

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 2 JUN 1988

APPLICATION NO 816 /87(F)

W.P. NO. _____

Applicant

Dr K. Rangappa
To

Respondent

V/s The Chief Secretary, Govt. of Karnataka,
Bangalore & 2 Ors

1. Dr K. Rangappa IAS
Revenue Member
Karnataka Appellate Tribunal
Multistoreyed Building
Dr Ambedkar Veedhi
Bangalore - 560 001
2. Shri H. Srinivasa Rao
Advocate
64, Kumara Park West
Bangalore - 560 020
3. The Chief Secretary
Govt. of Karnataka
Vidhana Soudha
Bangalore - 560 001

4. The Revenue Commissioner
Govt. of Karnataka
Vidhana Soudha
Bangalore - 560 001
5. The Secretary
Ministry of Home Affairs
North Block
New Delhi - 110 001
6. Shri M.S. Padmarajaiah
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001
7. Shri S.M. Babu
State Govt. Advocate
C/o Advocate General, KAT Unit
BDA Commercial Complex
Indiranagar
Bangalore - 560 038

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAX/INTERIM ORDER~~
passed by this Tribunal in the above said application on 26-5-88.

Encl : As above

DEPUTY REGISTRAR
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 26th DAY OF MAY, 1988

Present : Hon'ble Sri P.Srinivasan

Member (A)

APPLICATION No. 815/87

Dr.K.Rangappa,
I.A.S., Revenue Member,
Karnataka Appellate Tribunal,
Bangalore. ...

Applicant

(Sri H.Srinivas Rao ... Advocate)

vs.

1. The State of Karnataka
by its Chief Secretary to
Government, Vidhana Soudha,
Bangalore.

2. The Revenue Commissioner,
Government of Karnataka,
Vidhana Soudha,
Bangalore.

3. The Government of India
by its Secretary, in the
Ministry of Home Affairs,
New Delhi. ...

Respondents

(Sri S.M.Babu ... Advocate for P1 and 2)
Sri M.S.Padmaraajiah ... Advocate for P3)

This application has come up before the Tribunal
today. Hon'ble Sri P.Srinivasan, Member (A) made the following :

O R D E R

The applicant in this case is an officer of the
Indian Administrative Service, Karnataka Cadre currently
working as Revenue Member, Karnataka Appellate Tribunal,
Bangalore. For the period 1.10.1985 to 31.3.1986 certain
adverse remarks made in his confidential report were communi-
cated to him by the Chief Secretary, Government of Karnataka
(Respondent 1) by his letter dated 28.1.1987 (Annexure A2).
The applicant represented against these adverse remarks to
the Government of Karnataka. This representation was rejected
by order dated 13.9.1987 communicated to the applicant by the



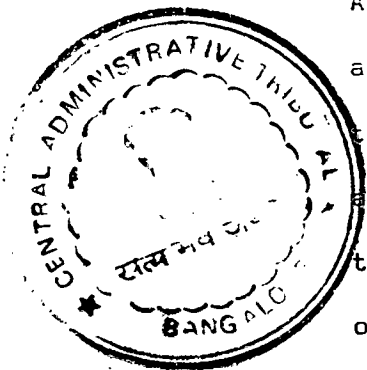
Under Secretary to the Department of Personnel & Administrative Reforms of the Government of Karnataka (Annexure A5).

The applicant prays that the adverse remarks communicated in Annexure A2 and the rejection of the representation against those remarks communicated in Annexure A5 be quashed.

2. To complete the statement of facts relevant to this application, it may be mentioned that in a letter dated 5.6.1987 addressed to the applicant, (Annexure A1), R1 communicated to the applicant certain complimentary and favourable remarks made in the same confidential report.

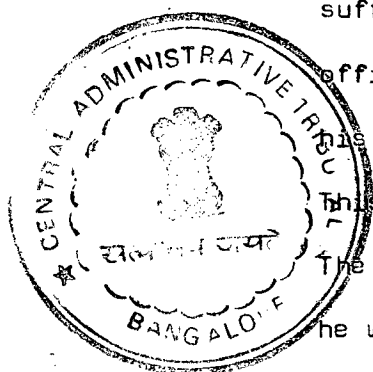
3. Sri H.B.Datar, learned counsel for the applicant made the following submissions :

the favourable remarks in the applicant's confidential report relating to the period 1.10.1985 to 31.3.1986 appearing at Annexure A1 were made by the Chairman, Karnataka Appellate Tribunal who was the reporting officer in respect of the applicant. There were only two persons who had an opportunity of seeing the work of the applicant and judging it. One of them was the Chairman of the Tribunal and the other would be the authority to whom appeals could be filed against the orders passed by the applicant as the Member of the Revenue Appellate Tribunal. The Chairman had recorded that the applicant had vast experience and was an ideal officer in the field of personnel administration and rural development and that he was an officer with pleasing manners and devotion to work. He had also remarked that the applicant was a man of integrity. It was the first reviewing officer viz. the Revenue Secretary who had recorded the adverse marks... He had no opportunity to see the work of the applicant which was purely judicial, ^{H deciding Case} and in which one of the parties was always the Government of Karnataka. If the Revenue Secretary



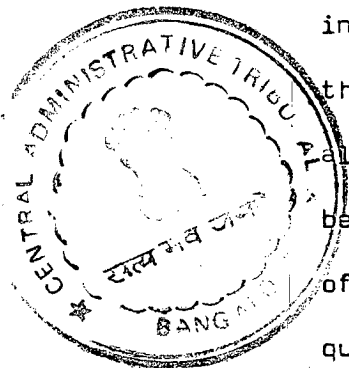
P. S. - 2

were to make any remark on the quality of the applicant's abilities that would be pernicious because he could be swayed by orders adverse to the Government passed by the Tribunal. On the other hand it would also affect the independence of the applicant in discharging his judicial functions. In view of this and also the fact that the Revenue Secretary could not be expected to be familiar with the judicial work of the applicant which constituted his entire work, there was no basis on which he could question the applicant's ability and record. So far as the doubt cast on the applicant's integrity was concerned, this was a serious matter and unless there were specific instances of proven dishonest behaviour, such remark should not have been made. The procedure set down in regard to integrity is that if the reporting officer or the reviewing officer has reasons to doubt the integrity of the officer reported upon, he should leave the entry regarding integrity blank and send a secret note to his immediate superior explaining the basis of his suspicion so that the latter could make proper investigation thereon. If a departmental inquiry is instituted and a finding of guilt is returned and an order of punishment passed, then that fact should be recorded in the character roll. Even otherwise, if it is felt that there is not sufficient material for initiating a departmental inquiry the officer reported upon should be confronted with the material and his explanation obtained before recording any adverse remark. This procedure had not been followed by the Reviewing Officer. The least that he should have been done, particularly because he was recording a view different from that of the Reporting Officer, was to confront the applicant with the facts that had come to notice touching upon his integrity and to give him an opportunity to state his case before recording any remarks. In the absence of this, the remarks were illegal and should be expunged.



4. Sri S.M.Babu, appearing for respondents 1 & 2 strongly resisted the contentions of Sri Datar. Sri M.S. Padmarajaiah, appearing for R3 supported Sri Babu. Sri Babu explained that according to the rules on the subject, the Chairman of the Karnataka Appellate Tribunal was the reporting officer for the applicant and the Revenue Secretary to the Government of Karnataka was the first Reviewing Officer and the Chief Secretary to the Government of Karnataka the additional Reviewing Officer. As the first Reviewing Officer, the Revenue Secretary was entitled to record the remarks on the applicant's ability and integrity. If he recorded an adverse remark, it was not necessary that he should furnish any details to the applicant before making them or to cite specific instances on which the remarks were based in the confidential report. Refuting the contention in the application that no disciplinary proceedings had been initiated against the applicant, Sri Babu pointed out that four charge sheets had been issued to the applicant between 25.4.1986 and 9.2.1987 for various irregularities with which he was charged and these proceedings were pending as on date. The Reviewing Officer may have had the events leading upto the issue of these charge sheets in mind when recording his observations about the integrity of the applicant. As regards the applicant's ability the Reviewing Officer was recording his impression on an overall assessment of the applicant's work and conduct which cannot be challenged merely because he differed from the assessment of the reporting officer and no specific instances were required to be spelt out by the reviewing officer to support the remark.

5. I have considered the rival contentions very carefully. As mentioned earlier, Sri Babu submitted it was not obligatory on the part of the Reviewing Officer to give de-



P. S. Babu

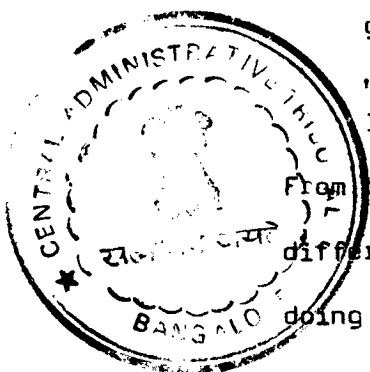
-5-

tailed explanation as to how he came to a different opinion on the ability of the applicant, and his integrity from that of the reporting officer. For this he relied on the decision of the Supreme Court in R.L.BUTAIL v. UNION OF INDIA AND ORS : 1970 2 SCC 876. In that case the adverse remarks were of a general nature concerning the amenability of the officer in question to discipline and his attitude to work. He was described as a 'problem Director' for the person under whom he was made to work. It was also remarked that if he wished to apply himself he was an intelligent and capable officer thereby suggesting that he had no desire to apply himself. It was with reference to these remarks that the Supreme Court observed that while making a general assessment it was not necessary to cite specific instances. Moreover, the Court was dealing in that case with adverse remarks recorded by the reporting officer. In the present case, the reporting officer had expressed a favourable opinion about the ability of the applicant but the reviewing officer had differed from that opinion. It is significant to note that the proforma of the confidential report in the present case in part V relating to the remarks of the reviewing authority (column 3) reads as follows :

"Do you agree with the assessment of the officer given by the reporting authority?

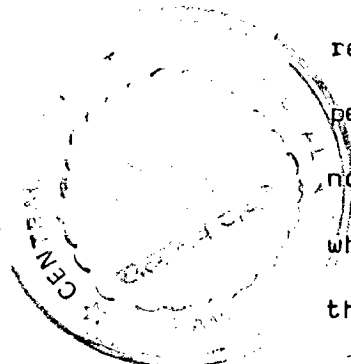
"(In case of disagreement, please specify the reasons; Is there anything you wish to modify or add)."

From this it is clear that when the Reviewing Officer differs from the reporting officer he has to give reasons for doing so. This becomes particularly important in the present case where applicant was engaged entirely in judicial work and an assessment of his ability would involve assessment of the quality of the orders passed by him, the Government being a party in all cases before the Tribunal. Therefore, I am satisfied on the facts of this case that the recording of



adverse remarks by the Reviewing Officer in regard to the ability of the applicant without assigning any reasons was totally unjustified. No worth while reason is adduced in the reply of the respondents either supporting the adverse comments made by the reviewing officer.

6. Turning to the remarks about the applicant's integrity, this is indeed a serious matter and unless there were specific instances before the reviewing officer clearly establishing lack of integrity he could not make the remark which he did. That is why detailed instructions have been issued by the government as to how the matter should be handled in confidential reports. If as contended by the respondents there were disciplinary proceedings pending against the applicant, no remarks could be made in the confidential report till the proceedings ^{are} concluded and a decision taken thereon one way or the other. If in the meanwhile, the case of such an official comes up for promotion before a DPC, his case would be considered without reference to the subject matter of the proceedings but the decision of the DPC ^{would} ~~will~~ be kept in a sealed cover to be opened only after the disciplinary proceedings are completed. It may be mentioned in this connection that all the four charge sheets referred to by Sri Babu were issued after the end of the period to which the adverse remarks relate. Though this does not by itself prevent a reference being made to the events which formed the basis of the charge sheets, according to the procedure prescribed no comments on integrity could be made in the confidential report till a final decision was rendered in respect of the charge sheets and it is common ground that the departmental inquiry in respect of all the charge sheets is still pending. In view of this, the adverse remark regarding integrity of the applicant made by the reviewing officer are also totally unjustified.



7. In view of the above I quash the adverse remarks communicated in Annexure A2 and ^{the} decision of R1 rejecting the applicant's representation thereon conveyed in Annexure A5. The application is allowed. But in the circumstances of the case, parties to bear their own costs.

Sd/-

(P.SRINIVASAN)
MEMBER (A)



TRUE COPY

[Signature]
DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE