

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

Tr. Application No. 6/86

Shri R.R. Gupta,
Jawahar Colony at P.O.
Pulgaon Camp - 442303
Dist. Wardha.

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Applicant.

V/s

1. Union of India & Others.

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Respondents.

Coram: Hon'ble Member (A), Shri J.G. Rajadhyaksha
Hon'ble Member (J), Shri M.B. Mujumdar

Appearances:

Applicant in person
and Mr. S.R. Atre for
Mr. P.M. Pradhan for
the Respondents.

JUDGMENT:

(Per J.G. Rajadhyaksha, Member (A))

Dated: 5-2-88

The applicant filed a Civil Suit No. 157/1984 in the Court of Civil Judge Senior Division, Wardha on the 21st April, 1984. That suit has been transferred to this Tribunal for decision.

2. The dispute in fact is a very short one, namely the adverse remarks recorded by Respondent No. 4 The Administrative Officer, Central Ammunition Depot, Pulgaon against the applicant in his Annual Confidential Report for the year 1980.

3. It is the applicant's (Original Plaintiff) case that he was appointed through the U.P.S.C. from 21.9.1970 as Assistant Security Officer and came to Pulgaon on transfer on 25.10.1977. All along, he has been getting excellent Confidential Reports. Only in the year 1980, there was an incident in which he brought the malpractices of Respondent No. 4 (Original Defendant No. 4) to light and this has led to the Respondent No. 4 recording adverse remarks in the Annual Confidential Report of the applicant. These remarks were communicated to the applicant on 17.4.1981. He has thereafter been representing to the higher authorities

and he got a final reply only on 20.4.1981 from the Respondent No.2 namely the Director of Ordnance Service, Army Head Quarter, New Delhi. The applicant continued to agitate the question and filed a Regular Civil Suit No.387 of 1981 in connection with his suspension from service on certain charges. The Court ordered enhancement in his subsistence allowance. Thereafter, he filed a Writ Petition No.340/84 in the High Court, but he is unable to say what is the final outcome of that Writ Petition. It is applicant's claim that he got a final reply on his representations on 27.1.1984, therefore he gave a notice under the Code of Civil Procedure and followed it up by the present suit filed on 21.4.1984.

4. The Respondents had filed their written statement in the Civil Court on 17.9.1984. The matter has not been decided and the suit has come to be transferred to this Tribunal. The Respondents have also filed in the Tribunal a written statement in reply to the application (Original Suit) on 21st August, 1986. It is the Respondents contention that the behaviour of the applicant left much to be desired since he had violated Official Secrets Act and had also been involved in charges of accepting illegal gratification. He had also used abusive language towards his superiors and his behaviour in general warranted the type of report that was written by Respondent No.4 for the year 1980. They, therefore, prayed that the application be dismissed with costs.

5. We have heard the applicant in person. His arguments are that, Respondent No.4 who was also Prosecution Witness No.1 in a departmental inquiry against him, initiated this Annual Confidential Report in 1981 after an incident dt. 25.8.1980 in which the applicant was accused of removal of official documents and mis-behaviour in general, including acceptance of illegal gratification. It is applicant's contention that Respondent No.4 wrote adverse report being biased against the applicant and the comments made by him against paragraph 17 (c), paragraph 19 about "integrity" and paragraph 20 on "oral or written counselling to the Officer and his reaction thereto" have all been based entirely on prejudice. It is applicant's contention that there was no raid by Anti Corruption Officials, he was never arrested, there was no trial in a

Criminal Court nor was there a suit in the Civil Court, and, therefore, the contents of the Annual Confidential Report are totally false and deserve to be expunged. Further, he adds that maliciously an inquiry was launched against him, it lasted for 4 years and applicant was forced to go to the Civil Court as well as, to the High Court. The High Court had directed the Respondents to complete the case within two months time which they never did. The Officers went to the extent of getting adverse News Paper publicity for the applicant by getting false reports published about acceptance of illegal gratification by the Security Officer namely the applicant. In all these circumstances, it is the applicant's contention that the adverse remarks were uncalled for, unwarranted and the ~~xxxx~~ rejection of his representations thereon was without application of mind at any level whatsoever and therefore is wrong. The relief that he seeks, therefore, is that these adverse remarks be expunged from the Annual Confidential Report for the year, 1980.

6. It is Mr. Atre's contention, in reply, that the Annual Confidential Reports are written absolutely objectively. In this particular case, there was a raid on the person of the applicant and according to Crime Register the applicant was prosecuted on 20.8.1980. The Crime Register number was 520 of 1980, filed in the Court of the Judicial Magistrate First Class, Wardha. Mr. Atre also says that there was another case No. 209 of 1980 in which the applicant was acquitted on 29.12.1980. The case No. 520 of 1980 was about a cognizable ~~offence~~ offence namely, demand of illegal gratification. There was also a charge under Sec. 294 of the I.P.C. and the applicant was arrested on 28.8.1980, was charge sheeted and the charge sheet was submitted on 3.9.1980 in the Court of the Judicial Magistrate, First Class. Mr. Atre however, states that applicant was acquitted in the Register number 209 of 1980. Mr. Atre showed us secret papers containing the weekly confidential report which the District Magistrate, Wardha had submitted to the Government with copies to the Army Authorities, as required. For the

week ending 23.8.1980 the report included the mention of a raid by Anti Corruption Personnel on the applicant on 23.8.1980 itself. On 25.8.1980 the District Magistrate sent a secret report to Lt. Gen. Hundoo, Director of Ordnance Service, Army Head Quarter, giving details of the incident. The reporting officers' remarks also referred to the incident which had taken place before the writing of the Annual Confidential Report and because of his alleged acceptance or demand of illegal gratification, the applicant was described as of "doubtful integrity". Mr. Atre emphasised that the copies of the adverse remarks were given to the applicant, that he had an opportunity of representing against those remarks and his representations were turned down, though Mr. Atre admits that there was a delay in turning down these ~~remarks~~ *representations* *f*

7. In reply Mr. Gupta, the applicant points out that against para 19 of the annual confidential report Sec. 294 of the I.P.C. is mentioned, which has nothing to do with the question of integrity of the applicant. The Tribunal observed that there was in fact a raid, though it was infructuous, from the records and on questioning the ~~applicant~~ applicant and the applicant did not have anything to explain in that respect.

8. After hearing both the sides and perusing the record, including the secret documents showed to us by Mr. Atre, the learned Advocate for the Respondents, we have come to the conclusion that this application for expunction of adverse remarks in the Annual Confidential Report cannot succeed. The Annual Confidential Report for the year 1980 is expected to be written at the end of the Calendar Year. It appears that the initiating officer has written and signed it on the 2nd April, 1981. It is now well established even on applicant's admission that there were incidents in August, 1980 involving the applicant's behaviour and leading to initiation of the departmental enquiry against him. Suffice it to mention

here that the applicant has filed another application being O.A. 5 of 1986 in the Central Administrative Tribunal, New Bombay Bench against his dismissal as a result of the departmental inquiry. That matter has been heard, separately and will also be decided, separately. It is however, pertinent to mention here at this stage that the Respondent's suggestion that because of the dismissal of the applicant, the remarks have lost their value and need not be expunged is not very sound inasmuch as, if the applicant were to succeed in O.A. 5/1986, they would still be relevant. In this case however, we find that there is reason for the Administrative Officer, the initiating officer to record his remarks that the applicant's behaviour was generally undesirable inasmuch as he made false allegations against his superiors and they led to his suspension. On the question of integrity also the remarks say that the integrity of the official namely the applicant was directly challenged by the raid on his person by the Special Police Establishment, of Wardha District on suspicion of receiving illegal gratification.

9. It is not necessary nor is it perhaps possible to establish that the official received oral counsel to improve his behaviour and therefore, the remarks in para 20 need not be gone into, in depth.

10. The net result is however, that in so far as the Annual Confidential Report is concerned, the Officer appears to be justified in saying that the applicant was of doubtful integrity and ^{he} cites an incident in support of his remarks. It is further relevant to note that the applicant submitted representations and these representations have been turned down after careful examination of all circumstances and records by the superior authorities. It is not possible for us to infer that the remarks have come out of a bias or malice, nor is it possible for us to feel that applicant did not have adequate opportunity of defending himself against such remarks. His representations have been considered and turned down and we cannot find fault with the superior authorities of this department who have

turned down applicant's representation against adverse remarks in the annual confidential report.

11. In the result, we do not see any reason to interfere with the Annual Confidential Report for the year 1980 as written by Respondent No. 4 and confirmed by the Respondents Nos. 2 and 3 being the accepting and the reviewing authority or being authority who have considered applicant's representations and appeal against such remarks.

12. We therefore pass the following order.

ORDER

1. The application is dismissed.
2. In the circumstances of the case however, we pass no order as to costs.

(J.G. RAJADHYAKSHA)
MEMBER (A)

(M.B. MUJUMDAR)
MEMBER (J)