

CENTRAL ADMINISTRATIVE TRIBUNAL, LONDON, LIVERPOOL, LEICESTER,

Original application No. 192 of 1991

Hon'ble Mr. S.N. Prasad, Member(Judicial)

The applicant has approached this tribunal under section 19 of the Administrative Tribunals Act, 1985 with the prayer for expunction of the portion "Except amicability to discipline which is below average" and the subsequent sentence "His integrity also is in question" from the impugned annual remarks dated 28.12.1990 contained in Annexure No. 1 to compilation- I and for quashing the order dated 30.5.91 contained in Annexure A-2 (compilation- and for further direction to the respondents for not considering the aforesaid adverse remarks contained in Annexure-1 while considering the promotion etc. of the applicant.

2. Succinctly, facts of this case, inter alia, are that the applicant was initially appointed as peon in the department on 26.12.1968 and had served on the post of peon upto November, 1977 to the full satisfaction to the authorities concerned. Later on the applicant was appointed on the post of Staff Car Driver and the applicant was allotted to cross efficiency car and the applicant was also granted modified grade of pay scales increasing his pay scale from Rs. 300-640 i.e.f. 8.11.1984. On 31.12.1990 the applicant was conveyed in adverse annual remarks for the period i.e. 1.4.1989 to 31.3.1990 recorded by Sri L.I. Bhagavat, Control

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of Administration, I. P.R.C., Lucknow (who is respondent no. 2 in this case) and in the above impugned annual remarks (Annexure 1 to the application), he writes as follows :

""Intelligence, Professional ability and personal qualities are satisfactory except amecability to discipline which is below average. His integrity also is in question.

The above annual remarks recorded by the respondent no. 2 are wholly vague, subjective, baseless and have been given without following rules contained in para 174 of the P. & F. Manual Vol. III, in as much as that the applicant was never given any warning or was never reminded and the above remarks are not based on any material against the applicant, but are arbitrary, baseless, and whimsical. Since the representation of the applicant has been rejected vide order dated 31.5.91 (Annexure 1-2 to the compilation-II), the applicant has approached this tribunal for the relief sought for.

3. In the counter-reply filed by the respondent no. 2, it has been contended, inter-alia, that the applicant is a staff Car Driver in the organisation of the respondents and the applicant was incharge of driving an Ambassador Car No. UGI-560. During the period in question the aforesaid vehicle was sent for repair to M/s Calcutta Motor Works, Lucknow under the supervision of the applicant and the applicant gave a certificate of satisfactory repair of the aforesaid vehicle and consequently, the above M/s. Calcutta Motor Works were paid a sum of Rs. 13,119.00 by the respondent on 23.6.89. But hardly 6 months after the

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aforsaid repairs of the said vehicle, the applicant again reported that the said vehicle had gone out of order and most of the faults were exactly as before and estimate for repair was submitted by one of the serving centre ~~W~~ M/s. Central Automobiles for Rs. 19,792.28 for the same work which had earlier been done by the M/s. Calcutta Automobiles. Since the above repairs involved a substantial amounts of expenditure a meeting of the transport committee was called and the applicant was questioned thoroughly and he confessed that certain work which he verified <sup>~ was done</sup> by M/s. Calcutta Motor Works was in fact not done at all and as such the committee ~~also~~ held the applicant responsible for the expenditure unnecessarily sustained by the institute and came to the conclusion that the applicant acted in irresponsible manner and the facts go to reveal that the applicant not only acted in irresponsible manner, but also it shows that the integrity of the applicant cannot be certified and that's why the above adverse remarks were given. It has further been contended that the remarks were based on materials and <sup>the</sup> same were ~~given~~ recorded properly and in accordance with rules and procedures. It has further been contended that the representation of the applicant was rejected rightly and there is nothing malafide on the part of the respondent no. 2 and as such the application of the applicant is liable to be dismissed with cost.

\*: In the rejoinder-affidavit filed by the

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applicant wherein almost all those points have been reiterated as mentioned in the main application, the applicant has also filed supplementary rejoinder-affidavit wherein it has been stated that before the aforesaid vehicle No. U.C.I.-560 was to be opened for the purpose of repair, the applicant was sent on duty for a tour programme with another vehicle to Haldwani and as such the applicant was out of station from 24.4.89 to 12.5.1989 and when the applicant returned <sup>~ and went ~</sup> to the workshop, the aforesaid vehicle was ready for delivery, Annexure S.R.-I to the supplementary rejoinder-affidavit is extract of log book to show that the applicant was on duty out of station from 24.4.89 to 12.5.89.

<sup>~ heard ~</sup>

5. I have ~~at~~ the learned counsel for the parties and have thoroughly gone through the records of the case.

6. The learned counsel for the applicant while drawing my attention to the contents of the application, rejoinder affidavit and supplementary affidavit and papers annexed thereto and file reiterating the view points and grounds set out in the application of the applicant's defense. It is to be impugned adverse remarks for the year 1989-90 (or the period from 1.4.89 to 31.3.90) were communicated <sup>~ very late ~</sup> to the applicant on 31.12.90, though the same ought to have been communicated by the end of August 1990, in a further regard that the impugned adverse remarks are ~~wise~~ <sup>wise</sup> ~~value~~ subjective and have been given without following the rules contained in



para 174 of P&T Manual, Volume III, which is also applicable to applicant's department as no narration of any specific incident/instance about the applicant's indiscipline and integrity has been shown therein, and has further argued that even neither any warning was given nor any explanation of the applicant was called for during the aforesaid period under review i.e. 1.4.89 to 31.3.90 and there was no complaint of any kind regarding indiscipline and integrity of the applicant but the adverse remarks in question have been given arbitrarily and baselessly, and has further argued that the applicant was deputed for tour programme for the period with another vehicle to Haldwani from 20.4.89 to 12.5.89 and as such ~~the~~ applicant cannot be saddled with the responsibility of any bad repair of the aforesaid Ambassador Car vehicle No. U.G.I. 560 and has further argued that no show cause notice was given and no enquiry was held by the authorities ~~concerned~~ <sup>~ after</sup> <sup>~ or non-repair</sup> concerned regarding the bad state of repairs of the aforesaid vehicle No. U.G.I. 560 and without holding him responsible, the above annual adverse remarks were recorded and as such the impugned adverse remarks be expunged; and has further argued that there is no absolute bar to the entertainment of the application of the applicant without exhausting further departmental remedies after rejection of the representation of the applicant by order dated 30.5.91(Annexure A-2) and in support of his arguments, has placed reliance on the following rulings:

(1) (1988) 6 ATC 320, A.N.Saxena and another (Applicant) versus Chief Commissioner (Admn.) Respondents wherein

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discipline to be done was not in accordance with the disciplinary action in question; and it is also to be noted that the report of the Director of the Calcutta Motor Works, in giving specific incidents/instances of the applicant's irregularities and the disciplinary action by him, states that the same is necessarily that the irregularities in para 15 of the counter affidavit, have stood the applicant in good stead and uncondonable. From the scrutiny of the entire material on record, it becomes obvious that the Director of the Calcutta Motor Works, has not called for any specific incident of infidelity or malice touching the integrity; and thus, this being so, the contention of the respondents, as mentioned in para 3(c) of the counter affidavit to the effect that the applicant was questioned thoroughly and he confessed that certain works which he verified was done by M/s Calcutta Motor Works, was in fact not done at all; and the contention of the respondents, as contained in para 3 (b) of the counter affidavit of the respondents to the effect that even Director of the institution received several complaints against the applicant from time to time, do not stand to reason and sanity in the face of the fact that even no warning was given to the applicant and no explanation was called <sup>for</sup> from the applicant in writing. It is well settled that the annual remarks ~~written~~ are given to the employee/officer concerned only when reformatory measures prove ineffective, after giving him warning <sup>him</sup> and after affording reasonable opportunity to the employee/officer reported upon to <sup>and amend</sup> improve his

conduct/performance. This is also important to point out that from the perusal of the Supplementary Rejoinder affidavit of the applicant dated 13.7.92, coupled with Annexures SR-1 and SR -2 (Annexures to the Supplementary Affidavit) also go a long way in hitting hard the version of the Respondents, as the applicant was deputed on tour programme out of station from 24.4.89 to 12.5.89 with another vehicle.

9. Thus, from the foregoing discussion and after considering all the facts and circumstances of the case and having regard to the principles of law as enunciated in the above rulings, I find that the <sup>relied</sup> above rulings/upon by the learned counsel for the applicant <sup>give</sup> much support as the facts of the present case <sup>with the facts of</sup> are found to be in resemblance <sup>with</sup> the above rulings, and the above arguments of the learned counsel for the respondents do not appear to be sound and tenable, and I have come to the conclusion that the application of the applicant is maintainable and the portions "except amicability to discipline which is below average. His integrity also is in question" from the impugned annual remarks dated 28.12.89 contained in Annexure No. 1 to the application, are legally not sustainable and the impugned order dated 30.5.91 Annexure A-2 (Compilation No. II), whereby representation of the applicant has been rejected, also is not legally sustainable and as such the above portions of the above remarks are liable to be expunged and they are hereby accordingly expunged and the above order dated 30.5.91 (Annexure A-2, Compilation No. 2) is <sup>also</sup> hereby quashed.

10. In the result, the application of the applicant is allowed as above and the respondents are directed to expunge the above portions of the annual remarks, as specified above within a period of one month from the date of receipt of <sup>the</sup> copy of this judgment. Parties are directed to abide by their own costs.

  
Member Judicial.

Shakeel/- Lucknow Dated 26.11.92.

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