

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH NEW BOMBAY

Transferred Application No. 397/86.

Shri M.R. Valvaikar,
8 Jawahar Nagar,
Pune - 411 016.

.... Applicant.

v/s.

1. The Union of India, through
the Secretary, Government of India,
Ministry of Information & Broadcasting,
New Delhi.

2. The Director of Field Publicity,
Ministry of Information &
Broadcasting,
New Delhi - 110 066.

3. The Regional Officer,
Directorate of Field Publicity,
3 Vidya Vihar,
Pune - 411 016.

.... Respondents.

Coram: Hon'ble Shri B.C. Gadgil, Vice Chairman.

Appearances :

1. Mr. K.R. Pillai
(for Mr. V.B. Raikar)
Advocate for Applicant.

2. Mr. J.D. Desai
(for Mr. M.I. Sethna)
Advocate for Respondents.

JUDGMENT

Date :- 16-11-1987.

(PER: B.C. Gadgil, Vice Chairman)

Regular Civil Suit No. 257/83 of the file of the Civil Judge Senior Division is transferred to this Tribunal for decision and is numbered No. Tr. Application No. 397/86.

2. The grievance of the applicant(Original plaintiff) is about adverse confidential reports written against him for the year 1982. The applicant is working in the office of the Regional Office of the Directorate of the Field Publicity at Pune. Initially he was recruited as a Chowkidar, in 1968 and later on he was

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Promoted as a L.D.C. The Administrative Officer has written following adverse remarks against the applicant.

"Required prompting and constant supervision to ensure completion of his work. Reprimanded vide R.O.'s memo No. 21/54/ROMH/6142 dated 28.7.1982 for causing delay in disposing off cases and for non-compliance of office notice sent to him for non-scrutinizing of S&D bill, stationery supply, etc. He is also found to be in habit of keeping papers, pending without proceeding. One of such delay for non-proceeding caused financial loss in payment of huge amount as demurrage. His maintenance of film/store, etc. is not satisfactory."

The Reviewing Officer namely the Regional Officer has written the following remarks,

"Yes, I agree with the Reporting Officer. He lacks initiative and efficiency. He shows scant regard for the prescribed norms of procedure. He prefers to have sycophants around and to instigate them to harass his senior officers by exploiting his so-called office as a Regional Secretary of the so-called Staff Welfare Association."

There was one more remark which was written by the Reviewing Officer. It is not now surviving as it has been expunged on the representation of the applicant.

3. The Applicant's contention is that the remarks were not written in the prescribed form. It is further alleged that the Reporting Officer has written the remarks at the instance of Regional Officer i.e. Reviewing Officer. He also contended that the Reviewing Officer had an axe to grind against the applicant, as the applicant, was the Regional Secretary of the Staff Welfare Association. According to the applicant the remarks in question are malafide written without any basis and that they were written with an oblique motive. He further contended that his chances of

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promotion would be affected if these remarks are not expunged. ^{these} ~~With this~~ ^{filed} the suit in question for quashing the remarks and also for damages of Rs.5,000/-.

4. After the suit was transferred to this Tribunal, the Administrative Officer of the respondent filed the reply. It was contended that the Confidential Reports were written in the proforma. It was denied that the adverse remarks were written at the instance of Regional Manager. The respondents did not admit that the Reviewing Officer wrote the remarks simply because the applicant was the Secretary of the Staff Welfare Association. As far as the promotional chances are concerned the respondent submitted that no line of promotion is available to the petitioner and that therefore there is no question of his promotional chances being adversely affected.

5. Mr. Pillay submitted that the Administrative Officer Mr. Kadam has written the adverse remarks at the instance of the Regional Officer Mr. Swadia and that the reason for these adverse remarks is that the said Regional Officer was aggrieved of certain complaints which were made by the applicant against Mr. Swadia. It was, therefore, contended by him that the adverse remarks in question is result of malafides on the part of Swadia. Mr. Desai for the respondents argued that the remarks have been properly written by the Administrative Officer and there is no question of malafides.

6. It is an accepted position in law that the person against whom malafides are alleged should be made a party in his personal capacity so as to enable that person to give reply about the allegation of malafides. In the present case, neither Mr. Kadam (Administrative Officer) nor Mr. Swadia (Regional Officer) have been made parties in their personal capacity. In fact the Administrative Officer is not a party even in his official capacity. The Regional

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Officer is sued not in his personal capacity but in the official capacity. The applicant has specifically pleaded malafides against Swadia. In that background, it was absolutely essential for the applicant to join Swadia as a party. Similarly Mr.Kadam was also a necessary party in his personal capacity as it was alleged he has acted at the instance of Swadia. In the absence of these two persons as parties in their personal capacity it would not be possible for the applicant to contend that the Confidential Reports are a result of a malafide action on their part. Hence the application is liable to be rejected on this ground.

7. It is true that the Staff Union has some grievances against Swadia and in the month of May a representation has been made. Mr.Pillay submitted that Swadia was transferred from Pune by the end of the August,1982. However it must not be forgotten that the said transfer was immediately cancelled. Mere fact with the Staff Union has some problems against the Regional Director would not mean that he asked the Administrative Officer to write adverse confidential report. Mr.Pillay submitted that but for the report of 1982 the applicant has earned good confidential reports for the earlier years, and that this would be a circumstance to suggest that the adverse report in question is a result of a malafide action on the part of the two officers. Mr.Desai contended that the applicant is not right when he contends that prior to 1982 there was no adverse remarks. According to him in 1973, 1977 and 1978 the applicant has earned adverse remarks. In 1973 he was found to be lethargic and again in 1977 and 1978 he was reprimanded for not attending the work properly. Mr. Pillay contended that only the report of 1973 was communicated to the applicant and while the other two reports of 1977 and 1978 have not been communicated to the applicant, and that therefore they could not be made use of. Mr.Desai contended that he relies upon these reports only for the limited purpose of refuting the applicant's contention

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that he has obtained good reports for his service before 1982, and that 1982 report was a result of an alleged malafide.

8. The Administrative Officer has issued a memorandum dated 20/7/1982 to the applicant mentioning therein various deficiencies in the work of the applicant. This memorandum is based upon the events that took place on various dates such as 2/4/82, 22/5/82 and 5/7/82. A copy of that memorandum is produced as document at serial no.8 filed by the applicant on 10th July 1987, it is not necessary to give the details of that memorandum. Suffice it to say that on 20/4/1982 the applicant was informed that he has not carried out the work of ensuring security arrangements by replacing all locks which have no duplicate keys, and handing over duplicate keys of all the locks to administrative officer for safe custody. Similarly the applicant was informed that he has not got fitted the new locking equipment on the door and that the issue of liveries has not been properly looked after. On 22/4/1982, the applicant was informed that he did not look after providing the rexin covers to all the typewriters. He was informed by the Administrative Officer to examine the matter and put up concerned file before Administrative Officer. Similarly he was specifically informed to look after the disposal of old records and outdated films. On 5/7/82 he was informed that even the pending bills of the Song and Drama Division have not been submitted diligently. After mentioning these and other instances better in the above mentioned memorandum, the applicant was called upon to give explanation about the deficiencies in his work. He was also asked to explain as to why a disciplinary action should not be taken. The applicant has given his explanation dated 13/8/1982, It is at serial no. 7 amongst the documents filed on 10th July 1987. In substance he contended that he has been doing his best and that it was impossible to cope with the work load single handed. As regards some other items he has given a little bit more explanation.

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9. It was contended by Mr. Pillay that this explanation should have satisfied the Administrative Officer and that he should not have written any adverse confidential report. In my opinion though correctness or otherwise of adverse reports can be reviewed by the Tribunal, still the scope of the review is very limited. It will not be open for the applicant to ask the Tribunal to scrutinise the matter as an appellate authority. It would be very difficult for the applicant to contend that I should reassess all the circumstances and then come to a different conclusion. Primarily it is the duty of the concerned officer to make a assessment of the work of his subordinates and to write confidential reports. After going through the various documents I do not think that confidential remarks deserve to be expunged.

ORDER

The result, therefore, is that the application fails and is dismissed. There would however be no order as to costs.

B. C. Gadgil
(B.C. GADGIL)
VICE CHAIRMAN.