

In the Central Administrative Tribunal,

Patna Bench (S) Patna

Date of Order:- 9.2.98

Registration No. OA-257 of 1996

M.A. Ibrahim, IAS, son of Shri M. Mohammad,
Director, Ministry of Textiles, Udyog Bhawan,
New Delhi-110011

... Applicant

By Advocates 1. Shri J.P.Shukla

2. Shri S.P.Singh

Versus

1. State of Bihar, through the Chief Secretary,
Old Secretariat, Patna.

2. Commissioner & Secretary, Department of Personnel
& Administrative Reforms, Old Secretariat, Patna
3. Additional Secretary, Department of Personnel
and Administrative Reforms, Old Secretariat,
Patna.

4. Union of India, through the Secretary,
Department of Personnel and Training, North
Block, New Delhi

.... Respondents

By Advocate, Shri B.N.Yadav, for the
State of Bihar

Coram:- Hon'ble Mr. Justice V.N.Mehrotra, Vice-Chairman

Hon'ble Mr. R. Rangarajan, Member (Administrative)



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O R D E R

Hon'ble Mr. R. Rangarajan, Member (Administrative):-

1. Heard Shri J.P.Shukla for the applicant Shri B.N.Yadav, for the State of Bihar Respondents.

2. The applicant in this O.A. belongs to 1978 Batch of I.A.S. and was allotted to Bihar cadre.

On the direction of the Election Commission of India the then District Magistrate of Munger, Dr. Gore Lal Yadav was transferred in June, 1991 in the midst of Parliamentary elections. The State Government after getting approval of the Election Commission posted the applicant as District Magistrate, Munger in place of Dr. Gore Lal Yadav. The Election Commission of India also appointed the applicant as Returning Officer for Munger and Begusarai Parliamentary constituencies in place of Dr. Gore Lal Yadav. It is stated that the applicant was posted vice Dr. Gore Lal Yadav in view of his past experience of successfully conducting election of highly sensitive constituencies during the elections to Parliament in 1984 and 1989 as well as elections to Assembly in 1985. The applicant submits that he conducted the remaining part of the election process in the year 1991 successfully.

3. The applicant submits that while working as

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D.M. Munger during the midst of Parliament election in 1991, the circumstances prevailing in the two Parliament constituencies, namely, Munger and Begusarai, were not normal and had given rise to all kinds of speculations and apprehensions including countermanding of elections. The applicant further submits that he made all efforts to defuse the tension and create a sense of credibility and fair play in the conduct of remaining part of the election process relating to repolling at 124 booths and counting of votes. It is also submitted that there was no complaint against him by any political parties and no petition was moved in any of the Courts against the decision of the applicant which in his opinion is due to confidence of all Political Parties reposed on him due to his fairness in his dealing.

4. As the matter stood thus the applicant received a letter no. 1/A-56/9 (Ka) 2341 dated 2.3.1994 issued by Commissioner-cum-Secretary, Department of Personnel and Administrative Reforms, Government of Bihar (Respondent No.2 herein) seeking certain clarifications regarding report D.O.no.1039/c dated 22.8.91 of the then Commissioner, Bhagalpur. The Commissioner had made certain comments regarding role of applicant as Returning Officer of Munger and Begusarai Parliamentary Constituencies in relation to repolling and counting

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of votes. The applicant sent his explanation dated 26.5.94 stating that the remarks made against him are false, against material on record, without jurisdiction and smacks of mala_fide. This letter is enclosed as Annexure_1 to the O.A.

5. The applicant was deputed for foreign study in United Kingdom under Colombo Plan by letter dated 2.8.91. He after requesting the Secretary (Personnel) and Cabinet Secretary was posted at Patna within three months of his working as District Magistrate, Munger.

6. The applicant on 5.10.95 received the Government Resolution Nb. 7621 dated 30.8.95 at New Delhi where at that time he was working as Director, Ministry of Textiles. The Resolution was regarding decision to enter warning in his ACR for the year 1991-92, in view of the report of the then Divisional Commissioner. A copy of the Resolution No. 7621 dated 30.8.1995 is annexed as Annexure_2 to the O.A. He submitted his representation dated 18.10.95 (Annexure-3 to the O.A.) against the Resolution dated 30.8.95 issued by the department of Personnel and Administrative Reforms, Government of Bihar, deciding to enter written warning in his ACR for 1991-92.

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7. The applicant submits that in view of the warning entered in the ACR for 1991-92 he is not considered for promotion to the grade of Joint Secretary, even though he has put in sufficient service for consideration.

8. This O.A. is filed for quashing the Resolution dated 30.8.95 resolving to enter warning in his A.C.R. for the year 1991-92 and expunging the same remarks from the said A.C.R.

9. The applicant submits that the entry of warning in the ACR for 1991-92 is a punishment equal to 'Censure'. He relies on judgment of the Calcutta High Court reported in 1975(2) SLR 103 - Nirmal Kumar Datta Versus Union of India and Others wherein it was observed that "the warning implies within it a blame" which amounts to Censure. He also relies on a judgment of the CAT, Principal Bench, New Delhi reported in 1989 (1) SLR-CAT 526- V.K.Gupta Versus Union of India and Another wherein it was held that "record of warning tantamounts to censure and cannot be awarded through an administrative memo."

10. The applicant submits that the record of warning in the ACR for 1991-82 is to be treated as equal to "Censure" and hence a punishment ^{been} had imposed on him. Such a punishment cannot be granted to him

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by the Commissioner-cum-Secretary, Department of Personnel and Administrative Reforms, Government of Bihar, on the basis of the report of the then Divisional Commissioner, Bhagalpur. as the report of the Commissioner, Bhagalpur is in regard to certain comments made while he was working as Returning Officer of Munger and Begusarai Parliamentary Constituencies in relation to repolling and counting of votes. The Commissioner has no jurisdiction to comment on his work as a Returning Officer. He has been deputed by the Election Commission of India as a Returning Officer under Section 28-A of the Representation of the People Act, 1951. This Rule 28-A reads as follows:-

"28-A. Returning Officer, presiding officer, etc., deemed to be on deputation to Election Commission - The returning officer, assistant returning officer, presiding officer, polling officer and any other officer appointed under this part, and any police officer designated for the time being by the State Government, for the conduct of any election shall be deemed to be on deputation to the Election Commission for the period commencing on and from the date of the notification calling for such election and ending with the date of declaration of the results of such election and accordingly, such officers shall, during that period, be subject to the control, superintendence and discipline of the Election Commission."

He further submits that as he was under direct control of the Election Commission of India and not under the Divisional Commissioner, Bhagalpur, the report of the Divisional Commissioner should

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not be relied upon to give him the recorded warning.

Further the Secretary, Department of Personnel and Administrative Reforms, Government of Bihar, has no jurisdiction to issue the impugned Government Resolution No.7621 dated 30.8.95 (Annexure_2). He has also attributed malicious motive towards the applicant at the behest of certain persons who are enemical to the applicant. Some other grounds which are not very essential for consideration of this O.A. have also been given in this petition.

11. The main point for consideration in this O.A. is whether the applicant can be issued with the impugned Government Resolution by the Secretary (Personnel) to the Government of Bihar on the allegation of Divisional Commissioner, Bhagalpur in regard to the duties connected with the election.

12. The learned counsel for the applicant submits that in view of the section 28-A of the Representation of People Act, 1951 extracted above, the Secretary (Personnel) has no jurisdiction to impose any punishment on the applicant as he is working under the Election Commission and the Chief Electoral Officer of the State of Bihar in so far election duties are concerned. The Commissioner though being an Administrative Head of the District can only supervise

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Parliamentary constituencies election held in 1991 has been appreciated as can be seen from the letter No.34/BX dated 29.3.96 (Annexure-4 to the O.A.). Hence, it cannot be said that the Divisional Commissioner had apprised the performance of the applicant as Returning Officer correctly to the Secretary, Department of Personnel, Bihar. That report had led to the issue of the recorded warning.

13). The Respondents in their reply admit that the Returning Officer does not remain under the control of the Divisional Commissioner. When the Respondents themselves admit that, it is not understood why the applicant should be issued with that impugned Government Resolution for recorded warning without examining the matter fully. Though the Respondents admit that the Divisional Commissioner can supervise the administrative management and law and order maintained by the Division, it is not clearly stated that the duties entrusted to the applicant as Returning Officer also come under the purview of control of Divisional Commissioner. The report of the Divisional Commissioner comments the role of the applicant as Returning Officer of Munger and Begusarai Parliamentary Constituencies

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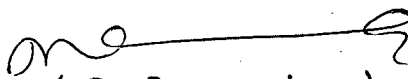
in relation to repolling and counting of votes.

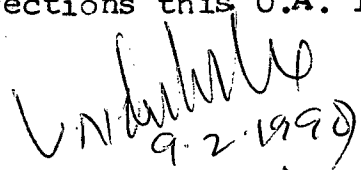
Those duties in our opinion if strictly examined may not come under the administrative management and law and order maintenance. In that view also the report of the Divisional Commissioner cannot be taken note of for issuing the recorded warning.

14. In view of the foregoing we are of the view that the impugned Government Resolution No.7621 dated 30.8.95 had been issued without proper jurisdiction and without proper scrutiny of the case dispassionately. In that view the impugned Resolution No.7621 dated 30.8.95 by which it was decided to enter warning in the ACR of the applicant for the year 1991-92 is liable to be set aside. Accordingly, the Government Resolution No. 7621 dated 30.8.95 is set aside and the Respondents Nos. 1 and 2 are directed to expunge the remarks of warning recorded in the ACR for the year 1991-92 of the applicant.

The above directions should be complied within a period of two months from the date of receipt of this order.

15. With the above directions this O.A. is allowed. No costs.


(R. Rangarajan)
Member (A)


(V.N. Mehrotra)
Vice-Chairman