

12/12

CENTRAL ADMINISTRATIVE TRIBUNAL  
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 203/96 /199

Date of Decision: 16-1-97

V. K. Sood

Petitioner/s

S. P. Saxena

Advocate for the  
Petitioner/s

V/s.

U.O.I. & Ors.

Respondent/s

R. K. Shetty

Advocate for the  
Respondent/s

CORAM:

Hon'ble Shri M.R. Kolhatkar, Member(A)

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?

M.R. Kolhatkar  
(M.R. KOLHATKAR)  
M(A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

O.A.203/96

Pronounced, this the 16<sup>th</sup> day of January 1997

CORAM:

HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

V.K. Sood,  
Executive Engineer  
(Diploma Wing)  
College of Military Engineering,  
Dapodi,  
Pune - 411 031.

(By Advocate Shri S.P.Saxena )

.. Applicant

-versus-

1. Union of India  
through  
The Secretary,  
Ministry of Defence,  
DHQ P.O.  
New Delhi - 110 011.
2. The Engineer-in-Chief,  
Kashmir House,  
New Delhi - 110 011.
3. The Chief Engineer,  
Headquarters,  
Eastern Command,  
Fort William,  
Calcutta - 700 021.
4. The Chief Engineer,  
Calcutta Zone, Gurusaday Road,  
Ballygung Maidan Camp,  
Calcutta - 700 019.
5. Col.S.M.Mehra,  
Commander Works Engineer,  
Kalaikunda,  
Dist.Midnapur(W.B.)
6. Air Commander S.G.Inamdar  
C/o. H.Q. 5 Wing Air Force,  
99 A.P.O.
7. Commander Works Engineer(AF)  
Kalaikunda,  
Dist.Midnapur(W.B.)

(By Advocate Shri R.K.Shetty)

.. Respondents

- : O R D E R :-

(Per M.R.Kolhatkar, Member(A) )

This O.A. relates to challenge to the adverse remarks in the ACR of the applicant for the year 88-89

i.e. for the period 1-6-88 to 31-5-89. These remarks to be seen at page 27 and 28 of the O.A. may be reproduced below for appreciation of the case :

"His state of health is good. Relation with public is cordial and attitude towards SC/ST Weaker section is sympathetic. His aptitude and potential are planning and Technical Administration. He is adequately trained. His personal qualities, professional knowledge and its application have been assessed as very good/good. His qualities as an executive are very good/good. A sincere and hard working officer who has carried out duties quite well. However his overall performance as GE is just satisfactory. He is an expert in the area of design and structures. He has not given any reasons to doubt either his integrity or his honesty. However, his knowledge of MES and IAF rules, regulations, provisions and procedures in relation to maintenance, work's services funding can, at best be described as only adequate. Well intentioned and hard working, he needs to show more effective control over the local MES staff (Officers as well as workers), greater foresight and imagination in planning and rigorous monitoring of plan, execution. During a part of the period of report (01 Feb.89 to 31 May 89), the quality and speed of response of the local MES to our spot requirements left something to be desired. The quality of its routine maintenance support was also just about fair to satisfactory during the period. This was communicated to the CWE and GE verbally on many occasions during the period of Report as also later on many occasions during the period of report as also later on many occasions during the 27 Sep 89 (vide 5W/2621/1/W). A qualified and able civil engineer himself, Mr.Sood's management, control and leadership vis-a-vis his staff, need to show a marked improvements. This will be essential if the

quality and speed of MES support to 5 Wing is to be more than just adequate during the next period of report. As a person, he is pleasant, polite, cooperative and courteous individual. However, as GE, he needs to be more firm, knowledgeable, resolute and exacting in his handling of the MES officers, the MES workers as well as the contractors. He has, it may be said to his credit, lately shown a trend towards improvement as a result of counselling and advice by the Chief Administrative Officer of the Station."

The applicant had represented against adverse remarks by his letter dt. 23-6-1990(Ex.A-7). The same was rejected by the Chief Engineer HQ Eastern Command on 14-5-91 at Ex.A-8. The applicant thereafter resubmitted appeal dt. 22-6-91 at Ex.A-9. The same has been rejected by the Engineer-in-Chief on 26-7-1994(Ex.A-1). It is this rejection of the representation in appeal that the applicant has challenged. According to the applicant there has been delay in communication of the adverse remarks and there has been a prolonged delay in replying to this appeal (delay of three years). The applicant contends that on the ground of delay alone, the OA is entitled to be allowed. Next it is contended that the various remarks which <sup>have been</sup> ~~has~~ communicated to the applicant as reproduced above are contradictory to each other. Thirdly it is contended that the main reason for conveying adverse remarks was that there was a cyclonic storm at the station on 26-5-1989 when the applicant was out of station for the period from 23-5-89 to 3-7-89 and for <sup>a</sup> further period of 17-7-89 to 18-8-1989 both for official work. In his absence the officiating GE pursued the matter but the sanction for funds as under <sup>either</sup> para 11/12 of the rules was not forthcoming. The cost of storm damage repairs was.

Rs.4.38 lahs and the same could not be met from the limited maintenance funds. The applicant was under pressure from superior officers to undertake the work by diverting the funds out of funds meant for maintenance work to which the applicant was not agreeable and this basic issue is at the root of dis-satisfaction of the respondent No.6 who wrote a letter on 27-9-89 on the subject of "Maintenance support by MES Kalaikunda" which is to be seen at page 36(J)Appendix 'G'. The applicant states that a detailed reply to this letter was sent on 16-10-89 at page 36(M) appendix-H in which each and every point raised in the letter dt. 27-9-89 was dealt with. The applicant however contends that apart from the dis-satisfaction being due to delay in the repairs of the damage caused by storm the superiors were also dis-satisfied with him because he had taken up by way of reminder the question of payment of licence fee in respect of shops and shopping complex vide Annexure A-6 in pursuance of an earlier letter by Barracks Stores Office vide Annexure A-5 and this was not liked by the superiors. Further respondents No. 6 & 7 working as C.W.E. and Station Commander were desirous of making a Golf Course at Kalaikunda without sanctioning a job by misusing the meagre MES resources unofficially and wanted the applicant to give help for it from his auditable stores which the applicant declined. According to the applicant the respondents 6 & 7 therefore bore a grudge against the applicant and therefore adverse remarks came to be written. Applicant has therefore sought the relief of expunction of the adverse entry in the ACR of the applicant for the period 1988-89 or in the alternative to direct the respondents not to act in any manner on the basis of ACR of 1988-89.

2. Respondents have opposed the O.A. According to respondents great care and study have gone into writing the ACR and the same constitutes an indepth analysis of the applicant's performance. There is no question of any contradiction in the ACR because both the good aspects and bad aspects are incorporated in the ACR and this is as per the rules. The respondents have stated that the reasons stated by the applicant for not initiating either para 11 works or para 12 works are agreed to but ~~this aspect~~ is only one aspect of the maintenance support by the MES. Respondents have also denied that there has been any prejudice against the officer either on account of his raising the issue of licence fee of shopping complex or on account of Golf course which according to the respondents does exist but no job was sanctioned for Golf course nor any MES resources were utilised for the same and therefore respondents have stated that the remarks endorsed on the ACR of the applicant ~~were based~~ <sup>based entirely</sup> on the performance during the period of the report 1-6-88 to 31-5-89. However, the 5 wing letter No.5W/2621/1/W dt. 27-9-89 was reflected in the ACR due to late initiation of ACR. In para 4.25 of the O.A. the applicant has stated that the Reviewing Officer has endorsed the remarks of the Reporting Officer. With reference to this para the respondents have stated that the report has been reviewed by Brig.S.S.Anand and he has not endorsed any adverse remarks except that the officer's performance as GE has been just satisfactory.

3. Respondents have relied on the following cases in support of their stand that the scope for judicial review of adverse <sup>C.R.</sup> entry is very limited.

- (1) D.N.Vaidya vs. U.O.I. & Ors.,  
(1987)4 ATC 32(Chandigarh)
- (2) B.K.Mishra vs. U.O.I. & anr.,  
(1988)6 ATC 425, New Delhi.
- (3) P.N.Gandhi vs. U.O.I. & Ors.,  
(1989)11 ATC 289, New Delhi
- (4) S.R.Sharma vs. U.O.I. & Ors.,  
(1993)25 ATC 549 Chandigarh
- (5) P.Venu vs. U.O.I. & anr.,  
(1993)25 ATC 536, Madras.

Respondents have also relied on the recent Supreme Court judgment in the case of Air Vice Marshal S.L.Chhabar, VSM (Retd.) vs. U.O.I. reported at 1993(II)LLJ 658. In this judgment Hon'ble Supreme Court held that a court cannot moderate the appraisal and the grading of ~~the~~ a Govt. servant for a particular year. While exercising the power of judicial review, a Court shall not venture to assess and appraise the merit of the grading of an officer.

4. I have considered the contentions and arguments of the parties. In my view the adverse remarks cannot be faulted on the ground of being contradictory. However, the background of the adverse remarks set out by the applicant has to be taken into account. It is a matter of record that for a large portion of the year the applicant was out of station on official work on the following periods:

- (i) 20-8-88 to 10-9-88
- (ii) 23-5-89 to 3-7-89
- (iii) 17-7-89 to 20-8-89

Secondly the storm occurred on 26-5-89 and the applicant was out of ~~turn~~ town at that time. It is clear from the facts brought out that in the immediate aftermath of the storm, <sup>an</sup> officer junior to the applicant had pursued the matter

and it is also a matter of record that the sanction neither under para 11 nor 12 was forthcoming inspite of vigorous pursuit by applicant in this regard.

In fact Reporting officer was himself competent under para 11 therefore applicant cannot be faulted on account of delay in taking remedial action in the aftermath of the storm. In this context the adverse remarks "During a part of the period of report (01 Feb 89 to 31 May 89), the quality and speed of response of the local MES to our spot requirements left something to be desired" cannot be considered to be based on a fair assessment of the superior officers relating to the way the Garrison Engineering Organisation dealt with the aftermath of the storm. Next it is stated that the quality of its routine maintenance support was also just about fair to satisfactory during this period and this was communicated to the CWE and GE verbally on many occasions during the period of report as also later on many occasions during the 27 Sep 89" These remarks also cannot bear scrutiny. The applicant has contended that no oral or written memoranda regarding quality of the maintenance support were issued prior to the letter dt. 27-9-89. In fact, during this period, the Applicant's organisation was preparing for periodical DASI inspection and the applicant had received a letter of appreciation dt. 12-1-89 at Ex.A-11. Clearly this portion of the remarks certainly relates to the period subsequent to 31-5-89. While therefore not accepting the contention of the applicant that the entry of adverse remarks in his CR including not only these remarks under examination but also other remarks is actuated by malafides. I am of the view that the remarks reproduced above have no factual basis; they appear to have been made without looking into the fact of the absence of the applicant from the scene during the crucial time of storm and its aftermath. They have thus no bearing

on the performance of the applicant during the relevant period and are therefore required to be expunged. So far as the remaining remarks are concerned I am of the view that they embody the subjective assessment of the performance of the applicant by superior officer and applicant has brought no material before me to interfere with the same.

5. The O.A. is therefore partly allowed with a direction that the following remarks in the CR for the period 88-89 should be expunged and that while considering the applicant for promotion or for any other purpose for which the CR is considered, these remarks should not be taken into account:

"During a part of the period of report (01 Feb 89 to 31 May 89) the quality and speed of response of the local MES to our spot requirements left something to be desired. The quality of its routine maintenance support was also just about fair to satisfactory during the period. This was communicated to the CWE and GE verbally on many occasions during the period of report as also later on many occasions during the 27 Sep 89 (vide 5W/2621/1/W)"

There would be no order as to costs.

*M/R. Kolhatkar*

(M.R. KOLHATKAR)  
Member (A)