

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Original Application No. 496 of 1991

Versus

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. K. Cbayya, Member (Administrative)

(By Hon'ble Mr. K. Obayya, Member(A)

The applicant who is an I.A.S. Officer borne on U.P. State cadre, while on deputation to Government of India was appointed as Chief Executive, National Cooperative Union of India (N.C.U.I.) and ex-officio Director General-cum-Executive Vice-Chairman, National Council for Cooperative Training (NCCT), New Delhi during the period from 24.6.1985 to 3.7.1989 under the Ministry of Agriculture & Cooperation. He received adverse remarks for his work for the years 1985-86, 1986-87 and 1987-88, against which he made representations which were rejected vide orders dated 25.10.1988, 6.10.1990 and 20.2.91 (Annexures 9 to 11). Aggrieved by the same, he has approached the Tribunal with a prayer that the adverse remarks for the years 1985-86, 1986-87 and 1987-88 (Annexures-I, II & III) and also orders of rejection (Annexures 9 to 11) be quashed and that respondents be directed to consider and promote the applicant in super time scale of service with retrospective effect from 30.5.88 i.e. from the date on which his next junior was promoted and also to treat remarks of the President N.C.U.I. and the Chairman N.C.C.I. as final and to ignore the adverse remarks in the matter of giving service benefits including

empanelment as joint Secretary Government of India.

2. It is contended by the applicant that his service record has been good through out and his performance in Government of India was also considered to be very good, that is why he was promoted to super time scale in 1991, but this promotion was due to him in 1988 when his immediate junior was promoted, and the adverse remarks stood in the way of his promotion on the due date. It is further contended that N.C.U.I. and N.C.C.T. are autonomous bodies and are governed by their own bye-laws and the President and Chairman are vested with the control and power of supervision of administration and the applicant was required to function under the control of President/Chairman.

3. The adverse remarks are assailed on the ground that they have been given without jurisdiction by the Additional Secretary and Secretary agreed with the remarks though he has recorded that he has not seen the work of the applicant. It is contended by the applicant that there was no material to substantiate or support the adverse remarks, they were given by the same person who was biased against his popularity and hard work and accepted by the same person and that at no time any oral or written warning or Memo was given to him during the period covered by adverse remarks, pointing out any deficiency or lapses on his work.

4. The respondents have contested the case and it is pointed out that the NCUI is a grantee institution of Government of India and the Secretary and also the Additional Secretary are closely associated with the organisation and they had full knowledge about the working

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and functioning of NCUI. It is also stated that the work of the applicant and also the programmes of N.C.U.I were discussed periodically and reviewed as such the Additional Secretary incharge of cooperation had noted the failures or faults of the applicant and his general conduct. It is also stated that since the President of the Organisation is a non-official and the applicant belongs to I.A.S. cadre, the matter regarding the authorities to Report, review and accept his ACRs was decided in consultation with Department of Personnel and Training, Government of India in 1986. Since the President, N.C.U.I. is only the reporting authority, he cannot be the final authority and also N.C.U.I. being under administrative control of Department of Agriculture and Cooperation, the appointment of the applicant having been finalised by the department of Agriculture and as such the applicant was answerable to the Department of Agriculture and Cooperation, though the Additional Secretary of the Department was not overseeing the work of the applicant in the capacity of immediate superior. It is further pointed out that the remarks were on objective assessment of the working of the applicant. The applicant was considered not fit to continue that is why his deputation there was terminated even before the expiry of the deputation period. The competent authority i.e. Reporting authority, Accepting and reviewing authorities of the confidential rolls have been nominated in accordance with All India (Confidential Rolls) Rules, 1970.

5. In the rejoinder, the applicant has refuted the averments made in the counter and reiterated the stand taken in the claim petition.

6. We have heard the learned counsel for the parties.

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Learned counsel for the applicant submitted that Additional Secretary was not competent authority to pass the remarks since there was no notification to that effect, as such the remarks are void and cannot be acted upon. He has also raised other pleas to the effect that there was no material to record those remarks. The counsel for the respondents has denied that Additional Secretary was not empowered nor the remarks were unjustified.

7. The question involved in this case is a short one. Whether the Additional Secretary of the concerned Department i.e. Agricultural and Co-operation, and Secretary were vested with powers of proper authorities-Reviewing Authority and Accepting Authority for purposes of confidential rolls. In the matter of recording remarks in the C.Rs. of All India Services (the rules known as All India Services (Confidential Rolls) Rules 1970 lay down the procedure, as also the aspects to be looked into while writing the reports. These Rules have been notified in exercise of powers conferred in section 3 of the All India Services Act. In these rules, it is laid down that the reporting Authority should initiate the report and thereafter the accepting authority and reviewing authority should make their own comments and remarks. The competent authorities to record their comments, is provided in the definition Rule 2. The relevant extracts are as under :-

2(a) "accepting authority" means the authority who was, during the period for which the confidential report is written is immediately

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superior to the member of the service and such
other authority as may be specifically empowered
in this behalf by the government."

2(e) " reporting authority" means the authority
who was, during the period for which the
confidential report is written, is immediately
superior to the member of the service and such
other authority as may be specifically empowered
in this behalf by the government."

2(f) " reviewing authority" means the authority
who was, during the period for which the
confidential report is written, is immediately
superior to the reporting authority and such
other authority as may be specifically empowered
in this behalf by the government."

8. From the above, it is clearly noticed, that the
reporting authority, reviewing authority and Accepting
authority should be placed, hierarchically one over the
other, being immediate superiors; or the 'Authority' should
be specifically empowered by the government, in case no
such hierarchical system is regulated.

9. Since N.C.U.I. is an autonomous organisation and
not a department, specific notification was required to

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empower the authorities for purposes of recording the adverse remarks. It would appear that though there were certain I.A.S. Officers heading this organisation earlier, they were either too senior of the rank of Additional Secretary or Secretary as such there was no problem for recording their remarks, as they were also holding posts in the department with ex-officio status; since the applicant was only of the rank of Deputy Secretary, the matter was taken up ^{with} the department of personnel as to who should be proper authorities to satisfy the provisions of the rules. The department after considering the matter, had some views but left it to the department itself to take a decision. The proposal was initiated suggesting the President as reporting authority, Additional Secretary as the Accepting authority and the Secretary as the Reviewing Authority. There was also suggestion that the Accepting Authority could be the Minister and Reviewing Authority could be Secretary. However, this matter was not decided during the year 1986. No orders were issued, though it would appear that the proposal was cleared at the level of Secretary, but the matter was not pushed through upto the Minister for approval. It was only in 1988 that the department detected the mistake and put up the file to the Minister who approved the same. The record produced before us, containing the proposal, clearly brings out that at the relevant time when C.Rs. of the applicant were written neither the Additional Secretary nor the Secretary were empowered to exercise the power of Reviewing Authority and the Accepting Authority as is provided in the Rules. In other words, the exercise of power was without sanction and hence without jurisdiction.

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10. Confidential Reports play an important role in career advancement. The remarks should be an objective assessment of the work and conduct of the officer reported. The objective sought to be achieved through these reports is to pin point strong and weak points, so that the officer, becomes aware of his failings and makes attempts to improve. It is for this purpose, it is laid down that "immediate superior" has to be the Reporting Authority, as he is better placed to know the working of his subordinates. In this case, the immediate superior of the applicant is the President of N.C.U.I. and not the Additional Secretary. It has been urged by the counsel for the applicant that neither the Additional Secretary nor Secretary were closely placed as to observe the working of the applicant and there was no material for them to write remarks as they did. May be this has some relevance if one goes by technicalities. But it cannot be said that N.C.U.I. or N.C.C.T. functioned in isolation and the department of Agriculture had nothing to do with the working of these organisations. The organisations are grantee organisations of the Government and the department concerned had every right to monitor, review and give guidelines and instructions for better working. N.C.U.I. and N.C.C.T. subserve government interests; May be in the day today working autonomy was provided to these organisations and the Chief Executive has to function like a bridge between the department and the non-official oriented cooperative.

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institutions. The only lacuna in the entire scheme of administration was that linkage between N.C.U.I. and the department was not through formal notification and at the relevant time when C.Rs. of the applicant were written, neither the Additional Secretary nor the Secretary were "empowered" to act as "Authorities" as laid down in the Rules. Reference may be made to the case of R.L. Bhutail Vs. Union of India (1970) S.L.R. 926 (S.C.),

in which it was held that "A confidential Report is intended to be the general assessment of work performed by a government servant subordinate to his Reporting authority, such reports are maintained for the purpose of serving as data of comparative merit when questions of promotion etc. arise." In the case of K.V. Subbarao Vs. Government of Andhra Pradesh 1988 SCC(L&S) 506.

The Supreme Court held that the "Rules framed under Article 309 binds the State as well, the State is bound to comply with them." Administrative instructions cannot over ride Rules as held by the Supreme Court in Paluru Ramakrishnaiah Vs. Union of India 1989 SCC(L&S) 375. where power has to be exercised that has to be done only in accordance with procedure (K.Prasad Vs. Union of India 1988 SCC (L&S)

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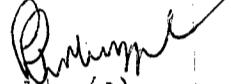
11. The adverse remarks against the applicant portray the applicant more like exuberant and over active person, but is keen on throwing his weight about to achieve ends not mindful of means. The remarks do not convey a picture of inefficiency or failures. We do not wish to make any observation as to whether these remarks were justified or not, but the Secretary who was the Accepting authority has recorded though he has not seen work of the applicant, he has only gone by the assessment of his Additional Secretary, which must be correct. The applicant was not given any memo nor called on to explain for any short comings in his work. It is noticed that it is the President and not Additional Secretary who has given the appointment of the applicant.

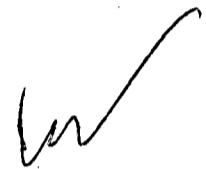
12. Having considered the matter in all its aspects, we have no hesitation whatsoever to say that the adverse remarks being not remarks of "empowered" authority cannot be acted upon and they suffer from legal infirmity. In these circumstances, the adverse remarks are liable to be quashed and accordingly we quash the adverse remarks communicated to the applicant for the years 1985-86, 1986-87 and 1987-88 (Annexures 1, 2 & 3) and also the orders rejecting the representation of the applicant (Annexures 9 to 11). We also direct the respondents to convene a review D.P.C. and ~~consider~~

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consider the case of the applicant for promotion to the Super Time Scale ignoring the adverse remarks and if the applicant is found suitable he should be given promotion from the date his immediate juniors were promoted in 1988. The applicant shall also be entitled to all the consequential benefits in accordance with law. The application is allowed as above with no order as to costs.


Member (A)


Vice-Chairman

Lucknow Dated: 3rd May, 1993

(RKA)