

87

O.A. No. 295/90 (L)

Vs.

Hon.Mr.K. Obayya, A.M.
Hon.Mr. S.N. Prasad, J.M.

This application is directed against charge sheet dated 12/10/88, punishment order dated 23-8-89, appellate order dated 21-2-1990 and order dated 9-6-89 rejecting the representation of the applicant for expunging the adverse remarks.

3. The respondents have refuted the contentions

of the applicant and pointed out that the applicant has not made any written complaints regarding misconducts of the officers as alleged by him and he has also not produced any documents to substantiate his allegations. It is further pointed out that the A.C.R. was written on the basis of work performance of the applicant and adverse remarks were communicated as recorded by Competent Authority to enable the applicant to improve his performance and overcome shortcomings. Merely because a note put up by a subordinate employee is not agreed to, it does not lead to inference that higher authorities are annoyed. The note can always be overvalued by superiors.


4. Regarding charge sheet, the applicant was served with a charge memo dated 12/10/88, for acts of omission and commission in performance of his duties; The applicant submitted his representation on 25/10/88, denying the charges; notwithstanding this the disciplinary authority passed the order awarding "Censure" to the applicant. The applicant assails the enquiry and penal orders on several grounds, that no enquiry was held, due opportunity was not given and that the disciplinary authority has not considered the material on record. The respondents have refuted the allegations, according to them, the applicant was given opportunity of personal hearing, his representation was considered, and since the charge was for ~~composition~~ imposition of minor penalty no enquiry was held, as the disciplinary authority considered that enquiry was not called for in the case.

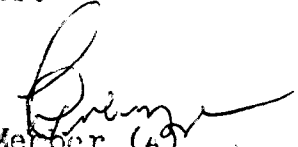
5. We have heard the Counsels of the parties. So far as the disciplinary proceedings is concerned, admittedly the charge was for imposition of minor

penalty. It was well within the power of the disciplinary authorities to hold or not to hold enquiry. It is not necessary that in each and every case elaborate enquiry is to be held. The representation of the applicant was considered. The disciplinary authorities have also went through the materials on record before passing the punishment order. As the proceedings was only for a minor penalty, holding of enquiry is a matter of discretion left to disciplinary authorities and as such we do not see any grounds made out calling for our interference.

6. So far as the adverse remarks are concerned, the applicant made a representation and this representation was rejected in June, 1989. A careful perusal of records indicates that the adverse remarks were communicated on 12/8/88 and the applicant resorted against the same, but this representation was rejected vide letter dated 9-6-89. Having regard to the contents of the remarks which were passed on evaluation of the work of the applicant, we are of the view that the Tribunal cannot sit in appeal over the remarks passed by the competent authority. However, there is one aspect in this case i.e. the applicant was due to cross efficiency Bar in December, 1988 for which D.F.C. was held in October, 1988. Evidently the adverse remarks were taken into consideration, as the rejection of representation made against the adverse remarks was communicated in June, 1989. In other words, the representation of the applicant was under consideration. In such circumstances, the

D.P.C. should have considered not only the adverse remarks, but also the representation of the applicant side by side. It appears that the same has not been done. For this reason we direct that the respondents should hold a review D.P.C. and consider the record of the applicant for the relevant period upto October, 1986 and also the representation of the applicant along with the adverse remarks as a whole and in case the D.P.C. come to the conclusion that the applicant is entitled to cross E.B., the same may be given to him from due date. Even otherwise the subsequent records of the applicant must have been found to be not adverse and the 'censure' entry also having lost its effect# there may not be any adverse factor against the applicant to deny him the benefit of crossing E.B. The respondents are directed to take into consideration all these aspects in the review D.P.C. The application is disposed of with the above directions. Parties to bear the costs.


Member (J)


Member (A)

Dated: 2nd Feb., 1993, Lucknow.

(tgh)