the Collector, Faizabad, the applicant obtained possession of the said house on 16.12.93 from the Public Works Department.(Annexure 18 to the application.).It has further been stated that Shri Gajendra Pal, a P.C.S. Officer in the mean time joined as Additional commissioner, Faizabad Division, Faizabad on 23.12.1983 i.e. ~~8~~ days after the applicant's occupation of the said ^{since the said Gajendra Pal} house; and ^{he} was closely associated ^{to} Sri V.K. Diwan, the then Divisional commissioner, Faizabad

Division, with the result that Sri Diwan, the then Commissioner Faizabad asked Sri Hari Mohan, the then Collector, Faizabad to allot the House No. 11, Civil Lines, Faizabad to Sri Gajendra Pal and get it vacated from the applicant, who accordingly allotted the said house to Shri Gajendra Pal, on 23.12.1983 under the directions of the then divisional Commissioner Sri V.K.Diwan(Annexure 19). It has further been stated that the applicant was, however, allotted one room accommodation at Officers Hostel in Sursar Colony, Faizabad which was insufficient for the applicant inasmuch as the applicant was residing with his family, and therefore, he requested for appropriate accommodation and on this the Collector, Faizabad on February 8, 1984 allotted the said accommodation, namely the accommodation in Officer's Hostel (which was allotted to the applicant) to Shri Gajendra pal (vide Annexure 20). It has further been stated that the applicant having no other accommodation for his residence except House No. 11 in Civil Lines, Faizabad, had expressed his inability to evacuate the House No. 11 Civil Lines, Faizabad, which annoyed Shri Hari Mohan Singh, the then Collector, Faizabad as well as Sri V.K. Diwan, the then Commissioner, Faizabad Division, Faizabad; and Shri Hari Mohan Singh, the then Collector Faizabad under the verbal orders of Sri V.K. Diwan, (the then Commissioner) sent a message through Sri Hari Ram the then Additional District Magistrate, Faizabad, to the applicant to see Sri Hari Mohan Singh, the then Collector, Faizabad on 31st December, 1983. It

has further been stated that the applicant accordingly met Sri Hari Mohan Singh, the then ^{31st} Collector, Faizabad on December, 83 who disclosed ^{to} the applicant that Sri V.K. Diwan, the then Commissioner, Faizabad was very much annoyed with the applicant, and he was seeking opportunity to punish the applicant; and Sri Hari Mohan Singh also informed the applicant that arrangement was made to take possession of the house in occupation of the applicant by force positively by 1.1.1984. It has further been stated that the applicant was on leave with effect from 1.1.1984 to 6.1.1984 and his wife, under compelling circumstances filed a civil suit in the court of Munsif Sadar, Faizabad with an application for interim injunction; and the Munsif ^{learned} ~~was pleased to~~ issued an ad interim injunction against the respondents for not taking possession of the House No. 11 at Civil Lines, Faizabad, and this injunction continued till the applicant remained at Faizabad. It has further been stated that the impugned adverse remarks have been given ignoring all the four factors provided by Rules of 1970, and as such the adverse remarks are not sustainable in the eye of law; and the orders rejecting the applicant's representation and memorial are non-speaking orders inasmuch as, the points raised by the applicant therein have not been considered at all. The impugned adverse remarks stand washed off by the doctrine of "washing off of adverse entries" inasmuch as he has been promoted in Senior Time Scale of Service after those remarks. It has further been stated that no opportunity of any kind was afforded to the applicant before recording the adverse remarks, and

as such the adverse remarks are liable to be struck down.

3. In the counter reply filed by the respondent No.1 it has been contended, *inter alia*, that it is incorrect that when the aforesaid House No. 11, Civil Lines Faizabad fell vacant, the petitioner was verbally asked by the District Magistrate to occupy the said house; but in fact, the District Magistrate, Faizabad had allotted to the applicant in Officers Hostel, ~~but~~ ^{and} the applicant did not occupy that room and instead, preferred to occupy the house No. 11 at Civil lines, Faizabad and ~~and~~ thereby he flouted the orders of the District Magistrate; and thereby the applicant lowered the dignity of District Magistrate Faizabad. It has further been contended that the aforesaid House No. 11, Civil Lines, Faizabad was in the possession of *Sri* H.O.K. Lawania, ~~the~~ then Additional Commissioner, Faizabad and on his transfer the house was allotted to his successor Sri Gajendra Pal in the normal course. It has further been stated that the applicant was allotted the accommodation in No. SS-2 in Sur Sari Officers' Hostel, Faizabad on 29.12.83; and when the applicant did not take possession of that accommodation, ~~not~~ gave any intimation in this regard to the District magistrate, Faizabad, that accommodation No. SS-2 was allotted to Gajendra Pal, the ~~the~~ Additional Commissioner, Faizabad under the orders of District magistrate Faizabad dated 7.2.84; and the applicant's contention that the accommodation was not adequate for him and his family members is incorrect. It has further been stated that the adverse remarks were

passed appropriately and validly without any ill will, ^{bad} motive or bias and there has been no violation of any rule or procedure and in view of the above circumstances, the application of the applicant is liable to be dismissed.

4. I have heard the learned counsel for the parties and have thoroughly gone through the records of the case. The learned counsel while drawing my attention to the pleadings of the parties and papers annexed thereto and while drawing my attention to rules 5, 6 and 8 of the All India Services (Confidential Rule) Rules, 1970 has argued that the impugned adverse remarks were not communicated to the applicant within the stipulated period of time as per rules; but were communicated to the applicant quite late and inordinate delay in communication of the above remarks itself vitiates the entire matter; and has further argued that non vacation of accommodation by the applicant itself does not in any way constitute misconduct; and has further argued that the adverse remarks ^{were} given by the authorities concerned extraneously and not in accordance with ~~law~~ the material and the facts of the case; and has further argued that there was no misconduct on the part of the applicant in ^{occupying} keeping house No. 11 as specified above and under the compelling circumstances the wife of applicant was constrained to file Civil Suit in the absence of the applicant, but the authorities concerned took it otherwise and ^{a laid} ~~had~~ the entire blame on the applicant without considering the matter from proper perspective; and has further

in communicating the adverse remarks

argued that this inordinate delay in mars glamour of adverse remarks; and has further argued that giving adverse remarks to the officers or employee is only resorted to when warnings prove ineffective, but, in this case no anywarning was given to the applicant by the authorities concerned; and as such ~~the~~ the above impugned remarks should be expunged and in support of his arguments has placed reliance on the following rulings:

1. D.R. Bhagat (Applicant) versus Union of India and others ^{*(Respondents)*} ~~reported in~~ 1989(1) SLR at page 526, wherein it has been enunciated:

"Administrative Tribunals Act, 1985, Section 19, All India Service (Confidential Roll) Rules, 1970, Rules 5 and 6-Adverse Remarks-Communication thereof-ACR relating to the year ending 31st march, 1981-Reporting officer and Reviewing Officer not dating their reports-Endorsement to the effect that copy of ACR sent to Government of India on 16.8.1984-shows that reports not recorded in time as stipulated under the Rules-Amounts to breach of the Rules."

2. Shri Satya Prakash (Applicant) versus Union of India and others ^{*(Respondents)*} ~~reported in~~ ^{*A.G.S.L.J*} 1990(3) (CAT) at page No. 460, wherein it has been enunciated:

"Non- Vacation of Quarter as Misconduct-Held no disciplinary proceedings can be initiated for non- vacation of a quarter and only a normal proceeding under public Premises Eviction Act can be taken."

3. A.V.S. Reddy (Applicant) versus State of Andhra Pradesh and another (respondents) reported in 1988(5)SLR, at page 486.

4. S.M. patanaik (applicant) versus The State of Karnataka and another, reported in 1988(4) SLR at page 806-807.

5. Bodu Tarmamad (Applicant) versus District Superintendent of Police, Jamnagar and another

(Respondents) ~
reported in 1988(2) SLR at page No. 65.

6. P.Satyaseelan (Applicant) versus Assistant Engineer Phones and others(Respondents) reported in 1986(3) SLR at page 371.

7. Shri R.P. Sharma, I.A.S (Applicant) versus Union of India and others(Respondents) reported in 1989(2) SLR at page No. 399.

7. The learned counsel for the respondents while drawing my attention to the pleadings of the parties and to the Annexures annexed thereto, particularly Annexure-3, thereport of Shri B.K. Diwan, has argued that the applicant took possession of the aforesaid House No. 11 as referred to above in an unauthorised manner anddespite being asked to vacate it by the then District Magistrate, and there was no allotment order in his favour and though thre was no any oral direction by the District Magistrate concerned, as stated by the applicant in his application; and has further argued that delay was caused in communicating the above adverse remarks to the applicant in due course; and has further argued that the impugned orders were passed by the authorities concerned properly and legally on the basis ~~that~~ ^{of} the factual facts and there was no ill-will or ill-motive on the part of the authorities concerned against the applicant; and has further argued that the above rulings relied upon by the learned counsel for the applicant are not applicable in this case; and as such the application of the applicant be dismissed.

8. I have perused the above rulings. This is significant to point out that from the scrutiny of

entire material on record, it is apparent that no written warning was given to the applicant ^{~ and ~} as this goes without saying that spirit and intention [~] lurking behind giving adverse remarks to the employee/officer concerned is to bring about reform in him and not to punish outright; but in this case for the reasons best known to the authorities concerned, no warning was given to the applicant.

9. It is pertinent to note that a perusal of Annexure C-3 which is copy of the then Commissioner's letter dated 15.2.87 sent ^{U.P.} to Government with his comments on the representation of the applicant against the above adverse remarks, shows that according to his own statement of the aforesaid Shri B.K. Diwan, the main basis of giving the above adverse remarks to the applicant is about taking possession by the applicant of the aforesaid house No. 11 in an unauthorised manner without any allotment of the District Magistrate.

10. This is significant to point out that from the scrutiny of entire material on record it becomes obvious that Civil suit was filed by the wife of the applicant under compelling circumstances in the absence of the applicant, as the family members of the applicant were apprehending forcible vacation therefrom, resulting in no accommodation for them to take refuge.

10. In this context it is significant to point out that a perusal of Annexure 29 which is ^{copy} ^{is of the applicant} ^{and sent} of the letter dated 6.1.84 which was addressed to Chief Secretary U.P. Government, Lucknow through proper channel i.e. District Magistrate Faizabad and Commissioner, Faizabad Division, Faizabad

shows that at the very outset apprehending further harm and harassment the applicant sent that letter to the higher authorities for action giving detailed narration of facts and circumstances and harassment and mal-treatment meted out to the applicant and discrimination and harassment caused to the applicant by the respondents No. 3 ~~and 4~~ regarding allotment of Government accommodation to the applicant. In this connection, it is also important to point out that the impugned adverse remarks for the year 1983-84, were communicated to the applicant as late as on 23.4.85, though the same should have been communicated much before 23.4.85 (vide Annexure - 4).

11. This fact should also not be lost sight that a perusal of Annexure R-1 to the Rejoinder Affidavit of the applicant, which is copy of the application dated 20.1.84 shows that the Officers' Hostel suite No. SS 2 which was allotted to the applicant as per order dated 27.12.83, the possession of which was not made available to the applicant even upto 19.1.84. Scrutiny of entire material on record and the circumstances of the case reveals that the above injunction order passed by the learned Munsif restraining the respondents from taking forcible possession over the aforesaid house No. 11 also indicates that the possession of the applicant over the aforesaid house No. 11, as referred to above, was not forcible or unauthorised and illegal.

12. This fact should also be not lost sight of that the applicant has been confirmed in the service since 1.9.85 and was promoted in the senior ~~scale~~ scale of service on 22.10.86 and this fact finds corroboration from the perusal of para 2 of the Counter reply of the respondent No. 1, ~~after~~

communication of the above adverse remarks and thus this being so, the adverse remarks contained in Annexure No. 4 have lost their glamour, and particularly also in the face of the facts of the certificates issued by Treasury Officer Faizabad dated 28.6.83 (Annexure No. 11); by S.D.M. Bikapur, Faizabad dated 8.2.84 (Annexure - 12) and the certificate dated 6.12.83 issued by Shri A.S.Tripathi, Special Additional District and Sessions Judge, Faizabad in respect of the applicant, wherein the learned Additional Special District and Sessions Judge, Faizabad has particularly stated that the applicant Shri Ashok Kumar has been punctual in coming to court and sitting on dias alongwith ~~me~~ ^{him} ~~he~~ and has examined the judgments written by Shri Ashok Kumar i.e. the applicant and he found that the appreciation of evidence and law points were sound and during the period of his training with him he had acquired sufficient knowledge of law and procedure and is fully able to handle independently, and he further found that Shri Ashok Kumar is young and efficient ^{Officer} and may be given any independent charge; and the certificate dated 9.12.83 issued by Shri T.N. Mishra, P.C.S the then Munsif, Hawali, Faizabad (Annexures 14 and 15) and certificates dated 17.2.84 and 27.7.84 (Annexure -17) issued by Hari Mohan Singh, ^{the aforesaid} then ~~Ex~~ District magistrate, Faizabad ^{himself}.

13. This fact should also not be lost sight of that for the reasons best known to them the ^{~ NO. 2 to 4 ~} respondents have not filed any Counter Reply.

13. Thus, from the foregoing discussions and after considering all the view points and the principles of law as enunciated in the above

rulings, I have come to the conclusion that the adverse remarks being not based on material facts, are not sustainable and as such they are to be expunged, and consequently impugned orders contained in Annexures 6 and 8 are also to be quashed.

14. In the result, the application of the applicant is allowed and the adverse remarks contained in Annexure No. 6-3 and 6-4 are expunged and quashed, and the impugned orders contained in Annexures 6 and 8 are quashed; and the respondents are directed to expunge the above adverse remarks from the A.C.R. of the applicant for the year 1983-84 within a period of three months from the date of receipt of the copy of the judgment. No order as to costs.


JUDL. MEMBER.

29.4.94

LUCKNOW: Dated: 29.4.94

Shakeel/