

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH

O.A.No.236/91

Monday this the 14th day of February,2000

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. J.L. NEGI, ADMINISTRATIVE MEMBER

Ashok Dwivedi son of Shri Harihar Prasad Dwivedi
resident of Village Bahora Dalpatpur
Dist.Dooria, Upeer Divn.Clerk (CG-I)
under Director, Doordarshan Kendra
Gorakhpur,UP. ... Applicant

(By Advocate Mr. K.P. Srivastava)

Vs.

1. Union of India through Secretary,
Ministry of Information and Broadcasting
Shastri Bhavan, New Delhi.
2. Director,
Doordarshan Kendra, Gorakhpur.
3. Director, All India Radio,
Vidhan Sabha Marg, Lucknow. ... Respondents

(By Advocate Mr. A.K. Chaturvedi)

The application having been heard on 14.2.2000, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

Shri Ashok Dwivedi, Upper Division Clerk under
the Director Doordarshan Kendra, Gorakhpur was eligible
to be considered for promotion to the post of Head Clerk/
Accountant/Sr.Storekeeper along with his juniors by the
DPC held in February, 1990. Though a panel was issued
on 9.11.90 promoting persons who were far junior to the
applicant and the applicant was not promoted, the applicant
made a representation. However, immediately thereafter

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he was served with a communication regarding adverse entries in the ACR pertaining to the period from 1.1.87 to 31.12.87 and 1.1.88 to 4.7.89 (excluding 12.10.88 to 14.3.89) on 14.2.91 and 10.6.91. Aggrieved by the above adverse entries which were belatedly communicated, the applicant made representations to the second respondent seeking to have the adverse entries expunged on the ground that the entries were made by Shri Mishra, the Director on account of personal malafides against the applicant. As the representation remained not disposed of the applicant has filed this application for a direction to promote him with effect from the dates on which his juniors were promoted with consequential benefits as also for having the adverse entries set aside. During the pendency of this application the second respondent considered the representation of the applicant and by the order dated 6.4.93 (Annexure.13) held that it had been not found feasible to expunge the adverse entries in the ACRs. Therefore the applicant has amended the original application and sought the following reliefs:-

"To issue order direction or writ on the pattern of mandamus directing the opposite parties to place the name of the applicant on the select list on the proper place and promote the applicant with all consequential benefits.

To issue order or direction or writ in the nature of certiorari quashing the adverse remarks as contained in Annexure.A.4 and A.11.

To issue order or direction or writ in the nature of mandamus directing the opposite parties to produce the original letter No.GRK/DTC/(1)/GR/ dated 29.5.91 pertaining to the applicants char roll which is under the possession of Head Of Doodhahan Gorakhpur and the report of the reporting officer Sri RS Rai and Sri PK Gaxer Asst.Engineer for the period 1.1.88 to 4.7.89

contd...

May issue order or direction or writ in the nature of certiorari quashing the rejection of the representation as contained in A.13 filed with the application.

Any other relief the Hon'ble Tribunal may deem fit under the facts and circumstances of the case and

Cost of the application be awarded to the applicant."

It has been alleged in the application that the adverse entries in the ACR were not made on the basis of a dispassionate assessment of the applicant's conduct but only on account of bias and prejudice by Shri Misra who was the Asst. Station Director and that the impugned order A.13 has not been issued after a proper consideration of the representation.

2. We have perused the pleadings and materials on record and have heard the learned counsel of the applicant and the respondents. Shri K.P. Srivastava, learned counsel of the applicant with considerable tenacity argued that the ~~belated~~ communication of the adverse entries is meaningless and defeats the purpose of communication of adverse entries in the ACT. To buttress this point he relied on a number of rulings of the Apex Court including that reported in 1990 SCC (L&S) 38 (Baidyanath Mahapatra Vs. State of Orissa. That the adverse entries in the ACR should be communicated at the appropriate time and late communication will in fact defeat the purpose is a well established principle. The question is whether an adverse entry communicated late should be expunged solely on the basis of delay. In none of the rulings relied on by the learned counsel the Apex Court has held that solely because of late communication adverse entries should be expunged. The adverse entries contained in Ann.4 and Ann.11 reads as follows:-

contd..

Annexure .4

General Remarks with specific comments about the General remarks given by the reporting officer and remarks about the outstanding work of the Officer.

Very sensitive
desertas duties
if his wishes
are not fulfilled.

(a) Fitness for promotion to higher grade(s) in his turn.

Needs to be watched
Not yet fit.

Shri Ashok Dwivedi is advised to improve his performance in respect of item No.1,2,3,&4 in order to ensure better reports in the future. The attached copy may be please be signed in token of receipt and returned. If the officer desires to make a representation in this regard it should be submitted within the period prescribed by Govt. for the purpose. At present the period is four weeks from the date of communication.

Annexure .11

General Assessments:

Very fast work but not dependable. One has to be very careful in giving sanctions on papers, put up by him.

Regularity and punctuality: Absents without notice

Deals some times directly with the party in financial matters keeping Head of office in dark.

Fitness for promotion to
higher grade in his turn. Not yet fit.

Shri Ashok Dwivedi is advised to improve his performance in respect of item No.1 3 & 4 in order to ensure better reports in the future. The attached copy may please be signed in token of receipt and returned. If the officer desires to make a representation in this regard, it should be submitted within the period prescribed by Govt. for the purpose. At present the period is four weeks from the date of communication."

Though it has been alleged in the application that the adverse entries were made on account of personal malafides of Shri Misra for the applicant did not oblige him with financial assistance at the time of latter's daughter's wedding, Shri Misra has not been displeased in this case as a respondent by name to give him an opportunity to refute the averments. Therefore, the allegations of

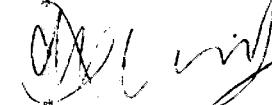
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malafides cannot be seriously considered. From Ann.13
of order/the second respondent it is seen that the second
respondent has considered the representation after obtain-
ing the ACR dossiers of the applicant and the connected
papers and getting the comments of the concerned officials.
No allegation of malafides has been raised against the
second respondent. We, therefore, do not find any justi-
fication to interfere with the impugned order A.13 made
by the second respondent on a consideration of the repre-
sentation made by the applicant with reference to the
materials papers including the ACRs of the applicant and
comments of the officer reporting.

3. In the conspectus of facts and circumstances,
we do not find any merit in this application, which is
dismissed leaving the parties to bear their costs.

Dated the 14th day of February, 2000


J.L. NEGI
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

s.