

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1020/96

Transfer Application No.

Date of Decision 1. 12. 97

S.Haldar

Petitioner/s

Shri Suresh Kumar

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri V.S.Masurkar

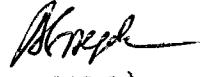
Advocate for
the Respondents

CORAM :

Hon'ble Shri. B.S.Hegde, Member (J)

Hon'ble Shri.

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?


(B.S. HEGDE)
MEMBER (J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

DA.NO. 1020/96

18/ this the 16 day of November 1997

CORAM: Hon'ble Shri B.S.Hegde, Member (J)

S.Haldar
Senior Foreman NAD Karanja,
Uran, Dist. Raigad, Mahareashtra.

By Advocate Shri Suresh Kumar ... Applicant

V/S.

1. Union of India through
Chief of Naval Staff,
Naval Head Quarters, New Delhi.
2. Shri Y.P.Rao, Director General
of Naval Armament Supply,
Naval Head Quarters,
West Block No.5, R.K.Puram,
New Delhi.
3. The Flag Officer Commanding-in-Chief
Western Naval Command SBS Road,
INS Angre C/o Fleet Mail Office,
Mumbai.
4. The General Manager,
Naval Armament Depot, Karanja,
Uran Dist. Raigad, Maharashtra.
5. Shri Bhanu Prasad (DGM),
NAD Sonabeda Orissa.
6. Shri Divakar Jayanth
Assit Manager Naval Head Quarters,
West Block No. 5, R.K.Puram,
New Delhi.

By Advocate Shri V.S.Masurkar
C.G.S.C.

... Respondents

O R D E R

(Per: Shri B.S.Hegde, Member (J))

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The applicant has filed this OA. for expunging the adverse remarks that was made in the confidential report of the applicant for the year 1994-95. These adverse remarks are communicated to the applicant by order dated 5.5.1995, which reads as follows :-

"Character : Average
Assessment : He is in the workshop for little over $7\frac{1}{2}$ months and is yet to acquire tech.know-ledge expected at a SFF level. A little more time may be required to assess it but it is found that he is not taking adequate interest in technical matters. etc."

2. The contention of the learned counsel for the applicant Mr. Suresh Kumar is that respondents have taken a revengful attitude because of the filing of the OA. by the applicant in Ernakulam Bench of the Tribunal which was decided on 6.9.1993 wherein the Tribunal has observed that "the applicant is eligible to get relaxation from qualifying in the departmental examination held in 1990 for being promoted as Senior Foreman with effect from 17.1.1991 with all consequential benefits. The respondents shall pass final orders in terms of this declaration, in accordance with law, without any further delay." Since respondents did not comply with the directions of the Tribunal, he has filed Contempt Petition against Respondent No. 2. Initially, the applicant joined at Vishakapatnam and on promotion he joined at Alway, Kerala. Thereafter, he was promoted from Foreman to the grade of Sr. Foreman and transferred to

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NAD, Karanja. The further contention is that the transfer was due to order of contempt petition. Despite that, he has carried out the transfer order. Inspite of that, following adverse remarks were passed against him intentionally.

3. On the other hand, learned counsel for the respondents denied the various contentions of the applicant and submitted that the Respondents No. 1,2,3 are unnecessarily impleaded as party respondents and hence the application is bad in law for misjoinder of parties and should be dismissed on this ground alone. Though the applicant has been communicated adverse remarks both orally and in writing, he did not improve his mistake, ~~they were~~ ^{perforce} to make the entry in confidential report for the year 1994-95. He further submitted, that following conditions are to be fulfilled before being promoted to the post of SFF, i.e. (1) the candidate should have rendered 3 years regular service in the grade of FF, (2) he should have qualified in the departmental qualifying examination and (3) he should be senior enough to be in the zone of consideration with respect to the number of vacancy, however, in the cases of SC/ST candidates the zone can be extended. If a candidate meets all this conditions, he will be considered for promotion and be recommended for promotion based on his seniority subject to the conditions that his performance as recorded in his ACR is good or above and that no disciplinary/vigilance case is pending/contemplated against him at the time of consideration. The SC/ST

candidates also have to fulfil these conditions for promotion against the vacancies reserved for them. As a matter of fact, the direction of the Tribunal has been complied with by the competent authorities and therefore, there is no need to implead Respondent Nos. 1 to 3 in this OA. There is nothing illegal in passing the adverse remarks against the applicant. The main contention raised in this OA is that when on transfer to Karanja he was refused accommodation in the Guest House and he was forced to stay on street for 3 days. Secondly, one labourer Mr. Thakur was working under him had taken proper leave in accordance with law, the applicant was directed by the higher authorities to take action against the labourer, he did not take any action, which according to him is justified but the higher authorities got annoyed on the applicant. Against the adverse remarks, he made representation dated 24.5.1995 in which he had not mentioned either of this incident to competent authority to consider. For the first time, the applicant has brought out this in the OA. The respondents in the reply denied the contentions of the applicant. The respondents submit that generally all efforts are made to provide some kind of transit accommodation to the employees coming to NAD on permanent transfer. The Guest House quoted by the applicant is a sort of transit form of accommodation and one room of the same is used as a kitchen while the other room is in bad conditions due to leakage, electrical and building defects and a special repair case had been initiated and is still pending. The contentions of the

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applicant that he was refused accommodation in the guest house is not correct as prior to allotting the same to the applicant, efforts were made to clear make it habitable. In fact, he did stay there for some time and as its condition was not suitable to him and in view of leakage/seepage and inadequate space for his entire luggage, he himself opted to move out making his own arrangements to stay in a Govt. quarter of depot employee in the NAD colony. Further contention of the applicant, that he had not received any memo prior to the contempt petition is not true. The applicant has earned mostly average reports through out his service career and in one year even adverse report. He further submitted, that the communication about unsatisfactory performance is generally made at the initial stage. The applicant's superiors had actually communicated to the applicant on several occasions both verbally and in writing bringing out the need to improve his performance during 1994 itself. Therefore, the incident brought out by the applicant that the reporting officer was against him is the imagination of the applicant and is far from the truth. Since the applicant is working in workshop, the rules the question of issuing of Memos is not permissible under accordingly, oral warning ~~was~~ given so as to not to disturb the working condition in the workshop. It is clear from the Memorandum issued by the respondents dated 26.10.1994, wherein it is made clear that :-

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" Before proceeding on leave on 08 Oct.94, you were intimated well in advance by me that your Foreman Shri M.Kumar will be proceeding on Temporary Duty to NPOL Cochin for the calibration of CTS and even after my return from I telephonically informed you on 18 Oct 94 that Shri Babu Jacob, Sr.C.Man is now proceeding for temporary duty in place of Shri M.Kumar.

Further refer my telephonic conversation on 25 Oct 94 P.M. you admitted that Shri Babu Jacob, Sr.C.Man has also informed you before proceeding to Cochin.

In the light of para 2 and 3, I am sorry to state that despite being the Section-in-charge, you are not aware of the happenings in the workshop and this is not the first such incident that has come to my notice. I also take this opportunity to inform you that it has been observed that you are not being able to control and effectively use your supervisors and workers."

4. Heard the learned counsel for the applicant Shri Suresh Kumar and the learned counsel for the respondents Shri V.S.Masurkar and perused the pleadings. Counsel for the applicant submits that the adverse remarks should be expunged in view of the judgement of the Supreme Court in State of U.P. vs. Yamuna Shanker Misra & Anr. (JT 1997 (4) S.C. 1), Sukhdeo vs. The Commissioner Amravati Division, Amravati & Anr. (JT 1996 (5) S.C. 477) and Sri M.A.Rajasekhar vs. The State of Karnataka & Anr. (JT 1996 (7) S.C. 708).

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5. It is true that the A.C.R. is a performance oriented running profile and cross section of the conduct and the character of an employee. It is an objective assessment of his administrative qualities viz. handling of works, competence, conduct, character, capability, including personnel relationship in the performance of his official duty. If the employee, while performing his official duty, is not up to the mark in any of these administrative qualities &/or attributes, it is immediately pointed out by superior officer to the concerned officer either to clarify on those points or to improve &/or correct in that regard and if he or she does not clarify him or herself &/or does not show any improvement and/or correction in that regard that forms objective assessment and the basis of Adverse Annual Confidential Roll remarks, if this part of the Reporting Officer's duty is performed, there is every justification in recording the adverse entries, which would refer to the defects, which have persisted despite the Reporting Officer's efforts to have them corrected. In the instant case, the respondents had brought to his notice about his deficiencies and the incident brought out in the OA, he has not brought out to the notice of the competent authority. It is clear, that it is an after thought one. On perusal of the pleadings, I find that there is no relation between the earlier petition filed by the applicant and C.P. against Respondent No. 2 vis-a-vis adverse remarks passed by the Respondents No. 4 to 6. Therefore, in my opinion, the Respondents 1 to 3 impleading/is unnecessary and no relief can be claimed against them. Even the decision cited by the counsel

for the applicant clearly indicate that the object of writing confidential report is to give ^a an opportunity to public servant to improve excellence. Article 51(A)(j) enjoins upon every citizen the primary duty to constantly endeavour to prove excellence, individually and collectively, as a member of the group. Given an opportunity, the individual employee strives to improve excellence and thereby efficiency of administration would be augmented. The officer entrusted with the duty to write confidential reports, has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately while giving, as accurately as possible the statement of facts on an overall assessment of the performance of the subordinate officer. Before forming an opinion to be adverse, the reporting/officers writing confidential should share the information which is not a part of the record with the officer concerned, have the information confronted by the officer and then make it part of the record. This amounts to an opportunity given to the erring/corrupt officer to correct the errors of the judgement, conduct, behaviour, integrity or conduct/corrupt proclivity. If, despite giving such an opportunity, the officer fails to perform the duty, correct his conduct or improve himself necessarily, the same may be recorded in the confidential reports and a copy thereof supplied to the affected officer so that he will have an opportunity to know the remarks made against him. If he feels aggrieved, it would be open to him to have it corrected by appropriate representation to the higher authorities or any appropriate judicial forum for redressal.