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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 435/88

~~Transfer Application No:~~

DATE OF DECISION 5-8-93

Shri E. Raghavan

Petitioner

Shri G.S. Walia

Advocate for the Petitioners

Versus

Union of India Through Ordinance Respondent

Factory Board (Ministry of Defence & Orgs.)

Shri R.K. Shetty

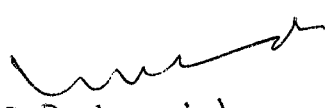
Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice M.S. Deshpande, Vice-Chairman

The Hon'ble ~~Shri~~ Ms. Usha Savara, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? yu.
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ? m.


(M.S. Deshpande)
Vice-Chairman

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY

O.A. 435/88

Shri E.Raghavan

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Applicant

vs

Union of India
Through Ordinance
Factory Board
(Ministry of Defence) &
Ors.

..

Respondents

Coram: Hon'ble Mr. Justice M.S. Deshpande, Vice-Chairman
Hon'ble Ms. Usha Savara, Member(A)

Appearance:

Shri G.S.Walia for the
applicant.

Shri R.K.Shetty
for the respondents.

Dated: 5-8-93

Oral Judgement

(Per: Mr. Justice M.S.Deshpande, Vice-Chairman)

By this application the applicant challenges the adverse confidential reports which was written for the year 1986-87 and consequent denial of all promotions to him.

The applicant was appointed as Lower Division Clerk on 8-10-1963 and he was confirmed in that on 6-2-1968 and came to be promoted as Upper Division Clerk on 22.12.1972. The applicant was ignored for the promotion of Office Superintendent Gr.II in 1988. ^{In} The confidential report for the year ending 1986, the applicant's performance was assessed to be 'average', against the column 'reliability', it was ~~also~~ mentioned that he was considered as 'un-reliable', for the year 1987 Ex. R-II. He was shown as 'average' and graded as fair. According to the applicant this remark was conveyed to him on 21-1-1988. He made a representation

on 21-8-1988. There was no response to the representation and due to the confidential remarks next promotion came to be denied to him. The respondents contention is that the representation of the applicant was considered and when the reply was sent to him he had refused to accept it. The remarks for the year 1986 for the applicant had been graded as 'Poor'. It came to be converted to 'Fair'. In respect of review of the remarks of 1987 no change was thought to be necessary. With regard to the promotion it was contended that the applicant was found unfit for the promotion on the basis of Annual Confidential Reports. Mr. Walia learned counsel for the applicant contended that the authorities acted arbitrarily in not considering his representation properly and no reasons had been given for rejecting the representation. Reliance was placed on the observations of Union of India vs. E.G. Nambudri AIR 1991 S C 1216, but there it is pointed out that there is no rule or administrative order for recording reasons in rejecting a representation. In the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a Government servant against the adverse entries the competent authority is not under any obligation to record reason. But the competent authority has no license to act arbitrarily, he must act in a fair and just manner. He is required to consider the questions raised by the Government servant and examine the same, in the light of the comments made by the officer awarding the adverse entries and the officer counter-signing the same. If the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons. The authority has no license to act arbitrarily.

9

The respondents produced confidential record of the applicant. It appears that in the year 1986 in respect of item 5 the Reporting Officer had said that the applicant was 'above average'. The Senior Reporting Officer, i.e. General Manager had disagreed with that evaluation and given the remark 'average'. In respect of column - 'reliability' - it was mentioned that he was 'un-reliable'. It is evident from the record that the Superior Reporting Officer had also observed the working of the applicant, and had the same advantage which the immediate reporting officer had. In the endorsement dated 16-1-88, the Superior Reporting Officer had mentioned that the applicant's performance was 'average' and he was 'un-reliable' and that he does not take interest in the work and is of argumentative type. These over all short-comings were to be intimated to him and the performance was poor. The communication dated 10-4-88 by the General Manager to the applicant Ex-R II shows that the applicant's representation was received on 5-4-88 and the subject matter was considered and the applicant was informed that the ACRs were completed on the basis of actual performance of the applicant and while considering representation dated 21-1-88 his ACRs for the year 1988 has been reviewed and graded as 'Fair'. The ACR for the year 1987 remained the same and had been initiated/completed as per his performance during the period in question.

Mr. Walia urged that the reasons for taking the view the superior officer did should be apparent from the record. All that we have to consider is whether the view taken by the Superior Reporting Officer was arbitrary and that in the absence of reasons, apart from the

(10)

action in Ex-R II whether there was material from which it can be said that there was basis for the Superior Officer to make the remarks which were conveyed to the applicant. If the superior authority had taken the action on his personal knowledge about his work ^{and} his over all assessment ^{and} the action cannot be characterised as arbitrary. It was submitted that since the applicant was Office Bearer of the Ministerial Association, the General Manager had a bias against him. Besides making mere allegations of bias no material was brought out in support of the allegation that the General Manager was biased against him. On the other hand, the record maintained by the General Manager shows that he was making the remarks on the basis of his personal knowledge. There is no reason for holding that the remarks of the Reporting Officer were either arbitrary or biased.

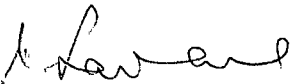
Mr. Walia urged that the superior authority above the General Manager should have considered the representation of the applicant as the Superior Reporting Officer had taken the same view as the Reporting Officer. He has not pointed out any particular rule besides Paragraph 22 of Swamy's Compilation of Confidential Reports of Central Government employees with reference to Rule 174(12) of the P&T Manual Vol. III which will not be applicable to the applicant. Mr. Walia urged that the authority which had passed the order cannot review his own order, but we are not inclined to agree with him in view of the position in the present case.

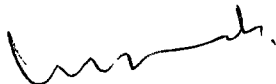
Since no interference with the initial confidential reports remarks is called for it is unnecessary for us to refer to the prejudice which the applicant

11

says was caused to him by the adverse confidential reports. The norm for the next promotion was seniority-cum-fitness and his position would remain unaltered by the view we are taking.

In the result the application is dismissed.
No order as to costs.


(Ms. Usha Savara)
Member(A)


(M.S. Deshpande)
Vice-Chairman