

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, MUMBAI.

ORIGINAL APPLICATION NO.773/1996.

Dated: 30.11.04

Anant Prasad Singh

.....Applicant(s)

.....Advocate for
applicant(s).

Vs.

Union of India & Ors.


.....Respondent(s)

Shri S.S.Karkera

.....Advocate for
Respondent(s)

Coram: Hon'ble Shri Anand Kumar Bhatt, 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.


(ANAND KUMAR BHATT)
MEMBER (A).

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, MUMBAI.

ORIGINAL APPLICATION NO.773/1996.

Dated: 30 November 2004

Hon'ble Shri Anand Kumar Bhatt, Member (A),

Anant Prasad Singh,
SDE (Estt),
O/o. G.M.Telecom,
Sharampur Road,
Nashik - 422 002,
Maharashtra.
(Applicant in person)

...Applicant.

v.

1. Union of India through
The Chief Secretary,
Ministry of Telecommunication,
(Telecom Commission),
Sanchar Bhavan,
Ashoka Road,
New Delhi - 110 001.
2. The Chief General Manager,
Mahanagar Telephone Nigam Ltd.,
Telephone House, 15th floor,
Dadar (W),
Mumbai - 400 028.
3. The Chief General Manager,
Telecommunication,
Maharashtra Circle,
G.P.O. Building,
Mumbai - 400 001.
4. The General Manager,
Telecom,
Sharanpur Road,
Nashik - 422 002.
5. Shri R.H.Karnani,
Divisional Engineer (NRC),
Ghatkopar Telephone Exchange Building,
M.T.N.L.,
Bombay - 400 086.
(By Advocate Shri S.S.Karkera)

...Respondents.

: O R D E R :

{Anand Kumar Bhatt, Member (A)}

The grievance of the applicant is about the adverse

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remarks in the ACR of the applicant for the year 1991-92 in respect of period from 19.9.1991 to 31.1.1992. The adverse remarks are as follows :

"General comments on the results achieved	: Was found to be : misusing delegated : financial powers.
Human relations, etc.	: Rude to superiors.
Whether the reporting officer administered any written or oral warning etc.	: Verbally advised : for not being : punctual."

The applicant's contention was that the remarks were communicated late, the Reporting Officer saw his work for less than 90 days and the adverse remarks are vitiated by mala fides. This was heard by a Single Bench of the Tribunal and order was passed on 18.9.1997 by which the OA was dismissed. The applicant went to the High Court in W.P. No.5466/1997 where the order of the Tribunal was set aside. The operative portion of the order dt. 4.7.2003 is contained in para 6 which is follows :

"6. For the reasons stated above, we are of the view that the order passed by the CAT cannot be sustained. We accordingly quash and set aside the order dated 18th September, 1997 passed by the Central Administrative Tribunal and restore Original Application No.773 of 1996 to the file of the Central Administrative Tribunal, Mumbai. The Tribunal will permit the Petitioner to produce all necessary material that he wants to produce before the Tribunal and may as well direct the Respondents to produce the documents which the Petitioner wants to produce to substantiate his submissions that the adverse remarks were not justified. Need less to state that it will be open to the Respondents to rebut the submissions when raised by the Petitioner, it is only when all the material comes before the Tribunal that the

Tribunal is expected to give its findings on the three adverse remarks as to whether they were rightly confirmed or they ought to be expunged. Rule is made absolute as above, however, without any order as to costs."

2. After the case was remitted, the case was first heard on 6.8.2003, when the applicant was asked whether he wants to produce any documents. He stated that he does not want to produce any documents. As for the documents which the applicant wanted the respondents to produce, he gave a list of records in MP No.584/2003. This was considered by the Tribunal on 8.10.2003 and it was decided that as far as documents listed from (d) to (h) are concerned, they are unnecessary for the purposes of disposal of the case. Respondents were asked to produce the documents listed from (a) to (c). The respondents filed affidavit that so far as bills and vouchers which have been listed at (a) and (b) are concerned, they ~~are the bills and vouchers which~~ have been destroyed according to the standing instructions of the Department. As regards document (c) i.e. ACR dossier and personal file of the applicant are concerned, they were produced for the perusal of the Court. The applicant stated that the affidavit is false and he prayed for taking action for forgery and concerned officials who filed the affidavit. It was decided by the Tribunal on 20.1.2004 that this aspect can be taken care of at the time of final hearing of the OA.

3. In the oral submissions, the applicant has stated that the period from 19.9.1991 to 31.1.1992 comes to 134 days. The applicant was absent for 46 days. The Reporting Officer was absent for two weeks in December and four weeks in January. Thus, the total period for which the Reporting and Reported

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Officer were together was only 46 days and therefore, as per instructions of the government relating to writing of ACR, the Reporting Officer i.e. R.H.Karnani, Divisional Engineer was not authorised to write ACR of the applicant. The second point raised by the applicant is that the adverse ACR was communicated belatedly after one year and seven months. The main contention of the applicant is that the Reporting Officer was biased against the applicant as he did not pass a bill for Rs.5,000/- for the New Year's Party.

4. The respondents, in their reply dt. 10.10.1996 have stated that the ACR of the applicant for the period 19.9.1992 to 31.1.1992 was written by his controlling authority and was forwarded to DGM vide letter dt. 29.4.1992. The remarks about misuse of financial powers, being rude to the superiors are based on letters dt. 28.1.1992 and 13.12.1991 given to the applicant and are on the basis of specific instances of misuse of financial powers. The respondents have denied the contention of the applicant that the adverse entry was communicated to him on 28.8.1993. They have stated that it was communicated vide letter dt. 1.5.1992 and the applicant had represented on 5.11.1992 against the said adverse entries (Exhibit - R-5). However, the C.R. sheet of the applicant was lost in transit when it was despatched by DE to DGM because of which the CR for the said period from 19.9.1991 to 31.1.1992 was re-written and again the said adverse remarks were communicated to the applicant vide respondents letter dt. 17.8.1993. Therefore, it is not correct to say that there was any delay on the part of the respondents in communicating the adverse remarks to the applicant.

5. In the reply submitted by the respondents on 27.11.2003, they have denied that the adverse entries have been given for disallowing the bill of the New Year Party. The adverse remarks were given to the applicant with regard to his rude behaviour with the officers based on the memo dt. 13.12.1991.

6. In the oral submissions, the applicant reiterated the written pleadings. He stated that the financial powers of the applicant were withdrawn by the order dt. 28.1.1992 (Exhibit R-2) which was passed by another DE and as he handed over on 31.1.1992, this order smacks of mala fide. He stated that an objection was raised for his buying anti-glare glasses for computers for official use while working on computers costing Rs.500/-. The applicant, later, paid the amount from his pocket because of the objection. He also wondered how of the two ACRS which were despatched, only his ACR was lost in the first instance. He stressed the point that the adverse remarks should have been communicated to him within one month of being recorded, which was not done. He contended that FR 11 has been interpreted wrongly by the Tribunal in their order dt. 18.9.1997. The Tribunal had held in para 8 that FR 11 provided that whole ^{time} ~~file~~ of the Government servant is at the disposal of the Government and therefore any ^{leave} ~~new~~ period cannot be excluded for the question of writing of ACR.

7. Shri S.S.Karkera for the respondents in his oral submissions pointed out that it was only after the representation of the applicant was rejected that allegation of mala fide has been made by the applicant. He stated that ~~as~~ in accordance with the ratio laid down in Orissa Mining Corporation and Anr. v. Ananda

Chandra Prusty {AIR 1997 SC 2274}, the applicant has to prove his case, which has not been done. In rebuttal, the applicant stated that there is a certificate from the Department dt. 12.8.1991 regarding the leave availed by the applicant (page 65 of the paper book). He stated that in orders of rejection of the representation of the applicant, the periods have been mentioned wrongly.

8. I considered the case. As per instructions of Government of India no ACRs should be written unless the Reporting Officer has at least three months experience on which to base his report. The period here is 19.9.1991 to 31.1.1992 which is 135 days. The contention of the applicant is that the applicant was on leave for the following period :

- | | |
|------------------------------|-------------------------------------|
| (1) 30.09.1991 to 11.10.1991 | 12 days E.L. |
| (2) 04.11.1991 to 03.12.1991 | 30 days E.L. +
commuted
leave |
| (3) 30.01.1992 - | 01 day E.L. |

Thus, total period comes to 43 days and if it is deducted from 135, it comes to 92 days. However, it can be seen that the leave has been taken by the applicant in ^{parts} between the period ~~and during~~ ^{and} ~~this period~~ it cannot be denied that the Reporting Officer was his Controlling Officer. Isolated period of leave during the period for which the ACR is to be written does not mean that the applicant is not under the control of his supervisory officer. The applicant has also stated that the Reporting Officer was on leave for two weeks in December and four weeks in January. However, it is not supported by any documents and this has not

been averred by the applicant in his pleadings and only during oral submissions this point was made. In the circumstances, I do not think that the period of absence of the Reporting Officer on leave has to be deducted from the total period for which the applicant worked under him. As for the broken periods of leave taken by the applicant it is seen that even if this period is deducted, the total period comes to more than 90 days. The second point raised by the applicant is about delay in communication of adverse remarks. This has been adequately explained by the respondents that the adverse remarks were communicated to the applicant on 1.5.1992 and he preferred a representation against it on 5.11.1992. The later communication was only because his ACR sheet was lost and it had to be restructured on the basis of available records. The last point is about mala fide, as the applicant did not pass New Year Party bills. The respondents have contended that this point has been raised by the applicant only much later when his representation against the adverse remarks were turned down. Any allegation of mala fide must have concrete base as has been held by the Apex Court in State of U.P. and Ors. v. Gobardhan Lal, {2004 (3) AISLJ 244}. In view of the fact that the applicant has raised the point of malafide much later and he has not been able to substantiate his claim with the help of any documents makes this allegation not sustainable. It may also be noted that in the OA which was filed on 30.7.1996 there does not seem to be any specific mention of the applicant refusing to pass bill of Rs.5,000/- for the so called New Year Party.

9. The OA was remanded by the Hon'ble High Court with a direction that the Tribunal should permit the petitioner to produce all necessary material that he wants to produce before the Tribunal and may as well direct the respondents to produce the documents which the petitioner wants to substantiate his submissions that the adverse remarks were not justified. When asked by the Tribunal, the applicant stated that he did not want to produce any documents. As regards the documents which he wanted the respondents to produce, it was considered by the Tribunal and it was decided that the respondents should produce three documents. The respondents, however, expressed inability to produce the bills and vouchers as they were already destroyed because of three year rule. The ACR dossier and personal file of the applicant were produced. From the general perusal of the file, I do not find anything which substantiates the claim of the applicant or goes in his favour. On the other hand, it is seen that there was a raid by a Anti Corruption Bureau, Government of Maharashtra on the applicant and he was placed under suspension on 4.7.1995. The suspension was later revoked on 9.4.1996. Later, the applicant has been dismissed from service vide order dt. 20.7.2001 and he was struck off the strength of Nasik Telecom District w.e.f. 17.08.2001 (AN). However, these matters are not immediately related to the present issue under consideration which relate only to adverse entries for a part of financial year 1991-92. It is for the applicant to prove his case. Some of the records which he wanted the respondents to produce are reported to be destroyed. The applicant should have kept a copy of such correspondence so that it could be used by him in the OA which was filed in 1996.

11. On the whole, I do not find any reason to agree to the contention of the applicant that the adverse entries in his ACR under question should be expunged. OA is dismissed. Costs easy.



(ANAND KUMAR BHATT)
MEMBER (A)

B.

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, MUMBAI.

R.P. NO. 18/2005 IN O.A. NO. 773/96.

Dated this Friday, the 15th day of April, 2005.

CORAM : Hon'ble Shri Anand Kumar Bhatt, Member (A).

Anant Prasad Singh

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Applicant

versus

Union of India & 4 Others

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Respondents

O R D E R

PER : Shri Anand Kumar Bhatt, Member (A).

R.P. No. 18/2005 has been filed in O.A. 773/96.

2. The matter is relating to adverse entry given to the applicant for the year 1991-92. This was first heard by a Single Member Bench of the Tribunal where by order dated 18.09.1997 the O.A. was dismissed. The applicant had gone to the Hon'ble High Court where the case was remanded to the Tribunal with a direction that "the Tribunal may permit the Petitioner to produce all necessary material that he wants to produce before the Tribunal and may as well direct the respondents to produce the documents which the petitioner wants to produce to substantiate his submissions that the adverse remarks were not justified". Accordingly,

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the case was heard by me in Single Bench on 18.11.2004 and order was passed on 30.11.2004 by which the O.A. was dismissed. Now the present R.P. has been filed by the applicant.

3. The first ground taken by the applicant is that the observation made by the Tribunal in para 7 of the order is wrong on fact, as this was already raised by the applicant in para 4.9 of the O.A. The applicant is challenging the error made by the Tribunal in the judgement and such error in the judgement of the Tribunal cannot be corrected in a R.P. The second point raised by the applicant is that the order of the Division Bench of the High Court in W.P. No. 5466/97 dated 04.07.2003 has not been complied with and in this regard a false affidavit has been given. The respondents have stated that the records are destroyed after three years and they have also enclosed a copy of the rules regarding destruction of records pertaining to the Accounts audited by the Indian Audit Department on page 102 of the Paper Book where so far as records relating to contingent expenditure is concerned, there is provision for ~~destruction after~~ ^{three years or one year after completion of the audit,} whichever is later. On that basis, the bills/vouchers by the applicant were not produced. In this also we do not find any error apparent on the face of record.

4. The applicant has also contended that as the order of the Tribunal was set aside by the Division Bench of the High Court, the present O.A. should have been decided by a Co-Ordinate Bench for full justice to the aggrieved party. The case was originally heard by a Single Member Bench and after remand, has been heard by another Single Member Bench than the one who initially decided the O.A. There is no specific order by the High Court that the matter be heard by a Division Bench and hence this contention of the applicant cannot be entertained in the Review Petition.

The applicant has further contended that the calculation of Earned Leave made by the Tribunal as regards Earned Leave taken by the applicant is not correct. This kind of error in judgement cannot be heard in a review petition. The Tribunal had considered the pleadings of the applicant and had held that isolated periods of leave taken by the applicant or the Reporting Officer need not be deducted from the minimum period of eligibility for writing ^{the +} ~~an~~ ACR by the Reporting Officer and again this cannot be questioned by the applicant in a Review Petition. The applicant had cited O.A. 469/92 in the order of the Tribunal dated 18.09.1997 and the applicant has again tried to rely on the said judgement. By this the applicant is trying rehearing of the case. In para 10 of the Review Petition it has been alleged that the Tribunal committed error in stating that "Applicant does not want to produce documents". This ^{was in compliance of} ~~is according to~~ the judgement of the High

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Court where the direction was to consider the documents produced by the applicant and those documents which the respondents produce. This was done by the Tribunal in compliance of the first part of the High Court order.

5. A Review Petition can be considered for discovery of new and important matter of evidence, some mistake or error apparent on the face of record or for any other sufficient reason. As mentioned earlier, for a wrong judgement review petition cannot be entertained. From the discussions as above we find that there is no error or mistake which is apparent on the face of the record nor there is any discovery of new or important matter or evidence. Therefore, the grievance of the applicant cannot be redressed by way of a Review Petition and the present submissions made by the applicant are beyond the scope of a review petition.

6. R.P. is dismissed by circulation.


(ANAND KUMAR BHATT)
MEMBER (A).