

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1173/96.

Date of Decision: 26.11.97

Smt. Swati L. Malve, _____ Applicant.

Shri S. P. Saxena, _____ Advocate for
Applicant.

Versus

Union Of India & Others, _____ Respondent(s)

Shri R. K. Shetty, _____ Advocate for
Respondent(s)

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).

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1173/96.

Dated this 26/11, the Wednesday day of November, 1997.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).

Mrs. Swati L. Malve,
Upper Division Clerk (R&E),
Ammunition Factory,
Kirkee,
Pune - 411 003.

... Applicant

(By Advocate Shri S.P. Saxena).

VERSUS

1. The Union Of India through
The Secretary,
Ministry Of Defence,
D.H.Q. P.O.
New Delhi - 110 011.

2. The Chairman,
Ordnance Factory Board,
10-A, Auckland Road,
Calcutta - 700 001.

... Respondents.

3. The General Manager,
Ammunition Factory,
Kirkee, Pune - 411 003.

4. Shri N. K. Chaudhari,
(Ex-Works Manager,
Ammunition Factory, Kirkee),
Stores Officer,
Currency Notes Press,
Nasik Road - 422 101.

(By Advocate Shri R. K. Shetty).

: ORDER :

¶ PER.: SHRI B. S. HEGDE, MEMBER (J) ¶

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In this O.A., the applicant challenges the impugned order issued by the respondents vide dated 30.07.1996 and also seeks expunction of the adverse entries made in the A.C.Rs. of 1992 and 1993 of the applicant and to direct the respondents to consider the crossing of Efficiency Bar of the applicant, which was due on 01.02.1994 by holding a review D.P.C. and by ignoring the adverse entries made by the respondents.

2. The applicant had approached the Tribunal earlier by filing O.A. No. 2/95, seeking the very same relief, (except the order dated 30.07.1996) which was disposed of by the Tribunal on 11.03.1996. The Tribunal, after considering the rival contentions of the parties, directed the Respondent No. 2 to forward the appeal made by the applicant to Respondent No. 1 within a period of four weeks from the date of receipt of a copy of the order. As the rejection of the representation in respect of the subsequent year, namely; 1993 was communicated only after the present O.A. was filed, liberty was granted to the applicant to file an appeal against this rejection to the respondent no. 1 through respondent no. 2 within a period of one month from the date of receipt of a copy of the order. If the applicant files such an appeal, respondent no. 2 shall

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forward the same to the respondent no. 1 and the respondent no. 1 will dispose of this appeal pertaining to 1993 within three months from the date of receipt of the appeal on merits without invoking the question of delayed submission of appeal for adverse entries for 1993. The said appeal was disposed of by the respondents within a period of three months from the date of receipt of the appeal, as directed by the Tribunal. It is also observed that the applicant had asked for another relief, that she should be allowed to cross the Efficiency Bar w.e.f. 01.02.1994 instead of 01.02.1995, as has been actually granted. The D.P.C. proceedings and the relevant A.C.Rs. were perused by the Tribunal, and it was decided that depending on the orders to be passed on the appeal, the applicant may revive the issue regarding crossing the efficiency bar with effect from 01.02.1994, if it becomes necessary.

3. Pursuant to the direction of the Tribunal, the applicant made a appeal to the Chairman, Ordnance Factory Board, vide dated 02.04.1996, bringing out the various aspects and comments of the competent authority in her A.C.R. and requested for expunction of the same. On receipt of the appeal from the applicant, the

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Ordnance Factory, vide its order dated 30.07.1996 rejected the appeal of the applicant stating that "there are specific instances of unsatisfactory performance of duties and the appellant had remained absent from duty on many occasions without proper sanction or any intimation. The allegations of ill will and bias made by the appellant are vague and without any foundation whatsoever." Accordingly, the appeal filed by the applicant was rejected as devoid of any merits. Against this order, the applicant filed the present O.A. seeking expunction of the adverse remarks made by the respondents.

4. The brief facts of the case are - the applicant initially joined the respondents department as L.D.C. on 05.08.1968. She is an active "Sports-Woman" and participated in sports at the State and National levels. She was promoted to the post of U.D.C. with effect from 10.08.1981 and she has put in nearly 26 years of service. She is continuing in the post of U.D.C. since 10.08.1981 under Respondent No. 3. In order to encourage the sports activity, the sportsman/sports-woman were allowed to have daily practice during the working hours of the factory between 8.00 a.m. to 10.00 a.m.

5. The Learned Counsel for the applicant further submits that the applicant was required to take her own leave, when required to attend various sports tournaments, even though she represented the Ammunition Factory, Kirkee in such tournaments.

6. It is further submitted, on some occasions, the applicant took leave to attend to her ailing sister who subsequently died. It is further submitted that the applicant had proceeded on leave after intimating the officer orally and obtaining their oral approval. Sufficient leave was to her credit, despite the same, the applicant received a letter dated 13.07.1993 from the Respondent No. 3 communicating certain adverse entries in her A.C.R. for the period from 01.01.1992 to 31.12.1992 made by the respondent no. 4. During this period, the applicant neither received any advisory notes nor warning pointing out the shortcomings and to improve in her work. The applicant represented against the adverse entries of 1992 to the respondent no. 3 vide representation dated 26.07.1993 and again reminded on 17.08.1993. The respondent no. 3 rejected the representation of the applicant and thereafter, she filed an appeal on 15.02.1994 to the Respondent No. 2 through proper channel i.e. through the Respondent No. 3.

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However, the Respondent No. 3 returned the appeal to the applicant stating that the appeal filed by the applicant does not conform to Rule 23 of the C.C.S(CCA) Rules, vide his letter dated 12.03.1994 placed at Exhibit A-7.

7. The respondent no. 4 once again made adverse entries in the A.C.R. of the applicant for the period from 01.01.1993 to 31.12.1993, which has been communicated to the applicant vide letter dated 18.07.1994, against which the applicant made representation on 08.09.1994. In the meantime, the Respondent No. 2 informed the applicant vide his letter dated 02.09.1994 that the D.P.C. has found her 'Unfit' to cross the Efficiency Bar. The applicant made a representation on 11.10.1994 against the above said decision of finding her unfit for crossing the Efficiency Bar, which was rejected on 10.12.1994.

8. The contention of the learned counsel for the applicant is, except for the above two years i.e. 1992 and 1993, through her entire career, there was no such adverse entries made in her A.C.Rs. The contention of the applicant is, without pointing out to her the shortcomings in her work during the entire period of 1992 and 1993, making adverse entries in her A.C.R. are arbitrary and contrary to the rules. He further contends that the

Reviewing Officer and Accepting Officer also did not apply their mind to verify, if the applicant, was ever informed of any shortcoming in her work, attendance, etc. On that account, the D.P.C. was perforced to with-hold the applicant from crossing the efficiency bar, which was due on 01.02.1994 and found her unfit for crossing the Efficiency Bar. The major issue that has been raised by the respondents is that the applicant was taking leave without prior sanction. Further, on the basis of the adverse entries made in the A.C.R., the D.P.C. did not consider the case of the applicant for crossing the Efficiency Bar, which is contrary to the rules and principles of natural justice. Since there were no adverse entries prior to the years of 1992 and 1993 and also subsequent to the above years till 1995-96, the adverse entries in the A.C.R. of 1992 and 1993 years are baised and arbitrary and the same be expunged.

9. On the other hand, the Learned Counsel for the respondents fairly conceded that though the applicant has been orally advised in the year 1992, no written communication was sent to her before making the adverse entries in the A.C.R. So far as adverse entries in the A.C.R. of 1993 is concerned, the applicant was communicated

vide letter dated 14.05.1993 stating that -

"over 60 cases are pending on MIS clearance and clearance of Consignees I/Vrs are pending and inspite of repeated instructions from the superiors and guidance as to how the work is to be performed, it appears that you have not taken notice of it and work is pending as it was. You are advised in your own interest that all pending cases shall be completed by 19.06.1993." The contention of the respondents is that the applicant's representation has been duly considered and the same was disposed of by passing a speaking order.

10. The main grievance of the respondents on account of which adverse entries were made in the A.C.Rs. of the applicant are the high rate of irregularity of the applicant wherein she had availed of leave without prior sanction on innumerable occasions. In the year 1992, the applicant has availed $22\frac{1}{2}$ days leave and in the year 1993, she availed 74 days leave. It is further stated that the applicant has availed of leave without prior sanction in the year 1992 and also in the year 1993 she has availed $102\frac{1}{2}$ days leave on 24 occasions, out of which 74 days leave was availed of on 7 occasions without prior sanction.

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11. It is true that the respondents have not pointed out to the applicant any short-comings in her work before making the adverse entries in the A.C.R. for the year 1992 nor anything to show that oral advise was given to the applicant from time to time. So far as the adverse entries in the A.C.R. of 1993 is concerned, one communication is addressed to the applicant vide dated 14.05.1993. Therefore, the contention of the respondents is, though the applicant has been asked to perform specific task, she remained absent without prior notice, as such, the whole work in the department suffers and there is chaos in the organisation. Further, it is contended that it is the prime duty of every sportsman/sportswoman to get the permission from their respective Head of Section and Immediate Incharge for allowing them to leave the place of work/factory premises for sports practice. In the instant case, the applicant has not taken permission nor had she intimated to her Head Of Section or Immediate Incharge that she would be going out of factory premises for sports practice during working hours. One such instance is, the applicant was recommended for Athletics Meet held at Dehradun on 25.01.1993 and accordingly a draft Factory Order (Deputation) was prepared by Sports Officer in respect of the applicant alongwith other two

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Sportsman. The copy of this D.F.O. was addressed to the Head Of Section/Stores alongwith other concerned Sections so as to enable the applicant to obtain counter signatures of her H.O.S. The procedure is well known to all members of staff. The applicant alongwith a U.D.C. did not follow the said procedure and went on deputation to Dehra Dun without even informing her Head of Section. All these allegations have been repeated in her appeal to the Chairman, Ordnance Board, vide dated 02.04.1996.

12. The Learned Counsel for the applicant further contend that in the year 1992, majority of the leave obtained by her was due to her own medical sickness and in the year 1993, partly on medical grounds and partly due to her sister's illness and she had leave to her credit. If availing of leave was the sole ground for making adverse entries in the A.C.R., the said adverse entry is not justified, as the applicant has sufficient cause to avail leave and the said leave alleged to be without prior permission, was sanctioned by the competent authority subsequently.

13. It is true that no advisory note was given to the applicant about the shortcomings in her work during this period. If that be the case, there is no

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justification on the part of the respondents in not allowing the applicant to cross the Efficiency Bar at the time when she became due and thus, deprive her of the benefit of annual increment. It is noticed that, regarding pending work only she was issued a letter by the respondents vide dated 14.05.1993 when she availed of earned leave partly because of medical reasons and partly because of her Sister's illness and ultimately, her sister died on 15.07.1992. It is further noticed that uncommunicated adverse remarks cannot be considered by the D.P.C. for withholding the applicant from crossing the Efficiency Bar. In the absence of advisory note/ warning during that period, no adverse inference can be drawn that her work was not satisfactory. The reasons for pending of the work, according to the applicant was that she was shifted from one Section to another without allowing her to understand the nature of work. Over and above, she had to attend the sports tournament in some other city. The comments made in the A.C.R. are of general nature, neither related to the work nor in respect of her sports activities.

14. During the course of hearing, the Learned Counsel for the respondents draws my attention that Respondent No. 3 has made complaint to the higher

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authorities regarding her behaviour during working hours. Similar plea has been raised by the Learned Counsel for the applicant that though the applicant had made a complaint against Respondent No. 3 to the Works Manager on 14.02.1993, the same has not yet been disposed of, therefore, the complaint of the Respondent No. 3 cannot be looked into ⁱⁿ isolation without deciding the issue raised by the applicant in her complaint to the higher authorities. Accordingly, the Counsel for the applicant was directed to furnish a copy of the complaint made by the applicant to the higher authorities and the relevant judgements cited by him across the Bar in support of his contention. The respondents were directed to furnish the copy of the complaint filed by Respondent No. 3 to the competent authority vide dated 09.02.1993.

15. Pursuant to the direction of the Tribunal, both the parties have furnished the copy of complaints for perusal. The Counsel for the applicant has also cited two decisions in support of his contention. One is, Anand Arjun Manjrekar V/s. The State of Maharashtra & Others [Writ Petition No. 2243 of 1988] delivered on June 25 & 26, 1990 wherein the question of adverse remarks not communicated and its effect was dealt with. It was observed by the High Court that - it was obligatory to

communicate the adverse remarks in the confidentials of the petitioner to him and he should have been given a reasonable opportunity of being heard. Oral communication of confidentials is unknown to service High Court relied jurisprudence. The / upon the decision of the Apex Court in the case of Amarkant Choudhary V/s. State of Bihar & Others [AIR 1984 S.C. 531] wherein it was observed :

"Where the case of Deputy Superintendent of Police was not considered by the Selection Committee for promotion to Indian Police Service Cadre and his name was not included in the select list by the Selection Committee due to some adverse remarks in his confidential rolls which were either not communicated to him or against which the representation made by him remained undisposed of and those adverse remarks had been expunged by the State Government they were not removed from the confidential rolls and subsequent confidential rolls which contained entries favourable to the employee not placed before the Selection Committee in its next meeting, the decision of the Selection Committee was vitiated."

In another decision, in Brij Mohan Singh Chopra V/s. State of Punjab AIR 1987 S.C. 948, the Apex Court observed :

"Whenever an adverse entry is awarded to Government it must be communicated to him. The object and purpose underlying the communication is to afford an opportunity

to the employee to improve his work and conduct and to make representation to the authority concerned against those entries."

The Learned Counsel for the applicant contends that in the instant case, the adverse entry made in the A.C.R. has not been communicated to the applicant. The sole ground of making the adverse entry in the A.C.R. is that the applicant availed of the leave without prior permission. Though, the applicant did not obtain prior permission, her entire leave has been subsequently sanctioned by the competent authority. Once the leave is sanctioned by the Competent Authority, the earlier irregularity that prior permission has not been obtained, does not subsist. The Learned Counsel for the applicant also relied on the decision of the Principal Bench of the Tribunal in O.A. No. 2579/90 decided on 16.02.1993, wherein it was observed :

"Once the absence has been treated as leave of any kind (including leave without pay) no penalty for such absence can be imposed."

In that decision, various other decisions have been cited by the Tribunal, wherein it was held that once leave is granted to a public servant in respect of a particular period, it must be considered that he is permitted to absent himself from duty for that period,

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thereby, whatever character of leave it might be, the sting from that absence is taken away, and the disciplinary authority cannot impose punishment on the Government Servant.

15. In the light of the above, the adverse entry made in the A.C.Rs. of the applicant on account of her absence from duty and not clearing the pending work for those two years, in my opinion, are not sustainable. Firstly, the applicant is a sportswoman. The fact that she has been depicted outside the factory to participate in the sports activity will be sufficient to sustain the plea that she had absented for valid reasons. The mere fact that she had not obtained prior permission of the concerned officer i.e. Respondent No. 3, before proceeding to participate in the sports activities, on that score the respondents cannot pass any adverse entries in the A.C.Rs. Their own factory rule permits the Sportsman/Sportswoman to participate in the sports activity and daily practice during office hours. It is an admitted fact, that the applicant had participated in the sports activities and brought laurels to the department. There were valid grounds in availing the leave. It is not a valid ground on the part of the respondents to impose punishment on the applicant, as she had not obtained prior permission. The respondents had not issued any

advisory note nor warning except the communication dated 14.05.1993. In the absence of any advisory note/communication, the adverse entry passed by the respondents cannot be sustained.

16, In view of the decisions cited by the Learned Counsel for the applicant and in view of the reasons stated above, I am of the opinion that the adverse entries passed by the respondents in the A.C.Rs of the applicant for the years 1992 and 1993 are not sustainable and the same is hereby quashed and set aside because the respondents have not shown how the applicant was indiscipline, as no particular incidence is mentioned nor communicated to the applicant. It is to be noted that quashing of the impugned order of the respondents is based on technical grounds, that by itself, does not absolve the responsibility of the applicant in adhering to the office discipline. The respondents are hereby directed to convene ~~the~~ review D.P.C. and consider the case of the applicant for crossing the Efficiency Bar as was due on 01.02.1994 and pass an appropriate order as they deem fit.

17. The O.A. is disposed of with the above directions. There will be no order as to costs.


(B. S. HEGDE)
MEMBER (J).