

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 292/96

Date of Decision : 7.12.2000

M.B.Ray Applicant.

Shri G.S.Walia Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents.

Shri V.S.Masurkar Advocate for the
Respondents.

CORAM :

The Hon'ble Shri B.S.Jai Parameshwar, Member (J)

The Hon'ble Smt.Shanta Shastri, Member (A)

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other
Benches of the Tribunal ?
- (iii) Library


(B.S.Jai Parameshwar)
MEMBER (J)

mrjt

CENTRAL ADMINISTRATIVE TR-BUMHAI
MUMBAI BRANCH, MUMBAI.

ORIGINAL APPLICATION NO. : 212

Date of Decision : 2.12.2000

H.B. Ray Applicant

Shri U.S. Walia Advocate for the Applicant.

VERSUS

Union of India & Ors. Respondents.

Shri V.S. Narasimhan Advocate for the Respondents.

CURAM :

The Hon'ble Shri B.S. Jai Parameshwar, Member (I)

The Hon'ble Shri Shanta Shastri, Member (II)

- (i) To be referred to the Registrar or not
- (ii) Whether it needs to be circulated to other Branches of the Tribunal
- (iii) Leave

B.S. Jai Parameshwar
MEMBER (I)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.292/96

Thursday this the 7th day of December, 2000.

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

Hon'ble Smt.Shanta Shastry, Member (A)

M.B.Ray, I.A.S.
Additional Commissioner,
Amravati Division,
Amravati.

... Applicant

By Advocate Shri G.S.Walia

V/S.

1. State of Maharashtra
through its Chief Secretary,
Mantralaya, Bombay.
2. The Principal Secretary,
General Administration Department,
Mantralaya, Bombay.
3. Union of India through
Secretary,
Department of Personnel
and Training,
North Block, New Delhi.

... Respondents

By Advocate Shri V.S.Masurkar

O R D E R (ORAL)

(Per : Shri B.S.Jai Parameshwar, Member (J))

Heard Shri G.S.Walia, learned counsel for the applicant
and Shri V.S.Masurkar, learned Standing counsel for the
respondents.

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2. The Applicant herein is an I.A.S. officer of Maharashtra Cadre of 1977 Batch.

3. On 10.5.1995 the Chief Secretary, Govt. of Maharashtra communicated the applicant the adverse entries found during the year 1990-91. The said letter dated 10.5.1995 is at page 19A, Annexure-'1-A'. The letter is reproduced below :-

" The Confidential Report on you for the year 1990-91 shows that you are a hard working officer and possess good initiative, good written communicationskills and a positive attitude towards the weaker sections of the Society. The report further shows that your relations with public are good and you do respond to suggestions for improvement. However, the said report also contains the following adverse remarks which are being hereby communicated to you as required under Rule 8 of the AIS (Confidential Rolls) Rules, 1970 :-

- Part III A(2) : Quality of output -
There is scope for improvement.
- Part III A(3) : Knowledge of sphere of work -
Needs to develop the habit of going into details.
- Part III B(1) : Attitude to work -
However, needs to develop conceptual clarity and systematic approach to work.
- Part III C(1) : Planning ability -
Has to develop conceptual and planning ability.
- Part IV (3) : General Assessment -
However, he needs to become more systematic and organised in his work."

4. Against the said communication, the applicant submitted a representation on 1.6.1995 and prayed for expunging the adverse remarks. The Principal Secretary to Government (Personnel) by his letter dated 29.9.1995 (Annexure-'1-A' page 19 B) informed the applicant as follows :

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" The Government of Maharashtra after carefully considering the representation, as per rule 10 of the above said rules has decided that the above remarks should not be expunged from the Confidential Rolls, hence the representation is rejected."

5. Being aggrieved, the applicant has filed this OA. for the following reliefs :-

- "8.1. To quash and set aside the adverse entry from the applicant's confidential report of the year 1990-91;
- 8.2. To quash and set aside the impugned letter dated 10.5.95 (Annexure VI);
- 8.3. To quash and set aside the impugned order dated 29.9.95 (Annexure X);
- 8.4. Hold and declare that the adverse remarks communicated to the applicant vide letter dated 10.5.95 are illegal and expunge the same from the confidential report of the applicant for the year 1990-91;
- 8.5. Hold and declare that the applicant is entitled to promotion to supertime scale of Indian Administrative Service from August 1995 and more specifically from the date his juniors including Shri J.M. Pathak are promoted and appointed to supertime scale of Indian Administrative Service;
- 8.6. Hold and declare that the applicant is entitled to be promoted to super-time scale of Indian Administrative Service with effect from the date his juniors were considered by the Selection Committee and are recommended for appointment to the super-time scale of Indian Administrative Service; and
- 8.7. To direct the respondents to fix the pay of the applicant in the supertime scale with effect from the deemed date of promotion and further direct them to pay arrears of salary and allowances alongwith the consequential benefits, such as release of increment, seniority and further promotions etc."

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6. The respondents have ^{filed} a written statement. They submit that reliefs claimed by the applicant are not ~~in~~ consequential in nature, that the applicant has claimed multi-farious reliefs. The respondents submits that the application is barred by time. They further submits that the applicant was not considered for selection grade as his C.Rs. are not found to be satisfactory, the critaria being "Very Good" grading. They submit that the representations given by the applicant are considered and replied.

7. As the applicant has ^{prayed} ~~filed~~ multifarious reliefs, we confined it to adverse entries communicated to him for the year 1990-91. The said adverse entries were communicated to the applicant by the Principal Secretary on 10.5.1995.

8. The respondents accordingly took nearly 5 years to communicate the adverse entries found in the C.R. for the year 1990-91.

9. In the case of Union of India vs. Mr. Ranjit Singh Grewal & Ors., 1980 (3) SLR 256, the Hon'ble High Court of Delhi considered the All India Services (Confidential Rolls) Rules, 1970 and in Para 17 the Hon'ble High Court was pleased to observe as follows :-

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" A combined reading of the said Rules 8, 9 and 10 makes it clear that the object of these Rules is first, that anything adverse to a member of the Service, if recorded in writing, shall be communicated to him expeditiously so that the member of the Service may know what his superiors feel about him and what their assessment about him is. Secondly the member of the Service may get timely warning to take note of his short comings, draw backs and faults so that he may remedy them and by improving continue to serve as a good officer. Thirdly, in consonance with the rules of natural justice the member of the Service may have an opportunity to meet the adverse remarks or opinion about him and show to his superiors whether the same were wholly or at all justified. If he is able to on representation, show that the remarks were not warranted or were not warranted as made, it is the incumbent duty of the Government to either tone down the remarks or expunge the same. Confidential remarks are after all an assessment of the work, performance and conduct of an officer by his superiors. The assessment by its very nature would be somewhat subjective but as is well settled the subjective opinion has to be formed on an objective appraisal of material and cannot be done arbitrarily. In the present case the requirements of All India Services (Confidential Rolls) Rules, 1970 have been completely ignored. As noticed earlier, the remarks for the first three periods, namely, 9.8.1965 to 10.1.1966, 27.7.1971 to 18.8.1971 and 11.5.1972 to 31.3.1973 were not communicated within three months or even within a reasonable period. They were communicated in July 5, 1975. Similarly, the remarks for the periods 1.4.1973 to 21.7.1973 and 8.10.1974 to 31.3.1975 were communicated on August 26, 1975. Mr. R.S. Grewal made representations within the statutory period permitted by Rule 9 of the said Rules. Before the government could look into the representations and decide in accordance with the rules whether the remarks were to be retained, modified as expunged the State Review Committee, the State Government and even Central Government made their respective recommendations and orders. This was a clear violation of the rules and we have no hesitation in holding that in all fairness the five sets of adverse remarks could not be taken into consideration in the circumstances noticed by us. The proceedings, therefore of the State Review Committee and the

the recommendation of the State Government and the final order of the Central Government stand vitiated on the ground of violation of statutory rules and principles of natural justice and fair play. That the representations have been subsequently rejected is neither here nor there. The point in issue is that the five adverse remarks as communicated to Mr. R.S. Grewal could not be taken into consideration till an order under Rule 10 of the All India Services (Confidential Rolls) Rules, 1970 had been passed affirming those remarks expunging them or modifying them."

10. When the applicant submitted his representation, the competent authority should have considered and taken a decision whether to retain or expunge the adverse entries found in C.R. for the year 1990-91. While ^{doing} so, the competent authority was expected to disclose the reasons as to why he took a decision to retain the adverse remarks found in the C.R. of the applicant for the year 1990-91. As already extracted above, the competent authority has not at all stated any reasons as to why it took a decision to retain the adverse entries.

11. In this connection, we feel it proper to refer to the decision of Hon'ble Supreme Court in the case of Union of India & Ors. vs. E.G.Nambudiri, 1991 SCC (L&S) 813. In para 6, the Hon'ble Supreme Court has observed as follows :-

"6. Entries made in the character roll and confidential record of a government servant are confidential and those do not by themselves affect any right of the government servant, but those entries assume importance and play vital role in the matter relating to confirmation, crossing of efficiency bar, promotion and

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retention in service. Once an adverse report is recorded, the principles of natural justice require the reporting authority to communicate the same to the government servant to enable him to improve his work and conduct and also to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified. The superior authority competent to decide the representation is required to consider the explanation offered by the government servant before taking a decision in the matter. Any adverse report which is not communicated to the government servant, or if he is denied the opportunity of making representation to the superior authority, cannot be considered against him. See: *Gurdial Singh Fijji V. State of Punjab*. In the circumstances it is necessary that the authority must consider the explanation offered by the government servant and to decide the same in a fair and just manner. The question then arises whether in considering and deciding the representation against adverse report, the authorities are duty bound to record reasons, or to communicate the same to the person concerned. Ordinarily, courts and tribunals, adjudicating rights of parties, are required to act judicially and to record reasons. Where an administrative authority is required to act judicially it is also under an obligation to record reasons. But every administrative authority is not under any legal obligation to record reasons for its decision, although, it is always desirable to record reasons to avoid any suspicion. Where a statute requires an authority though acting administratively to record reasons, it is mandatory for the authority to pass speaking orders and in the absence of reasons the order would be rendered illegal. But in the absence of any statutory or administrative requirement to record reasons, the order of the administrative authority is not rendered illegal for absence of reasons. If any challenge is made to the validity of an order on the ground of it being arbitrary or mala fide, it is always open to the authority concerned to place reasons before the court which may have persuaded it to pass the orders. Such reasons must already exist on records as it is not permissible to the authority to support the order by reasons not contained in

the records. Reasons are not necessary to be communicated to the government servant. If the statutory rules require communication of reasons, the same must be communicated but in the absence of any such provision absence of communication of reasons do not affect the validity of the order."

12. Considering these two decisions and also after going through the impugned letter dated 29.9.1995, we are of the considered view that the competent authority has not properly considered the representation dated 1.6.1995 made by the applicant against the adverse entries found in the C.R. for the year 1990-91.

13. Therefore, we feel it proper to direct the competent authority to consider ^{afresh} the representation in accordance with the rules and take a decision through a speaking order.

14. Hence, the following directions are given :-

(a) The order dated 29.9.1995 passed by the competent authority is hereby set aside.

(b) The competent authority shall consider the representation dated 1.6.1992 of the applicant and take a decision in accordance with the rules by a speaking order.

(c) The other reliefs claimed by the applicant are not considered at this moment.

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15. Time for compliance is two months from the date or receipt of a copy of this order.

16. With the above observations, the OA. is disposed of. No order as to costs.

Shanta

(SMT. SHANTA SHASTRY)

MEMBER (A)

B.S. Jai Parameshwar

(B.S. JAI PARAMESHWAR)

MEMBER (J)

7.12.00

mrj.