

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 680/2000

Date of Decision: 25.10.2001

Shri S.G. Chaudhari.

Applicant

Shri S.P. ~~Saxena~~

Advocate for Applicant

Versus

Union of India & 3 others

... Respondents

Shri R.K. Shetty.

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 ✓


(SMT. SHANTA SHASTRY)
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 680/2000

THIS THE 25TH DAY OF OCTOBER, 2001

CORAM: SMT. SHANTA SHASTRY . MEMBER (A)

S.G. Chaudhari,
Asstt. Professor (Archi),
Diploma Wing,
College of Military Engineering,
CME PO, Pune-31. ... Applicant

By Advocate Shri S.P. ~~Saxena~~

Versus

1. Union of India,
through the Secretary,
Ministry of Defence,
DHQ PO, New Delhi.
2. The Commandant,
College of Military Engineering,
CME PO, Poona-31.
3. Colonel Vikram Sing,
C/o Commandant,
College of Military Engineering,
CME, Pune-411 031.
4. Major General S.S. Karki,
Dy. Commddant,
College of Military Engg,
Poona-411 031. ... Respondents

By Advocate Shri R.K. Shetty.

O R D E R

The applicant in this case is a Group "A" officer working as Assistant Professor (Architect) in the College of Military Engineering of Pune with effect from 11.6.1992. He belongs to the ST category. The applicant is aggrieved by the adverse remarks for the period from January, 1999 to 10.10.1999 communicated to

him vide order dated 29th October, 1999 and the rejection of his representation against the adverse remarks vide letter dated 24th January, 2000.

2. The contention of the learned counsel for the applicant is that the applicant had been serving for seven years and during that period he had not received any adverse remarks. It is the first time that adverse remarks were communicated to him that too for the period from 01.10.1999 to 10.10.1999. His representation dated 25.11.1999 against his adverse remarks was rejected by the respondents vide letter dated 29.10.1999. The applicant submits that prior to the communication of the adverse remarks, he had received a letter from Col. Vikram Singh of Diploma Wing of CME seeking explanation from the applicant in respect of an incident which occurred on 29.12.1998. The applicant had been asked to prepare an architectural design work and building model for proposed interior of Officers Mess and furnish layout plan etc. The applicant was unable to undertake the work within the stipulated time period. According to the applicant, this type of work was not in any remote manner connected with the work of the applicant as Assistant Professor and there are others to undertake such work. He, therefore, politely explained the matter in his written explanation dated 01.02.1999. Thereafter, the applicant was issued performance counselling note on 08.02.1999 followed by the adverse remarks communicated on 29.10.1999. The learned counsel

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for the applicant submits that the adverse entries have been recorded in a malafide manner by the initiating officer based on one isolated incident. It has been done arbitrarily in a punitive manner just because the applicant showed his inability to do the work within a given time. Even the reviewing officer and the accepting officer did not apply their mind. Before entering such adverse remarks, the initiating officer ought to have brought to the notice of the applicant any drawback or short-comings noticed so that improvement can be shown. The applicant has further challenged the adverse remarks on the ground that they are not explicit but are vague in nature. No specific incidents have been quoted to support these remarks. The applicant has also taken objection to the wording "Officer not recommended for promotion to the next higher grade". This is beyond the scope of writing of the ACR. This is pre-judging the applicant for future promotion. No reasons have been disclosed for recording such remarks. The remarks are also personal in nature. The applicant, therefore, prays to allow his application and to direct the respondents to expunge the adverse remarks in the ACR for the period from 01.01.1999 to 10.10.1999 from the ACR, service book and files of the applicant.

3. The respondents have submitted their reply. According to the respondents, a perusal of the adverse remarks clearly goes to show that the officer was found to remain aloof and prepared to only perform

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instructional duties. Special efforts were required to carry him in the team, so also his diction was very difficult to understand. The applicant's representation against these remarks was duly considered and rejected. Merely because the applicant was not given any adverse remarks during the past seven years earlier, it does not mean that he could not be given adverse remarks in a particular year when his performance was not upto the mark. Although the applicant has alleged malafide against Col. Vikram Singh the reporting officer and Major General S.S.Karki (Respondents No.3 and 4), Dy. Commandant, the applicant has not been able to show personal interest of these two officers in showing any malafides against the applicant. Neither the reporting officer nor the reviewing the officer had sought any personal work out of the applicant. They had honestly and sincerely assessed the performance of the applicant, so that the applicant can take these remarks in right spirit and improve thereafter. As regards giving advance intimation or warning before recording the adverse entry, the respondents state that there is no provision either in rule or in law to give any advance warning or caution to the applicant before making adverse remarks in the ACR. All the same, the applicant has been given sufficient indication about his performance by way of the performance counselling note. Therefore, it cannot be said that these adverse remarks were sprung all of a sudden on the applicant. According to the respondents, the applicant has been informed of

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his short-comings several times orally and has been advised to show improvement. Even if the oral communication were to be ignored, still the performance counselling note made it clear to the applicant that there were short-comings in the applicant's performance. The incident quoted by the applicant is only one of the several occasion when he had failed to deliver what was legitimately expected of him and he refused to get his subordinate staff to undertake the assigned task as required by the ACR initiating officer. It is not correct to say that the applicant was not even remotely connected with the work he was asked to perform. But the applicant was defiant and displayed the typical negative attitude and refused to take on the job. Further, after the performance counselling note was issued, the applicant did the work but his over all performance did not show any improvement. The learned counsel for the respondents also submits that it cannot be said that the initiating officer had any malafide or grudge against the applicant. Respondent No.3 has been the reporting officer of the applicant since June, 1997 till 10th October, 1999. Had he any malafide, he could have given adverse remarks even for the year 1998 or 1997. Therefore, it has to be taken that there were no malafide, but the performance of the applicant was reported upon in a bonafide manner. It is also not correct to say that the reviewing and accepting officer blindly accepted the remarks given by the initiating officer. As Dy. Commandant of the Diploma Wing, Col.

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Vikram Singh-R3 regularly gave feed-back on the performance of his instructors and discussed other academic issues with Dean and Deputy Commandant, CME who also happened to be the Reviewing Officer. The over all performance and attitude of the applicant had been brought to the notice of the accepting officer. The respondents, therefore, have justified their action in rejecting the representation of the applicant to expunge the adverse remarks.

4. I have heard the learned counsel for the applicant as well as the respondents. It is not for this Tribunal to re-assess the performance of the applicant. It is seen that the adverse remarks were entered in the ACR of the applicant based on his actual performance. I also do not find that there is any malafide in this matter. The ACR initiating officer was the same for the period from 1997 to 1999, no adverse entries were made in the earlier ACRs. This is enough to show that the initiating officer has reported in an objective manner. Further, it is clear that it was not based on one isolated incident. But based on the repeated oral warning given to the applicant from time to time to allow him to improve and also a performance counselling note was given to the applicant, inspite of all that, the applicant did not improve. It is not necessary to given any advance notice about the adverse remarks. The adverse remarks are recorded based on the performance of the particular year. As the performance

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during the period from 01.01.1999 to 10.10.1999 was not found to be satisfactory the remarks were recorded in the ACR. The learned counsel for the applicant has cited the case of Swatantar Singh Vs. State of Haryana and Others reported in 1997 SCC (L&S) 909. In my considered view, this particular judgment is not applicable in the present case. Further, I do not see any good reason to quash or set aside the impugned order rejecting the applicant's representation against the ACR as the initiating officer has recorded the performance as seen by him and the reviewing and accepting authorities were also fully aware of the performance of the applicant. In the result, the OA is dismissed. No costs.



(SMT. SHANTA SHASTRY)
MEMBER (AO)

Gajan