

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Original Application No. 219 of 1991 (L)

## Versus

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

Hon'ble Mr. KunObayya, Member (A)

( By Hon'ble Mr. Justice U.C.Srivastava,VC)

The applicant who was working as Supervisor Barrack Stores Grade II, was transferred to Lucknow in the year 1985. He worked for two years and in the year 1987 he was transferred under the administrative control of Garrison, Engineering (West) Lucknow. According to the applicant from the very begining the Garrison Engineering was annoyed with him and he had to face his wrath number of times and even if the beginning, the charge was not given to him for six months. It was only thereafter, the steel charge was given to him. According to the applicant he became ill and he applied for leave and remained on medical leave till 2.9.1989 and submitted medical certificates and the medical leave was granted to him. Under the rules after long absence, the Board of Director is to be appointed by Garrison Engineer, who after physical checking of the stores on spot with the stock ledgers had to hand over physical custody of the stores to the reliever, but this process was not followed in the case of the applicant when he came back from long leave. The applicant after expiry of medical leave joined on 4.9.1989 and requested the respondent no. 6 & 7 to hand over charge after physical checking, but he refused to do so and asked him to resume his charge without any checking. The applicant did not agree to it and made the representations against it and a fresh Board was constituted on 31.1.90 and Board submitted.

AP

:: 2 ::

Its report on 18.7.90 regarding a surpluses and deficiencies and the respondents 6 & 7 directed the applicant to accept the said report and give his explanation regarding the said ~~expected~~ surpluses and deficiencies. He was directed to resume charge of the stores(Steel) after accepting the said position, but the applicant refused. He made an appeal to the higher authority against it. Thus according to the applicant this is all ~~tale~~ of woe and because of this ~~tale~~ of woe, deliberately out of malice and because of the bias, the adverse entry was given to him for two years and by ~~at~~ that time, the officer who was transferred and another officer came who gave good entry to the applicant as the applicants' performance and work was always satisfactory and ~~the~~ deliberately, the wrong entry was given to him and he has challenged the said entry on the ground that of course the entry should have been given after only one month, but it was given after 9 months and no deficiencies were pointed out to the applicant either by the initiating authority or by the reviewing authority and without requiring him to remove the defence, no adverse entry could have been given ~~on~~ which are not based any factual data. The A.C.R. of 1990 is a repetition of A.C.R. 1989 given by the same officer and all these entries are away from the fact and ~~as~~ <sup>a</sup> result of malice and bias the entry is illegal and ~~without~~ jurisdiction.

2. The respondents have opposed the application and according to them, the applicant who gave a certificate on 9.7.1989 to the effect that ground balances tallied with the ledger balances of his stores, when the Sub./Major was

Contd..3/-

DPI

:: 3 ::

relieved on retirement. During the said period when Sub./ Major was on leave from 5.5.89 to 25.5.89 and in his absence the applicant being the next senior man was looking after the stores, the applicant absented himself from duty from 12.6.89 to 17.6.89 by sending an application for leave dated 12.6.89 without sanction and without handing over the charge of the stores. The order had to be issued for steel items during the absence of the applicant who was the incharge of the stores, but the above board could not function as no receipt or issue were undertaken during this period. The applicant resumed duty on 12.6.89 and issued & receipted the stores items as usual. He again proceeded on leave without prior sanction. In his absence, the board constituted for the purpose and then board submitted the report and even thereafter, the applicant again absented himself from duty. Thus, it appears that a sort of sea-saw battle was going on and it can not be said that it was not only a one sided affair and because of the act of the applicant who was proceeding on leave every now and then. The department has to make some arrangement and the department was to do something and as such even if it could be said that the applicant has succeeded in improving that the officer concerned was annoyed and the annoyance also had to say in the matter of adverse entry, but it was not a case in which it could be said that it was the case of bias and malice and such adverse entry has been given, bias and malice are to prove with the facts from the record, apart from suspicion, the applicant had not succeeded in providing that the bias and malice on the part of the officer because, he was himself responsible. ~~suspicion~~ . As far

V

Contd..4/-

AP2

:: 4 ::

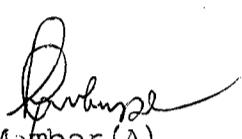
as the giving up the remarks. It is true of course, the applicant was not apprised of his short coming and deficiencies earlier, but in the instant case, it is not purely a case of short coming and deficiencies only, it is a case of short coming and deficiencies in respect of the adverse remarks were given to the applicant, the applicant could have been heard saying that without giving him any opportunity, the adverse remarks were given.

3. According to the respondents as the matter of fact the applicant was apprised from his short coming and deficiencies and the records which have been produced before us also indicate the same, the adverse remarks which have been given to the applicant. The applicant only represents the factual position. In the bottom of the adverse remarks, it has been mentioned that he is advised to take the above remarks in the correct perspective and show improvement in his own interest. Number of times notices were given to the applicant and the applicant did receive the same and some time he also submitted the reply to the same. The learned counsel pointed out that there are inconsistencies in the entries. We do not find that there are any such inconsistencies in the entries. The plea that the order which has been passed by the superior authority rejecting the representation, should have been speaking order also does not hold any water as it is not necessary to pass a speaking order. On the whole, we do not find any ground to interfere in the remarks and the application deserves to be dismissed and it is dismissed. It is not fit except for deletion of the word not fit for promotion which should not have been mentioned as it

13

:: 5 ::

of  
was only the remarks were of corrective nature . As it is  
not a subject matter, this application notwithstanding the  
fact that the prayer has been made , we are making  
observation, though it is always expected that the  
the enquiry  
department should fix/fairly and expeditiously.

  
Member (A)

  
Vice-Chairman

Lucknow Dated: 25.2.1993.

(RKA)