

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 124 of 2000.

Dated this Tuesday, the 6th day of November, 2001.

Dr. (Mrs.) Shashee Ananth Ram, Applicant.

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


VERSUS

Union of India & 5 others, Respondents.

By Advocate Shri R. K. Shetty, Advocate for
Respondents.

CORAM : Hon'ble Shri B. N. Bahadur, 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. N. BAHADUR)
MEMBER (A).

OS*

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MUMBAI BENCH

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Dated this Tuesday the 6th day of November, 2001.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Dr. (Mrs.) Shashee Ananth Ram
Technical Officer 'A',
R & D E (Engineers),
Dighi, Pune - 15.
R/o 11/2, Pratik Nagar,
Yerwada, Pune - 6.

..... Applicant

(By Advocate Shri S.P. Saxena)

VERSUS

1. Union of India
through the Secretary,
Ministry of Defence,
DHQ.P.O. New Delhi - 11.
2. The Scientific Advisor,
Ministry of Defence,
New Delhi - 11.
3. The Director,
R & DE (Engineers),
Dighi, Pune - 15.
4. Mr.D.L.Sapra,
Scientist 'D',
R & D E (Engineers)
Dighi, Pune - 15.
5. Mr.Y.P.Pathak,
Scientist 'G'/Director R & D E
(Engineers) Dighi, Pune -15.
6. Mr.M.R.Joshi,
(Ex-Director R & D E Engineers)
4 Aga Nagar Co-operative Society,
Nagar Road 14.

..... Respondents

(By Advocate R.K. Shetty)



O R D E R

PER : Shri B. N. Bahadur, Member (A).

The Applicant in this case comes up to the Tribunal seeking the relief as follows :

- "a) to quash and set aside the impugned orders dated 13.1.2000 and dt. 7.6.1999.
- b) to direct the Resp. No. 1 to 3 to expunge the adverse remarks in the A.C.R.'s for 1997 and 1998 of the Applicant or in the alternative to direct the Resp. No. 1 to 3 not to act upon the above ACR's for any purpose."

She has been informed vide letter dated 13.01.2000 (Exhibit A-2) that her representation dated 07.07.1998 and 20.08.1999 were forwarded to the DRDO HQrs., New Delhi and that expunging of adverse entries in her records is not agreed to.

2. The facts of the case, as brought out by the Applicant, are that she is working as a Technical Officer 'A' in the office of Respondent No. 3, which is an office under Respondent No. 1 and 2. Further, Respondents at No. 4, 5 and 6 have been arrayed in the party line-up in view of allegation of bias and malice made by the Applicant against them. The Applicant further states that she was regularised in the post of Junior Scientific Assistant in 1973 and further promoted as Sr. Scientific Assistant in March, 1983. Her case was considered for further promotion in the year 1988 and 1989 but she has not been promoted.



3. The grievance of the Applicant is that the adverse remarks, as communicated to her, are coming in the way of her promotion. She cites details in this regard in her application, specially making allegations that she has been treated badly in that she has been assigned with work which is of miscellaneous, non-technical and non-scientific in nature and apart from this, is humiliating to her. She states that her request for transfer was not agreed to. She also alleges prejudice, in that, her request for meeting the Scientific Advisor in 1993 was agreed to with great difficulty. Shri S. P. Saxena, Learned Counsel for the Applicant, who argued the case at length on applicant's behalf, took me over the facts of the case in detail, drawing upon the facts from the Written Statement as also from the various communications and documents which has been appended by the Applicant in her O.A. Shri Saxena made the point that the Applicant had a very good career and had never received adverse entry ever before. He took pains to exemplify the charge of vindictiveness and bias against private Respondent/s. He reiterated that her assignment to humiliating work of trivial and non-scientific nature was all apart of a design. Her desire to meet the Scientific Advisor was not liked and this has resulted in entry of adverse remarks in her record.

4. Official Respondents have filed a Written Statement resisting the claim of the Applicant in regard to the adverse remarks communicated to her (for the year 1997 and 1998), it is



stated that the details of her short comings had been conveyed to her on 19.04.1998 and representations made had been disposed of. The charge of her being given non-scientific and trivial work have been denied, as also the allegation that she was harassed. It is also denied that her desire to meet the Scientific Advisor during the later visit was the cause of any malice or adverse remarks being given and it is, in fact, stated in para 4.8 of her O.A. that she had been duly allowed to meet the person concerned.

5. It is stated that the Applicant has not been able to meet the grade for promotion in view of her record. A stand is also taken that promotions under Limited Flexible Complimenting Scheme are entirely merit based and limited in regard to number of persons that can be promoted and also that her relative position was not high in the list. The Written Statement then goes on to say that she was indeed given scientific work. The private Respondent Nos. 4, 5, and 6 namely - Mr. D. L. Sapra, Mr. Y. P. Pathak and Mr. M.R. Joshi, have filed separate affidavit denying all allegations and/or any prejudice on their behalf. They also deny that there has been any harassment by them to the Applicant.

6. Learned Counsel, Shri R. K. Shetty, argued the case for the official respondents taking the ground cited in their Written Statement and expounding on them in some detail. He stated that



the Respondents have been fair and just to the Applicant and that some of the points made in her own O.A. contradict the allegation she is making. It was argued by him that the representations have been dealt with and disposed of and that the Applicant has no case for the expunging of adverse remarks, as claimed in para 8 of the O.A.

7. Learned Counsel for Respondents also placed before me the dossier of confidential reports of the Applicant. I have carefully considered all papers in the case and the arguments made by the Learned Counsel for the Applicant and Learned Counsel for the official Respondents. I have also seen the confidential dossiers. It is seen that indeed the confidential reports in respect of the year 1997 and 1998 contains adverse remarks, as communicated to the Applicant.

8. Now it must be stated that in taking a judicial review in matters like this, we are indeed constrained to stay within the limits of the settled law. While infirmity in the action of the Respondents in regard to malice, arbitrariness, perversity or violation of rules has to be looked into, the role of the Tribunal cannot be extended to its taking the position of something like a superior officer or taking a view as if in appeal. The remarks made by the Reporting Officer cannot be replaced by assessment of ours.

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9. On the other hand, it is seen that the representation of the Applicant has been disposed of by letter dated 13.01.2000 by the following communication :

"Your both the representations were forwarded to DRDO HQrs., New Delhi. In response to your representations, reply received from DRDO HQrs. is as follows :

"The matter has been discussed with the competent authority. Expunging of adverse remarks in the C-PAR in respect of the above named individual has not been agreed to." "

Now it is here that we find some infirmity which was not explained to us. The point that is made is that the matter has been "discussed with competent authority". This is an apparent weakness, as it appears. The representations against adverse remarks are to be disposed of by written orders made by the competent authority itself. A discussion is not the manner in which such representation can be disposed of. It would give the impression that full and independent application of mind has not been applied. Certainly, any competent authority can take facts from records and call for remarks of the officers who have made the adverse entries. This in fact is the accepted procedure. But to say that the matter has been disposed of in discussion is not the proper thing to do. The order will have to be made by the competent authority himself.

10. Under the circumstances, while I am not convinced that there is any case for ordering of expunging the remarks by the Tribunal, as sought for by the Applicant, I am also convinced

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that there is a case for reconsideration by the competent authority of the representations already made by the Applicant. Also, while there is no evidence that the persons named as R-4, R-5 and R-6 are proved to be biased or having malice, it would be desirable on the principle of justice being "also seen to done", that none of them disposes of the representation. The O.A. is, therefore, disposed of with the following directions/orders :

- (i) The competent authority in the organisation shall reconsider the representations on the adverse entries already made by the Applicant and pass a concise reasoned order and intimate the Applicant of the decision taken. This decision would be final. The communication at Exhibit A-2 i.e. impugned letter dated 13.01.2000 is hereby quashed and set aside.
- (ii) The above direction shall be complied with within a period of three months from the date of receipt of a copy of this order.
- (iii) No order as to costs.

B. N. Bahadur
6/11/01
(B. N. BAHADUR)
MEMBER (A).