

Central Administrative Tribunal, Lucknow Bench, Lucknow

ORIGINAL APPLICATION No.345/2005

This the 9th day of September, 2009

Hon'ble Ms. Sadhna Srivastava, Member (J)

Hon'ble Dr. A.K. Mishra, Member-A

Madan Mohan Srivastava son of Late Sri D.P. Srivastava aged about 55 years resident of D-181, Sector-D, L.D.A. Colony, Kanpur Road, Lucknow, employed as Section Research Engineer (B&S) (Civil) under the control of Director General R.D.S.O., Ministry of Railways, Manak Nagar, Lucknow.

.....Applicant

By Advocate: Sri K.P. Srivastava.

Versus

1. Union of India through the Director General R.D.S.O. Manak Nagar Lucknow Ministry of Railways.
2. Executive Director, G.E. R.D.S.O. Ministry of Railways, Manak Nagar, Lucknow.
3. A.K. Singh, Director, G/E, R.D.S.O. Ministry of Railways, Manak Nagar, Lucknow.

.....Respondents

By Advocate: Sri N.K. Agrawal.

ORDER

By Ms. Sadhna Srivastava, Member-J

The applicant seeks quashing of the adverse remarks for the year 2003-2004, communicated to him, vide letter dt.21.07.2004 (Annexure-A-1).

2. The facts are that while the applicant was working as Section Research Engineer under the control of Director General, R.D.S.O., Ministry of Railways, Lucknow was awarded adverse remarks for the year 2003-2004. He made a representation dt.16.9.2004. It was rejected vide order dt.27.9.2004. The applicant, aggrieved with the rejection order,

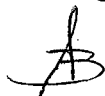


filed O.A.No.453/2004, which was decided on 20.5.2005. Tribunal set aside the said rejection order dt.27.9.2004 and directed that the representation of the applicant be considered again and a reasoned and speaking order be passed. In pursuance of the direction of the Tribunal, the impugned order dt.1.7.2005 (Annexure-A-5) has been passed by the competent authority. The applicant is still aggrieved and seeks quashing of the said order of rejection and consequently, quashing of the aforesaid adverse remark.

3. Heard counsel for the parties and perused the records.
4. The impugned order dt.1.7.2005, as contained in Annexure-A-5, is a detailed order dealing with applicant's (a). Tact & Temper, (b). amenability to discipline, (c). Reliability, (d). Relation with others and (e). how his work was unsatisfactory.

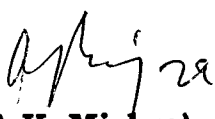
It is under these five heads that the applicant was found lacking. The work and conduct of an employee is to be judged by those who have an occasion to watch the conduct and performance of such an employee. The Tribunal, while exercising the power of judicial review, has to adjudicate if the remark is based on sufficient data i.e. there were reasons for assessing officer to record the adverse remark. If so, the assessment has to be confirmed. The Tribunal is not called upon to travel beyond this.

5. In the instant case, we have satisfied ourselves that the impugned order is a speaking order. It mentions specific facts on which the assessing officer has proceeded to record adverse remark against the applicant. Thus, the adverse remark was not awarded in an arbitrary manner. The competent authority dealing with the representation has discussed under above five

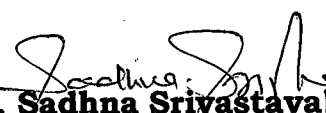


heads with specific reasons as to why he formed an opinion that the adverse remark should be allowed to stand as such. In our considered opinion, the impugned order is a reasoned and speaking order. There is no basis to say otherwise. It is also well settled that the Tribunal cannot substitute its own assessment about the work and conduct of the applicant. The Tribunal can only reach a finding that in the given circumstances, there was or was not the sufficient material before the assessing authority to form an adverse opinion about the employee during the year in question. On perusal of the impugned order, the inevitable conclusion is that the adverse opinion was formed on the basis of facts on record. Consequently, this application is liable to be rejected.

7. Resultantly, the application is rejected without any order as to costs.


(Dr. A.K. Mishra)
Member-A

09/09/09


(Ms. Sadhna Srivastava)
Member-J

Amit/-