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CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

Original Application No. 413/91

H.C. Khanduri

Applicant

versus

Union of India & others

Respondents.

Shri Kapil Dew Counsel for Applicant

Shri A.K. Chaturvedi Counsel for Respondents.

Coram:

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

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

The applicant, a member of Indian Forest Service (I.F.S.) now promoted to the post of Chief Conservator of Forest in the Scale of Rs 5900-6700 with effect from 29.6.92 after giving of signal by the review D.P.C. assembled in pursuance of direction of this Tribunal in this case, approached this Tribunal on 15th October, 1991 praying that adverse entry for the year 1987-88 be declared ~~xx~~ non-est and ~~xxxx~~ he may be considered and be promoted to the post of Chief Conservator of Forest with effect from the date his junior was promoted ignoring adverse entry ^{and} till he is not promoted, no junior should be promoted. Subsequently, by way of amendment, prayer for quashing of order dated 8.11.91 deleting that part by which while rejecting his representation against adverse remarks, matter was subjected to the decision of higher authority on his memorial and

for ignoring the same were made. The applicant joined I.F.S. on 1.10.1962 and after intervening p promotions at due time was promoted as Conservator of Forest with effect from July, 1984 and his name was placed at No. 2. of the gradation list. The applicant was posted at Varanasi when a preliminary report against one Shri R.P. Tewari Divisional Director(Special Forestry) was submitted to higher authorities in November, 1986. Apart from the applicant, three other senior officers also conducted preliminary enquiry against Shri Tewari. The fifth officer, Shri Madan Gopal, Additional Chief Conservator of Forest submitted his report in August, 1987 stating that since original documents are not available the matter should be referred to vigilance department for detailed enquiry. The C.I.D. submitted its report to Government on 29.6.91 but its result is not yet out. The said Shri Tewari who was earlier placed under suspension preferred appeal against the same. The enquiry officer who was appointed to make enquiry refused to conduct the same as original records were not available. The State Government, on his appeal decided ~~xxx~~ to refer the matter to C.I.D. for further enquiry and according to Government as it would take long time he was reinstated. The said Shri Tewari was also promoted as according to respondents C.I.D. inquiry was no bar for the same. Thus from these facts, it is evident that pending any adverse report it has been accepted that Shri Tewari is not ^{too} guilty that is why he/has been promoted ~~xxx~~ the applicant also did not hold him to be so in the

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in the absence of record preliminary enquiry and the last officer found himself unable to submit any report and the enquiry officer to hold enquiry as original papers were not available.

2. While the matter of said Shri Tewari was Secretary of Department pending Shri Kamal Pande/~~who~~ then recorded an adverse entry in the character Roll of 1987-88 which otherwise paints a good picture, of the applicant. The said entry which revolves round the case of the said Shri Tewari was communicated to the applicant on 18th June, 1988. The entry was as follows:

"Shri Khanduri had conducted a preliminary enquiry on a complaint received against Shri R.P. Tewari Divisional Forest Officer, Social Forestry, Allahabad. The Additional Chief Conservator of Forest sought some clarification on his enquiry report. A reminder was also sent to him. Shri Khanduri did not reply to the clarification sought. On ~~some~~ scrutiny the report was found sketchy. He has not taken pains to go deep into the matter. His casual approach has come to the adverse notice of the Government."

3. The applicant, in his representation against this adverse remarks printing over towards charge of misappropriation, misuse of Government property etc. pointed out that before him S/Shri R.S. Mathur and to whom also reference was made M.C. Ghildiyal ~~recommending back the matter pointed out~~ ~~that they~~ too did submit ~~a~~ report without findings as original records were not made available to them. The applicant claims that he handed all papers and record to Shri B.B. Gaur as

xx directed after sending comprehensive report in respect of all points. After submitting all papers to Shri B.B. Gaur and in the absence of receiving it back from him it was not possible for him to give any further clarification. It was also pointed out by him that Enquiry officer also failed because of non availability of original record.

4. The remarks 'Sketching or Not having taken pains' according to him, were unhelpful remarks in the appendix of Government order dated 13th July, 1957 and the entry so given violates the said Government order. The representation filed by the applicant was rejected vide order dated 23rd February, 1991, though according to him upto a stage it was allowed. It was rejected subject to the condition that after the report of C.I.D. Department is reviewed received decision on his memorial by way of reminder will be taken. The said order contained one endorsement (endorsement No.2) was in respect of the said Shri R.S. Tewari who was even promoted as Conservator of Forest on 23.4.91. Subsequently vide order dated 8th November, 1991, the said order was amended and the condition added in the rejection order referred to above was deleted. This review of rejection order was done without telling or assigning any reason for the same or giving any hearing to the applicant who was made to wait for C.I.D. report a few weeks before submission of which the said Shri R.P. Tewari was promoted and continues to hold the promotion post even after submission of the report by the C.I.D.

4. The adverse entry so given to the applicant was premature or forestating something ignoring the facts and realities was prejudicial, deliberate and against the Government instructions, is not without substance. Adverse entries, apparently were not given to other 3 officers who in the absence of records could not submit full report and the enquiry officer who on this account could not hold enquiry. The case is closer to analogy where accused was let off and placed on a high pedestal as he could not be convicted in the absence of material and judge on that score was pushed down from his pedestal. The singling out of applicant not only smears arbitrariness but exhibits discrimination even though no one can claim exemption or escape assessment on the ground of parity in such matters. Even though speaking order for rejection is not required the matter was left for reconsideration after receipt of C.I.D. report, the said R.K. Tiwari whose matter was referred to C.I.D. has been promoted and no action even thereafter having not been taken, the passing of second order deleting the condition from first order violates the principles of natural justice. It also goes against the promise so extended to the applicant who was having hopes during this period for reconsideration of his case as in the matter of investigation of guilt of another person in which he is said to have not succeeded, has resulted in a boon to the alleged guilty person at least temporarily. The applicant had a right to file memorial and it having


been entertained for reconsideration, the same was to be considered on merits taking into consideration antedecedent as well as present facts. The subsequent order not being in conformity with principles of law-equity and justice and shadowed by promissory estoppel the same deserves to be quashed.

5. The applicant has made reference to the circular dated 9.8.89 issued by the Inspector General of Forests Govt. of India provides that no factual entry is to be given to the officers in the Annual report. The State Government has taken the decision in similar matter of Sri A.C. Gupta the then Chief Conservator of Forests(Land Transfer) on his factual entry for the year 1987-88 vide G.O. dated 9.4.90. The decision was that no factual entry can be given without following the procedure laid down in Rule 10 of A.I.S. (Disciplinary and appeal) Rules, 1969, the copy of the said order has been placed on record. The applicant contended that in applicant's case this has not been followed, and the said circular has been violated and therefore the adverse entry for 1987-88 wrongly given and would have been expunged by the authorities which has rejected therepresentation. The order of the State Government which is on record in Shri Gupta's case, from it, it is clear that the State Government has expunged the entry on the ground that rule 10 referred to above has not been followed and that is why the entry is being expunged. In the counter affidavit the only explanation is that the entry for 87-88 awarded to Shri Gupta was awarded by the Governor

and was annual entry given by the authority concerned and in the case of the applicant entry is annual entry and not special entry covered by the term 'factual'. As a matter of fact, the word factual is derived from the word 'fact' and factual cannot be stretched to mean that it only means factual, special entry and not the annual entry. As a matter of fact, the rule itself referred to by the applicant supports his case and if read with the circular referred to above, lead to the same very conclusion. Circular rule thus, having been violated, the applicant's representation was rejected and as a matter of fact entry should have been expunged. There is provision in the All India Service Rules for giving such factual entries to the officers. The entries should have been expunged, more so in the circumstances of the case reference to which has been made above.

6. In view of what has been said above this application deserves to be allowed and the order dated 8.11.91 is quashed and adverse entries of 1987-88 are expunged. It is for the respondents to take action which they can take in the matter but in accordance with law on the basis of the report but no direction or observation in this behalf can be made at this stage. With these observations application is disposed of. No order as to costs.


Adm. Member.


Vice Chairman.

Lucknow: dated: 16-4-95