

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 204/2000

Date of Decision: 7.11.2001

Shri Gorekh Megh.

Applicant

Shri M.S. Karnik.

Advocate for Applicant

Versus

Union of India & 3 others

.. Respondents

Shri V.S. Masurkar.

Advocate for Respondents

CORAM: HON'BLE SMT. SHANTA SHAstry. .. 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

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(SMT. SHANTA SHAstry)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 204/2000

THIS THE 7 TH DAY OF NOVEMBER, 2001

CORAM: SMT. SHANTA SHAstry MEMBER (A)

Gorekh Megh,
Son of Goovind Megh
Age:51, Secretary, General Admin,
Department, Mantrayala, Mumbai. .. Applicant

By Advocate Shri M.S. Karnik

Versus

1. Union of India through the
Secretary, Department of Personnel
South Block, New Delhi.
2. The State of Maharashtra,
through the Chief Secretary,
General Administration Dept,
Mantralaya, Mumbai.
3. The Secretary to the Government
Social Welfare, Cultural Affairs
and Sportos Department
Mantralaya, Mumbai.
4. Shri Ratnakar Gaikwad,
presently working as Commissioner,
Pune Municipal Corporation,
Pune. ... Respondents

By Advocate Shri V.S. Masurkar.

O R D E R

Smt. Shanta Shastry. Member (A)

The relief sought in this OA is to call for the entire record in respect of Confidential Reports of the applicant from Respondent No.2 and after examining the same to expunge the adverse remarks in the CR of the applicant for the period from 24.7.1995 to 25.01.1996.

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2. The applicant belongs to Indian Administrative Service, 1979 batch of regular recruitment, allotted to Maharashtra cadre. He is governed by All India Services Regulations. The applicant, while he was posted as Managing Director of Mahatma Phule Backward Class Development Corporation was communicated adverse remarks for the period from 24.7.95 to 25.01.96 vide letter dated 06.10.1997. The applicant immediately represented against the adverse remarks and the applicant's representation was rejected by the respondents on 16th October, 1991. Being aggrieved the applicant has filed this OA on 06th March, 2000.

3. It is the case of the applicant that the applicant has had a very smooth career all along. In 1983 he was awarded the Gold Medal for standing first in the Maharashtra Family Welfare Programme. He was awarded Silver Medal for standing first in the Maharashtra in National Prevention of Blindness Programme. While he was Deputy Commissioner of Sales Tax in 1986, he brought to the notice of Sales Tax Department that the goods imported by Air were subjected to Sales Tax. Because of this research by the applicant, the Government is receiving crores of rupees as Tax every year. The applicant claims that he is highly qualified. He has a master's degree in law and also Banking Development of India. According to him, this is the first time, that he received adverse remarks. According to the applicant, the respondent

No.4, who wrote ACR for the period under consideration bears a grudge against the applicant. It is because of his animosity towards the applicant that he gave such adverse remarks. These are malafide and biased remarks. The respondent No.4 was prejudiced against the applicant. The applicant submits further that after this period of 24.7.95 to 25.01.96 he has received very good remarks. In spite of the adverse remarks the applicant has been promoted to the super time scale of the IAS in the year 1996, with retrospective effect though initially he had been denied promotion.

4. The applicant contends that the respondents have not considered his representation carefully. They should have gone deep into the matter in view of the law laid down by the High Court in the case of Kantilal G.Shah Vs. State of Gujarat reported in 1984 (3) SLR 322. The representation has been disposed of in a very mechanical way without taking into consideration the contentions of the applicant and also the applicant's past meritorious good service. The applicant has further relied on the judgment in the cases of S. Ramachandra Raju Vs. State of Orissa reported in AIR 1995 SC III. Dr.Gopeswar Dutta Vs. UOI reported in 1982 (1) SLJ 207. , F. Krishnadoss Vs. Secretary Central Board of Customs & Excise reported in 1992 (2) SLJ 1976. , Hrushikesh Mishra Vs. Chief Secretary

Government of Madhya Pradesh, Bhopal and another, 1994 (7) SLR 513. The applicant has produced copies of the judgments.

5. The applicant submits that the proper procedure as laid down in the All India Services Manual for writing of ACR has not been followed and therefore, the ACR is vitiated. The applicant has also harped on the fact that the ACR lacks objectivity, it is more subjective. The same assessing officer has given excellent remarks to his predecessor Shri Appalwar despite an inquiry was ordered against him. Whereas only for a period of six months, when there was no materials on record, the respondent No.4 has written adverse remarks against the applicant. The applicant had previously also worked as Managing Director of the same Corporation for one year. He had received excellent remarks for that period. The applicant submits that there was delay in communicating the ACR. This itself is sufficient ground to expunge the adverse remarks. The applicant also submits that it is a matter of record that the Under Secretary, Joint Secretary, Principal Secretary, GAD after going through the representation of the applicant had unanimously recommended that the adverse remarks against the applicant be expunged. However, the then Chief Secretary did not agree with the remarks and ordered to retain all the remarks without any reason or grounds. The applicant has also complained against the then Chief

Secretary Shri P. Subramaniam. He also attributed political motives for spoiling his ACR. According to him, he had opposed the corrupt practice of Shiv Sena Minister Shri Babanrao Gholap, who is facing corruption charges in the court of law and the applicant is suffering only because he refused to ^{back} ~~receive~~ corruption. The applicant contends that prior to the writing of adverse remarks the respondent No.4 spared no opportunity in humiliating the applicant in public and in the IAS circle, the reason being the applicant stood first defeating the respondent No.4. The respondent No.4 also did not like the adverse reports sent by the applicant against his predecessor Shri Appalwar, who is very close to respondent No.4.

5. In short, the applicant's contention is that the adverse remarks were motivated by the personal grudge of the respondent No.4.

6. Both the official respondents as well as Respondent No.4 have filed their reply. According to the official respondents, the applicant has not exhausted all the departmental remedies before approaching this Tribunal. As per Govt. of India instructions below All India Services (Confidential Reports) Rules, 1970, a member of All India Service is entitled to submit a memorial to the President under Rule 25 of the All India Service (Discipline and Appeal) Rules 1969 against the order passed by the

competent authority on representation made by the officer against the adverse remarks in his confidential report communicated to him. The respondents have stated that the applicant had earned the gradings outstanding/ very good for the year 1996-97 and very good/good for the year 1994-95 i.e. subsequent and previous year of the CR under consideration respectively. Though the gist of the good points is also to be communicated to the officer while communicating adverse remarks, in the present case the reporting/reviewing and accepting authorities have not recorded any good points in respect of the applicant. The official respondents have contended that the representation of the applicant was considered after taking into account the reporting authority's remarks thereon, the remarks of reviewing and accepting authority in the ACR. It is an administrative decision, there is no political motive behind the decision. There has been no delay either in communicating the adverse remarks to the applicant. The applicant submitted his assessment on 17.8.96, the reporting officer recorded his remarks on 30.9.96. the reviewing officer reviewed the report on 31.10.1996. The ACR was received from the accepting authority after recording his remarks on 28.7.1997, thereafter the adverse remarks could be communicated on 06.10.1997. Further, there were adverse remarks in the ACR of the applicant for the period 1984-85. However, they were expunged. In regard to the reply to the representation being cryptic the respondents submit that there are no

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instructions regarding conveying the reasons for rejection of representation in All India Service (CR) Rules, 1970.

7. The applicant has alleged that the then Chief Secretary Shri P. Subramaniam was responsible in denying him the promotion to the super time scale. The respondents, however, submit that the applicant could not be considered for promotion to the super time scale as his CRs were not available. He had given his representation against the supersession and the then new Chief Secretary had considered his representation and the applicant was promoted with retrospective effect to the super time scale and Shri P. Subramaniam was also a member of the DPC which recommended the promotion of the applicant on the second occasion when the ACR had become available. According to the respondents, there is no merit in this OA and the same deserves to be dismissed.

8. Respondent No.4 has given his detailed reply refuting the various allegation made by the applicant against him about prejudice and bias and malafides. The respondent No.4 states that the ACR was written objectively. When the applicant was transferred on 25.01.96 he has written a DO letter to the Respondent No.4 on 04th September, 96 mentioning the excellent support given by the respondent No.4 to him and also requesting the respondent No.4 to give him outstanding or at least very good remarks in the CR, so as to enable

on 21.9.2000. I therefore, do not consider it necessary to direct the applicant to submit a memorial to the President at this belated stage.

12. I have perused the judgments cited by the applicant in support of his contentions. They are discussed below. In Kantilal G. Shah Vs. State of Gujarat, it has been held that compulsory retirement based on adverse remarks before disposing of the pending representations against the same is illegal. This is not applicable in the present case as the applicant has neither been retired compulsorily nor is it that his representation was not considered. The applicant has relied on the judgment in Hrushikesh Mishra Vs. Chief Secretary Govt. of Madhya Pradesh & another (supra) holding that delay in communication of adverse remarks calls for expunging of remarks. In the case of the applicant, the remarks were communicated as soon as they were received from the accepting authority. Even the applicant himself had sent his self assessment belatedly in August, 1996. I do not consider it necessary to call for expunging of the adverse remarks on this ground. A solitary adverse report for one year cannot be made the basis for passing an order of compulsory retirement while earlier and subsequent confidential report showed meritorious service record and therefor, the order was liable to be set aside, so pronounced by the Supreme Court in the matter of S. Ramachandra Raju (supra). In the present case, the applicant has not suffered any

him to get him his promotion to the super time scale of the IAS. The applicant is now doing an about-turn alleging prejudice and malafides on the part of Respondent NO.4. There is no consistency in his stand.

9. The applicant persisted that the entire exercise of writing ACR was motivated, malafide and it was mere subjective assessment of his work rather than an objective assessment.

10. I have heard the learned counsel for the applicant as well as the respondents and have given careful consideration to the pleadings. I have also perused the relevant record pertaining to the consideration of the representation of the applicant against adverse remarks and his A.C.R. dossier.

11. The official respondents have raised a point that the applicant has rushed to the Tribunal without exhausting the available remedies, he is entitled to submit a memorial to the President under Rule 25 of the All India Services (Discipline and Appeal) Rules, 1969 against the order passed on his representation. It is correct that the applicant has not availed of this remedy. However, I find that the applicant ^{on} was filed more than one and a half year ago. Replies and rejoinder and sur-rejoinder have been exchanged during this period. The stand of the official respondents has become known. Moreover the OA has already been admitted

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adverse consequences ^{such as} ~~as~~ compulsory retirement. This does not cover his case. The Calcutta High Court quashed the order rejecting an appeal against adverse entries in the ACR, holding it unsustainable on the ground that no reasons for rejection were given in the case of Dr. Gopeswar Dutta Vs. UOI (supra). So also in S. Krishnadoss Vs. Secretary, Central Board of Customs and Central Excise the Madras Bench of the Tribunal quashed an order rejecting representation on adverse remarks without assigning any reasons. In the case of the present applicant also, his representation has been disposed of by a non speaking order without giving any reasons. But in the case of Union of India Vs. E.G. Nambudiri (1991) SCC (L&S) 813 the Supreme Court held that mere absence of any reason in the appellate order would not by itself vitiate the proceedings and that it would be open to the Government to produce the files before the court to satisfy the court that the representation was considered in a fair and just manner. In the instant case, the respondents have produced the relevant files and I am satisfied that the respondents have considered the representation of the applicant in depth with proper reasoning. The impugned order cannot therefore be set aside on the ground of it ^{being} ~~keeping~~ a non speaking order. Though the applicant has relied on some more judgements I do not consider it necessary to go into them as the applicant has made his points strongly enough. The respondents have also relied on the judgement in Amrik Singh Vs. Union of India 2001 (3) SC

SLR 585 holding that the scope of jurisdiction in writ proceedings being very limited the High Court cannot go into the correctness of the adverse remarks nor the assessment made by the Selection Board. No interference is called for. It is not for this Tribunal to go deep into and question the assessment. However, on perusal of the record, I find that this is a fit case to interfere in the matter.

13. Before I examine the record I observe that in the present case inspite of the adverse remarks the applicant has been promoted to the Super time scale of the IAS with effect from the due date. Thus the adverse remarks have lost their significance as they are deemed to have been washed out. They cannot affect his future promotions. All the same I feel the retaining of such adverse remarks would be a blot on the officer. I find that the representation of the applicant against adverse remarks was duly considered and the concerned officials of the General Administration Department of respondent No.2 have examined it point by point. They came to the conclusion that the adverse remarks were not substantiated by respondent No.4 and hence required to be expunged. The Department also tried to get the remarks of the then accepting authority i.e. the Minister, Shri Gholup but Shri Gholup did not respond. The Department then prepared a tabular statement showing how the Respondent No.4 had not given any remarks against the items in the representation and could not

justify. The Department recommended expunging of the remarks but then the then Chief Secretary recorded against each item that he did not agree with the Department or he agreed with Mr. Gaikwad. He did not give any reasons for not expunging the remarks. This clinches the issue. The Chief Secretary's decision was approved by the then Chief Minister.

14. It is evident from the tabular statement prepared, that while the applicant has supported his contentions against the adverse remarks with facts and figures, the respondent No.4 could not at all substantiate or justify the remarks given by him. He has made sweeping statements without any basis. The then Chief Secretary ~~had~~ also did not bother to give any reasons as to why he did not agree with the recommendation for expunging of the remarks when the facts were staring in the face. It was as clear as sunlight that the Respondent No.4 had no remarks to offer in support of the adverse remarks recorded by him. The only inference that can be drawn is that the assessing officer i.e. Respondent No.4 must be prejudiced against the applicant. He had not uttered single good word for the applicant who had otherwise had a good record all along. It is seen from the ACR of the applicant that the then reviewing officer had also thought that the applicant's performance was not as bad as had been projected in the report.

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14. In my considered view therefore in all fairness to the applicant the adverse entries need to be expunged.

15. In the facts and circumstances of the case and the reasons recorded above I quash and set aside the impugned letter of 16.10.1999 and direct the respondents to expunge the adverse remarks in the Confidential Report of the applicant for the period from 24.7.1995 to 25.01.1996 within a period of one month from the date of receipt of a copy of this order.

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(SMT. SHANTA SHAstry)
MEMBER (A)

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