

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

LUCKNOW

O.A. No. 387 of 1991

Ajai Bihari Srivastava,

Applicant

versus

Union of India and others

Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.  
Hon. Mr. K. Obayya, Adm. Member.

(Hon. Mr. Justice U.C. Srivastava, V.C.)

by

In this second inning, /the applicant before this tribunal his prayer is not only for implementing the judgment passed by the Calcutta Bench of the C.A.T. dated 4.8.89 in his case but has also prayed for direction to the opposite parties for promoting him to the post of Geologist (Junior) w.e.f. 11.9.78 and the post of Geologist (Senior) w.e.f. 30.3.85 and the difference of salary as well as its correct fixation. Prayer for expunction of adverse entries for the year 1975-76, 1976-77 and 1977-78 too has been made.

2. The applicant was appointed as Assistant Geologist on 11.7.73 after selection by Union Public Service Commission in a temporary capacity with a condition that he will remain on probation for two years. The said period was extended by D.G., G.S.I. for one year with effect from 7.1.77 with retrospective effect i.e. after adverse entries for two years were given to the applicant vide order dated 26.6.78 issued after adverse opinion by the D.P.C.. The term was

further extended for six months as a special case viz between 7.1.1980 to 7.7.1980 was directed vide letter dated 18.4.1980. It was thereafter his services were terminated vide order dated 2.7.1980 which order was served upon him in training Camp at Hyderabad, where he was receiving training. The writ petition against it was dismissed on the ground of jurisdiction whereafter he filed petition before Calcutta High Court against termination order as well as adverse remarks. The High Court passed an interim order which was modified by the Tribunal where it was transferred. The applicant confined his case in regard to termination order only in which the Court stated that he had to do it as an application could not have been entertained in respect of incomplete reliefs. The Tribunal allowed it holding that the applicant stood confirmed and vide judgment dated 4.8.89 quashed the termination order and directed the respondents to reinstate him with immediate effect and pay him all back wages and increments as per rules the between/date of termination and the date of reinstatement if not already paid.

3. The applicant was working on his thesis for getting Ph.D. degree which he had started before entering in service. He was posted at Lucknow vide letter dated 28.11.1974 according to him for that purpose but vide letter dated 21.1.1975 he was asked to report to Jhansi as Geologist (Junior). The applicant represented for his retention at Lucknow even at Headquarters to enable him to submit his thesis. The Deputy Director, communicated to the Director General that the applicant shows unwillingness for field job office order for hi

departure may be sent. A letter /order was sent received by the applicant for carrying order passed by Deputy Director. The applicant asked for travelling and contingency advance money to enable him to proceed for field work but nothing was paid to him. It was thereafter confidential report for the year ending 31.3.76 was said to have been initiated by the Director of Circle but allegedly the first part was written by Suri V.S. Krishnaswamy Deputy Director General as reviewing officer and the last 4 times by reporting officer. The adverse report was finally accepted by the then Director General. The applicant's representation against the said adverse remarks was also dismissed by the Director General. The entry was to the effect that he did not show interest and responsibility by his reluctance to take up the field work and instructions in this regard were not abided and accepted tactics and engaged in attending to his personal affairs as he did not take up the field work. He was then allotted minor works which he did satisfactorily. Then the entire remarks revolved round the reluctance to perform field work. At the same time it was mentioned that the said defects were being brought to his notice with a view to give him an opportunity to eliminate his short comings. The applicant has pointed out which he did in his representation that because of interim order passed by the Civil Court he was not required to go to

in field job and confidential remarks were given by person who were defendants to the said suit including Sri V.S.Krishnaswamy who from the beginning bore a grudge towards the applicant and unfavourably disposed of towards him.

4. For the year 1976-77 and other adverse remarks were communicated to the applicant vide letter dated 6.2.1978. The entry was to the effect that he had no sense of public duty and avoided in going to field duty and that he was not found fit for promotion by the said authority. According to the applicant after the order of injunction passed by Civil court was modified to the effect that defendants could take survey work within Municipal limits of Lucknow but were restrained from transferring him out of Lucknow, the applicant was not assigned field work from 31st May, 1976 to 31st March 1977. According to the respondents the applicant who joined Geological Survey of India started availing leave and absenting himself from the very beginning. He took earned leave and leave on medical certificates for quite a long period (88 days out of which 35 days), in 1976 133 days including 52 days on medical ground and in 1977 from Jan to March 1977 he was on leave for 70 days including 42 days on medical certificate. It is on this ground it was informed that he was avoiding to take up the field work.

5. Again vide letter dated 8.2.1979 the applicant was communicated adverse entry for the year ending 31st March 1978 which was as follows:

"He is very intelligent officer but clever.

He is free from commercial bias. He is also very influential. ~~Keicos~~ in knowledge.

He is too sick to attend the training camp.

He is too sick to attend the training camp he was now started regularly to take up the field assignments".

Again a letter dated 16.5.79 from the office Shri V.S. Krishnaswamy Director General was addressed to Deputy Director General asking him to add in the character roll of the following.

"He has not attended the training programme 1979-~~80~~ despite orders from the department and therefore he has not completed this training which was compulsory".

5. The applicant filed representation against the adverse remarks and the giving of particular remarks by the Director General himself.
6. The applicant has pointed out that even though he stood confirmed the Deputy Director General and thereafter the Director General since January, 1978 Shri V.S. Krishnaswamy was extending probationary period even with retrospective effect or after expiry of the period all of which were held illegal by the C.A.R and the applicant was held to be a confirmed employee and the last link in the chain started by him viz. the

termination order was set aside. He has pointed out that the applicant did not hesitate in defying the interim order passed by the civil Court and even in that period forced the applicant to take up the field assignment at Chamoli in 1975-76. The applicant has asserted that he had been continuously taking up field assignments from 1977-1992 and achieved target and according to him because of harassment and torture he fell ill and his case was referred by the said V.S. Krishnaswamy to Medical Board, which sanctioned leave to him and advised bed rest. The medical leave taken by him were sanctioned by the Medical Board. According to the applicant the first adverse remarks was given when written order by competent court was continuing and the third was given on non existing facts. The decision of his representation by Shri V.S. Krishnaswamy who gave the remarks has also been quashed apart from malafide on the ground of competence.

7. The applicant has claimed promotion with effect from 30.3.1985 on the post of Geologist Senior with effect from the date his immediate junior was promoted and the same salary which junior is getting and also entitled to the promotional post of Geologist Junior with effect from 11.9.78 from the date his immediate junior was promoted as well as the difference of salary.

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8. Before dealing with the arguments which has been raised in this behalf it will be relevant to make reference of the instructions of Government of India Ministry of Home Affairs Memo No. 514/64/Estt.(a), dated 21.8.1985 and 11059/86-AIS(III) dated 10.6.1986 and the relevant <sup>para</sup>s extracted hereunder:

"The Confidential Report is an important document, it provides the basis and vital inputs for assessing the performance of an officer and for his/her further advancement in his/her career. The officer reported upon, the reporting authority, the reviewing authority and the accepting authority should therefore take duty of filling out the form with a high sense of responsibility.

2. Performance appraisal through Confidential Reports should be used as a tool for human resource development. Officers should realize that the objective is/develop an officer so that he/she realises his/her true potential. It is not meant to be a fault-finding process but a developmental one. The reporting officer and the reviewing officer should not shy away from reporting short-comings in performance attitudes & overall personality of the officer reported upon."

3. Although the performance appraisal is a year and exercise in order that it may for resource development, the reporting officer

the officer reported upon should meet during the course of the year at regular intervals to review the performance and to take necessary corrective steps."

9. In the instant case as the facts as stated above indicate that the instructions were not followed and the reporting officer and the reviewing officer has not pointed out the short-comings or of the personality of the officer reported upon earlier and there has been no meeting and the adverse remarks were given though in the note it was stated that it is corrective, moreover it was for a particular purpose.

10. The Orissa High Court in the case of Madan Mohan vs. State of Orissa (1978) 1 SLR 829, Hon. Mr. Justice Ranganath Misra (as he then was) observed that there was no material on record to show that there was a contemporaneous intimidation to the petitioner that his conduct suffered from the drawback of not pulling on well with his colleagues. The absence of an ~~ephemeral~~ character roll and the fact that the entry has been made though the officer concerned was employed under the reporting officer for less than three months are two important features against the entry. In Union of India vs. Ranjit Singh (1980) 3 SLR 256 it was observed "Confidential remarks are after all an assessment of the work, / conduct of an officer by his super

The assessment by its very nature would be somewhat subjective but as is well settled the subjective opinion has to be formed on an objective appraisal of material and cannot be done arbitrarily.

11. Since these instructions have not been complied with, it will be relevant to point out the observation made by the Hon'ble Supreme Court in Gurdyal Singh Fiji vs. State of Punjab (1979) 2 SCC, 368 in which it was held that an opportunity given to explain the circumstances leading to the (adverse) report is not an empty formal "its object, (partially) being to enable the superior authorities on a consideration of the explanation offered by the person concerned, whether the adverse report is justified." The Principal Bench of this Tribunal in O. No. 511 of 1986 cited in the case of Hari Dev Goyal vs. Union of India observed "while it may be accepted that the character roll entries are not the same things as departmental entries and do not entail immediate punishment, but adverse entries in the ACRs of an officer can have adverse effect on his promotion and even in some cases his continuation in service."

12. In the instant case adverse remarks given in the previous year were followed in the next years and the entry 'reluctance to take up the field work' could not have been given as this inference was wrong drawn in view of the fact that the respondents themselves allowed the applicant to do the ordinary work which he did. The respondents having been allowed him to do so giving of such entry was unwarranted. It may be that the applicant was interested in completion of Ph.D the for which a request was made by him and that part of the entry was covered by the period during which the injunction order subsisted but the entry at the most should have been in respect of the minor charge and only

a small part of the entry was given. He was not warned that he should take field work and that he was not interested in taking any responsibility or discharge his responsibility. So far as the entries of subsequent years are concerned, the same should not have been given as the applicant was allowed to do some other work. The entries of subsequent years being unwarranted and uncalled for, deserve to be expunged. Even otherwise no remarks can be given at the dictates of the higher authority and as such the entry which has been given by the officer who was competent to do so has to be diluted as there was no exercise of his own mind but at the dictates of the higher authority and accordingly, the two subsequent entries are expunged.

13. The applicant claims promotion to the ~~post~~ Geologist from the date his juniors have been promoted and claims monetary benefit. The other two entries having already been expunged and the applicant has/succeeded before the Tribunal, which had issued certain directions, the case of application for promotion with effect from that date requires re-consideration.

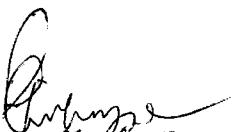
14: The respondents are directed to re-consider the case of promotion of the applicant with effect from the date his juniors were promoted without considering the two entries which have been expunged, keeping in mind that the earlier first entry has been diluted. This consideration shall be done within 3 months and in case the applicant is promoted, he will also be give monetary benefits to which he is entitled to and the

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payment will be made within next three months.

No order as to costs.

  
Adm. Member.

  
Vice Chairman.

Shakeel/-

Lucknow: Dated: 7th January 1993.