

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.967/1996

DATE OF DECISION:

Friday, this the 28th Day of July 2000

Shri A.W.Khadgi Applicant.
(Applicant in person)

Versus

Director General of ESI & Anr.... Respondents
(By Shri.M.I. Sethna, Sr. Advocate)

CORAM

Hon'ble Shri B.S. Jai Parameshwar, Member (J)
Hon'ble Shri B.N. Bahadur, Member (A)

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to
other Benches of the Tribunal?

(3) Library.


(B.N. Bahadur)
Member (A)

sj*



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.967/96

Friday, this the 28th TH DAY OF JULY 2000.

CORAM: HON,BLE SHRI B.S. JAI PARAMESHWAR, MEMBER (J)
HON'BLE SHRI B.N.BAHADUR, MEMBER (A)

Shri A.W. Khadgi
Officer on Special Duty
Employees' State Insurance Corporation
Hqrs. Office,
New Delhi. Applicant

(Applicant in person)

vs.

1. Director General
E.S.I. Corporation

2. Chairman,
Standing Committee
ESI Corporation
(Secretary, Ministry of
Labour, Govt. of India)
Shram Shakti Bhavan
Rafi Marg
New Delhi 110 001. Respondents.

(By Shri M.I.Sethna, Sr.Advocate with Shri Vadhavkar, Advocate)

O R D E R

[Per: B.N.Bahadur, Member (A)]

The Applicant in this Case, Shri A.W. Khadgi, is aggrieved by the adverse entries made in his Annual Confidential Report (ACR) for the year 1993-94, and seeks the quashing/expunging of these adverse entries. Through an amendment made, the Applicant also sought the relief for a direction to Respondents to promote him to the Grade carrying pay scale of Rs.3700--5000/-.

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2. The adverse ACR entries were communicated to Applicant vide the communication dated 22.11.1994 (Exh.A-4 Page 12). This in fact constitutes the core of the facts of the case. The Applicant has stated that he had submitted a representation dated 28.11.1994, which was considered by Respondent No.1 (Director General), who rejected the representation vide his communication dated 30.1.1978. The applicant submitted another representation to Respondent No.2 viz. the Chairman of the Standing Committee, which has been decided subsequent to the filing of the O.A. Here also, the plea of the Applicant has been rejected.

3. The Respondents have filed a reply wherein it is averred that the appeal made by the Applicant was duly considered along with comments of reporting Officer by the Director General of the Corporation, who is its Chief Executive and was rejected as being devoid of merits. The second representation made to the Chairman of the Standing Committee was also considered by the Chairman, even though normally no second representation lies, and this too has been rejected on merits. In the remaining part of the reply statement parawise comments are given and these averments of the Applicant made in the O.A. are resisted. Accordingly, the respondent prays that the Application be dismissed as being devoid of merits.

4. We have heard the Applicant in person, who argued his own case in detail. We have also heard the Learned Counsel for the Respondents Shri Vadhavkar. We have considered all the papers in the case, including the rejoinders and additional statements filed and the case law cited.

5. The Applicant first took us to the facts of the case in detail and also referred us to the Rules and instructions

relating to the communication of adverse entries and the manner and time frame of disposal of representations made against adverse entries recorded on ACRs. The grounds taken by the Applicant in the O.A. were reiterated. The arguments made by the Applicant are reproduced in gist below:

- a) No advice or warning was given during the year in question viz. 1993-94, as required by Govt. instructions. question viz. 1993-94, as required by Govt. instruction's.
- b) Both positive and negative remarks should have been communicated to the applicant, as per instructions.
- c) The Applicant also argued that the time frame stipulated for disposing of representation has not been adhered to and the rejection has been made after five months in the first case and after a gap of one year in the other case. Applicant relies on the judgement in *Dayal's case* decided by this Tribunal [1998 (87) ATC 118] and argues that the aforesaid delay is prejudicial to his case.
- d) The Applicant also took a stand that there is a legal flaw in the fact that his (first) Representation is decided by the D.G. who has himself reviewed his C.R. and that this was against the principles of natural justice.)

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e) It is argued that the above remarks in the ACR were inconsistent and therefore liable to be quashed in view of the ratio decided by Ernakulam Bench of this Tribunal (decision dated 26.3.1991 in O.A. 363/1990)

6. Arguing the case on behalf of the Respondents their Learned Counsel, Shri Vadhavkar first reiterated the points made in the written reply of Respondents and also produced before us the Original file and original C.R. The arguments made by learned Counsel are reproduced, in gist, below:

- a) It is clear from the last entry made by initiating officer on the C.R. that the Applicant had been advised to improve his working during the course of the year.
- b) Learned Counsel stated that there was no inconsistency in the remarks that were made. For example, even the comment "satisfactory" is not complimentary for an Officer of the seniority of the Applicant and logically when read the other remarks that the Applicant would need to improve the quality of his overall performance.
- c) The disposal of the first Appeal was made by D.G. as Chief Executive of the Organisation. This point cannot hold the decision of D.G. to be invalid. Learned Counsels stress the point that in spite of there being no provision a second appeal was allowed and decided on merits by

Chairman of the Standing Committee. There were some delays in the disposal of the appeals /representations especially the second one but this cannot vitiate the decisions.

d) No malafide exists and in any case for malafide to be alleged, it has to be specifically made against a particular person, as per law settled. Learned Counsel argued that this was not done in the present case and no one has been made Respondent for the purpose of *malafide* nor detailed facts brought out in the O.A.

7. We first see that the initiating officer who has reported on the Applicant has indeed mentioned in the ACR itself that the Applicant has been advised during the year to improve his performance. We apprised the Applicant of this in ^{the} open Court during arguments and this was denied by the Applicant. This point cannot carry a decisive weight in deciding this Application and we proceed to examine the other ground/averment of the Applicant.

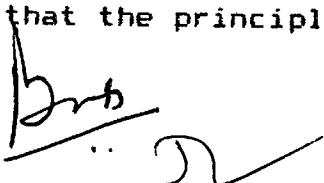
8. We find that the first representation has been decided by the Director General after about five months. Even if this means some one and half month's delay we cannot hold this to vitiate the decision or to hold that the relief sought can be provided on this ground. The time taken for the disposal of the second representation is indeed longer but here again we cannot view this to be a strong enough reason to conclude that this was done purposely or *per se* vitiates the decision. The second representation was considered at the highest level, and given the facts and circumstances of the case, it cannot be held that the delay was through intention or malice.

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9. We are impressed by the arguments of the learned Counsel for the Respondents that the contention made by the Applicant repeatedly during arguments about malafide intentions of the Respondents in spoiling Applicant's ^{Career} ~~C.R.~~ cannot hold ground. Firstly he has not made any official as party nor has given any specific facts, which can lead to establishing malafide action on any of the Respondents. It is settled law that vague allegations of malice cannot be made a basis to secure reliefs on that ground. Hence we hold that the argument of the Applicant that adverse entries have been made with ^a malafide intention to spoil the Applicant's career cannot be sustained.

10. One point that has not been answered by the Respondents by way of providing any instructions of Govt. or any case law is the point raised by Applicant about the D.G. deciding on his representation, when D.G. himself had reviewed the C.R. their adverse remarks have been made (for the year 1993-94). It was argued that these remarks were made by him as Chief Executive since no other higher Executive existed. However, in this case we find, that there is a Chairman of the Standing Committee hierarchically higher to whom a second representation was made and who has decided the matter. Thus the stand of the Applicant that a higher authority should decide on the representation happens to have been met by the second representation having been decided. This being the case the Applicant cannot have a sustainable ground on this score. Had there been only the first representation we would have to go deeper in the matter. Thus in the facts and circumstances of this situation it cannot be held that the principles of natural justice have been violated.



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11. We have seen the case law cited by the Applicant viz. the Cases of *Dayal* and the case of *Alphons Louis Erayil*. In the first case of *Dayal* the delay in communication of decision is of the order of two years in one case and of five years in another and no justification is offered by Respondents in that case. There are other issues in that case and the Applicant cannot get support from this judgement. We have also seen the judgement in the case of *Alphons Louis Erayil* decided by the Ernakulam Bench. We find that the remarks communicated therein were grossly contradictory and the conclusion of inconsistency has been reached by the facts which are clearly evident in the text of the adverse entries therein. No such inconsistency is seen in the adverse remarks communicated in the present case. Hence no support is available to the cause of the Applicant from the case decided by the Ernakulam Bench. In view of the detailed discussions made above we are not convinced that there is any ground for interference in this case and for the reliefs regarding adverse entries as sought by the Applicant. We are conscious of the law settled that in these matters the jurisdiction of the Tribunal is somewhat limited in that the Tribunal cannot take the position of an Appellate Authority and sit in judgement as such.

12. It may be recalled here that during arguments the grievance that the Applicant has been deprived of a promotion was also raised by him. As already stated, the Applicant had added this relief to his items of relief sought, through an amendment to his Application. It has been stated that by him in MP.401/96, which was made to seek the amendment, that on 15.1.1996

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the Departmental Promotion Committee meeting was held to consider such promotion, and that he had apprehended that he may not be promoted in lieu of the adverse entries communicated to him. It has been later stated and confirmed during arguments that the Applicant was indeed being overlooked for promotion. Copies of records of DPC were also shown to us. But full details regarding assessments of the concerned individuals yearwise were not made available. Even during the arguments, the main burden had been kept on the issue relating to the prayer for quashing of adverse entries, and matters related thereto. We are, therefore, not able to go into the grievance relating to the non-promotion. We are, however, providing hereby an opportunity to the applicant to make a comprehensive representation regarding the grievance relating to promotion. The respondents shall consider this Representation as per Rules and communicate their decision to the Applicant. It must be reiterated that we are providing this opportunity only in regard to the grievance regarding non promotion and not regarding the grievance relating to the adverse entries in the C.R. of the year relating to 1993-94. This latter matter is being decided here finally.

13. In view of the discussions above, this O.A. is disposed of with the following orders:

a) The prayer of the Applicant for quashing of adverse remarks in his ACR for 1993-94, as communicated to him through impugned orders, cannot be granted and is hereby rejected.

b) The Applicant shall be at liberty to make a representation on his grievance relating to his non-promotion, as discussed in the

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previous paragraph, within a period of six weeks from the date of receipt of a copy of this order. If respondents receive such a representation, they shall consider it as per rules and dispose it of within a period of ten weeks thereafter and communicate their decision to the Applicant.

c) There will be no orders as to costs.

B.N.Bahadur

(B.N.Bahadur)
Member (A) 28/07/00
sj*

K. Jai Parameshwar

(K. Jai Parameshwar)
Member (J) 28/7/2000