

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : **31 MAY 1988**

APPLICATION NO 119 /88(F)

W.P. NO. _____

Applicant

Dr Suresh Chandra Singhal

To

1. Dr Suresh Chandra Singhal
Controller of Mines
Indian Bureau of Mines
29, Industrial Suburb
II Stage, Tumkur Road
Bangalore - 560 022

2. Dr M.S. Nagareja
Advocate
35 (Above Hotel Swagath)
1st Main, Gandhinagar
Bangalore - 560 009

3. The Controller General
Indian Bureau of Mines
New Secretariat Building
Nagpur - 1
Maharashtra

Respondent

V/s The Controller General, Indian Bureau of Mines,
Nagpur & another

4. The Secretary
Ministry of Steel & Mines
Department of Mines
Shastry Bhavan
New Delhi - 110 001

5. Shri M.S. Padmarajaiah
Central Govt. Sng Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~57XX/INTERIM ORDER~~
passed by this Tribunal in the above said application on 26-5-88.

*Issued
Nagareja*
Encl : As above

RA Venkatesh
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. 119/88(F)

Dr.Suresh Chandra Singhal,
Controller of Mines,
Indian Bureau of Mines,
Bangalore.

...

Applicant

(Dr.M.S.Nagaraja & MR.S.K.Srinivasan .. Advocate)

vs.

1. The Controller General,
Indian Bureau of Mines,
New Secretariat Building,
Nagpur - 1.

2. The Government of India
by its Secretary,
Department of Mines,
Shastri Bhavan,
New Delhi.

...

Respondents

(Sri M.S.Padmarajaiah ... Advocate)

This application has come up before the Tribunal today.

Hon'ble Sri P.Srinivasan, Member (A) made the following :

O R D E R

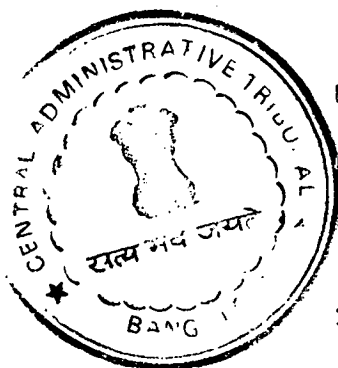
The applicant is working as Controller in the Indian Bureau of Mines, Bangalore. In this application he has challenged the adverse remarks communicated to him in his confidential report of 1985-86 as illegal and unjust.

2. Dr.M.S.Nagaraja, learned counsel for the applicant made the following submissions : The particular remarks which were communicated to the applicant read :

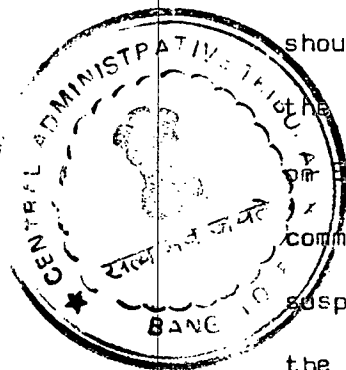
"PART-III

Item 21 - Attendance : Does not appear to be punctual. (on a few occasions when contacted on trunk call, he was not found in office."

It was written by Shri D.N.Bhargava, the Controller General of Mines, Indian Bureau of Mines, Nagpur. Dr.Nagaraja submits

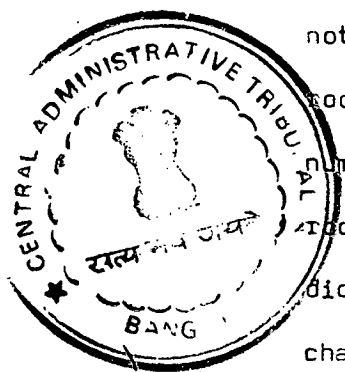


that these remarks are not based on established facts but only on hearsay. When the Controller General made telephone calls to the applicant, the calls were received on a wrong telephone while the applicant was sitting at another telephone. The applicant had himself written to the Controller General on 11.4.1985 giving his direct telephone no. and pointing out that he was receiving calls on another number. If the Controller General had telephoned and found that the applicant was not in his seat elementary courtesy required that he write a D.O. letter to the applicant about it or tell him when he met him next so that the applicant could have explained the situation. The Controller General visited the office of the applicant after the alleged telephone calls, but he did not mention to the applicant that he was not available when called on telephone. The Controller General had gone by hearsay and on incomplete information in making the above remarks. In fact on the only date to which specific reference is made in the reply of the respondents, i.e., on 3.12.1985 the applicant was on casual leave. Moreover, the remarks are not definite, since they only say that the applicant "does not appear to be punctual". Either the applicant was punctual or was not punctual and the remark should have been specific on the point. The instructions of the Government of India printed in Swamy's Compilation Manual on Establishment and Administration were to the effect that comments should be made on established facts and not on mere suspicion (page 424). The instructions further require that the reporting officer should maintain a Memorandum of Service of officials working under him and ^{it is} this Memorandum of Service which should serve as the sole basis for writing the annual reports. The reporting officer in this case did not maintain



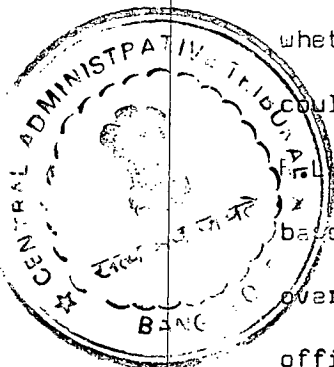
any Memorandum of Service. The applicant had made a representation against the adverse remarks but the reply rejecting the representation was a bald one merely stating that there was no sufficient ground for interference. It was not a speaking document explaining how the representation had been considered and for what reason it had been rejected. This was a matter which affected the career of the applicant when he is due for promotion to the next higher post of Chief Controller of Mines. That promotion could be jeopardised by the adverse remarks made without any basis of fact, without a definite expression of view and couched in vague terms. Dr. Nagaraj urged that in view of the peculiar circumstances of this case, the adverse remarks should be expunged.

3. Sri M.S.Padmarajaiah, learned counsel for the respondents submitted that the applicant had even in his representation dated 8.9.1987 against the adverse remarks conceded that on a few occasions when contacted on trunk call he was not readily available. The applicant was sitting in one room (Room No.219) till January 1986 in which telephone number was 361027. In January 1986 he shifted to a larger room (Room No.212) where the telephone number was 36287. He did not intimate the higher authorities immediately of the change of telephone number. Even otherwise the two rooms were close to each other and a telephone call at 361027 could easily have been attended to by him by walking across a few feet. The Controller General had also stated that he had received reports that the applicant was not punctual and the applicant's non-availability when telephone calls were made merely confirmed these reports. The Controller General had also stated that on some occasions when he actually got



through to the P.A. of the applicant, the P.A. reported that the applicant was not in his seat. These were matters of fact and on the basis of evidence available before him, the Controller General had formed the impression that the applicant was not punctual. The words "does not appear to be" punctual, should not be played up unduly, because one is not interpreting ^{H a} statute. The substance of the remark was that the applicant was not punctual. It was not for this Tribunal to launch on a detailed examination of the facts and to arrive at a different view, so long as some facts were there on the basis ^H of which a view could be taken that the applicant was not punctual.

4. I have considered the rival contentions carefully. I must observe as a matter of experience that adverse remarks are rarely made on punctuality. The usual practice in Government is to warn the officer concerned orally that he should be punctual and to leave ^{H &} at that, particularly, if he is a competent officer in all other respects and performs his duties satisfactorily. Having said so much, where such a remark is made, the role of this Tribunal is only to see whether there was some evidence on the basis of which it could be made. As pointed out by the Supreme Court in ^H ~~PL~~ BUTAIL vs. UNION OF INDIA, a confidential report is based on a total assessment of an officer's performance over the year and it is not necessary that the reporting officer should give the details on the basis of which remarks are made in the report. That would be stretching the principles of natural justice too far. There is an averment in the reply of the respondents that the Controller General had received ^H ~~representations~~ ^{report} of the applicant's unpunctuality. I do not think, as suggested by counsel for the applicant, that the Controller General should be called upon to give

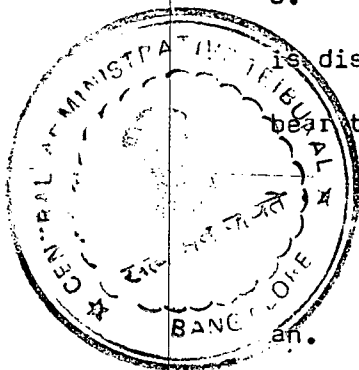


details of such reports because such reports could have reached him orally. There is an allegation in the application that the Controller General who had made the remarks nurtured jealousy towards the applicant because of the latter's high qualifications, recognition and popularity in the academic and general circles. A vague allegation like this which has been denied in the reply of the respondents cannot be taken into account for the present purpose. I have in this connection also perused the records maintained by the office of the respondents in which the representation of the applicant against the adverse remarks was considered and rejected. I find that the explanation of the Controller General has been taken note of to the effect that on some occasions he was able to contact the applicant's P.A. but the latter had intimated that the applicant was not present. I do agree that it would have been better grace on the part of the Controller General to have informed the applicant of his experience in this regard in a personal letter or through a D.O. letter or to have mentioned this to him orally when he met him with a warning that he should be punctual. But there is no averment in the application that he had not done so. Dr. Nagaraja and the applicant himself who was present in the Court submitted that the applicant had never been told by the Controller General about the telephone calls. Even if this statement were right, it would only show lack of grace, but cannot invalidate the remark requiring this Tribunal to expunge it. As I have explained earlier this is not a case where the remarks were totally unsupported by any factual evidence. I would agree with the counsel for the respondents that one should not read the remarks like a provision of a statute and enter into the region of semantics,



dissecting the meaning of every word. The sum total of the remark indeed is that the applicant was not punctual. The remark is specific and has been explained with facts to the extent possible in the reply filed to the application as also in the note in the office file dealing with the applicant's representation. I am not impressed with the argument that the reply to the representation is not a speaking order. It is not necessary that a reply rejecting a representation should give a detailed explanation as to how the representation had been considered. As I have already mentioned the relative records have been seen by me and I find that the representation of the applicant has been considered carefully before being rejected. It is unfortunate that this remark could stand in the way of the applicants promotion but it is for respondents to consider whether it should indeed be so, if his report is in all other respects good.

5. In view of what I have stated above, the application is dismissed but in the circumstances of the case parties to bear their own costs.



Sd/-

(P. SRINIVASAN)
MEMBER (A)

TRUE COPY

DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

Commercial Complex (BDA)

Indiranagar

Bangalore - 560 038

Dated, 11 AUG 1988

REVIEW APPLICATION NO.

66

/88

IN APPLICATION NO. 119/88(F)

W.P. NO.

Applicant(s)

Dr Suresh Chandra Singhal

To

Respondent(s)

V/s

The Controller General, Indian Bureau of Mines,
Nagpur & another

1. Dr Suresh Chandra Singhal
Controller of Mines
Indian Bureau of Mines
29, Industrial Suburb II Stage
Tumkur Road
Bangalore - 560 022
2. Dr M.S. Nagaraja
Advocate
35 (Above Hotel Swagath)
1st Main, Gandhinagar
Bangalore - 560 009

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY~~/~~INTERIM ORDER~~
 passed by this Tribunal in the above said ^{Review} application(s) on 5-8-88.

R. V. Venkatesh
 DEPUTY REGISTRAR
 (JUDICIAL)

Encl : As above

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

DATED THIS THE FIFTH DAY OF AUGUST, 1988

Present: Hon'ble Shri P. Srinivasan

.... Member (A)

REVIEW APPLICATION NO.66/88

Dr Sureshchandra Singhal,
Controller of Mines
Indian Bureau of Mines,
Tumkur Road, Bangalore-22.

Applicant

(Dr.M.S. Nagaraja..... Advocate)

Vs.

1. The Controller General
Indian Bureau of Mines,
NAGPUR-1, Maharashtra.
2. The Secretary to Govt. of India
Ministry of Steel & Mines
Department of Mines,
Sashtri Bhavan,
NEW DELHI.

Respondents

This application having come up for hearing
before this Tribunal to-day, Hon'ble Shri P. Srinivasan,
Member (A), made the following :-

O R D E R

This Review Application has come before me
for admission today. The applicant wants me to review
my order dated 26.5.88 passed in A No.119/88 filed
by him. In that application the applicant had challenged
certain adverse remarks recorded in his Confidential

P. Srinivasan

....2/-



Roll. A number of grounds were urged in that application one of which was that the order of the higher authority disposing of his representation against the remarks made by the Reporting Officer was not a speaking order. After considering the matter in depth I dictated the order in open court on 26.5.1988 in the presence of both the parties dismissing the application. The present application seeks a review of that order.

2. Dr.M.S. Nagaraja appearing for the applicant submitted that there was a mistake in the original order which was apparent from the record and which justifies a review of that order. According to him I had committed a mistake in holding that the appellate authority to whom the representation was made against the adverse remarks need not write a speaking order. This was contrary to the view taken by a bench of this Tribunal in A No.547/87 (V.L.LAMADADE'S CASE). Dr. Nagaraja submitted that I had proceeded on the wrong impression that the AA was not required to write a speaking order and that I should now review the same in the light of the correct legal position enunciated in the earlier orders of this Tribunal.

3. After careful consideration I am of the view that the ground on which the applicant seeks review is really something which could be raised only in an appeal and not in review. A decision rendered in a case cannot be divorced from the facts of that case. I took the view



[Handwritten signature]

that in the very nature of the adverse remarks challenged by the applicant, the order of the AA was an adequate one and there was material in the records of the appeal justifying his decision. If the applicant is aggrieved with the conclusion arrived at by me, he has to pursue his remedy appeal. I cannot sit in judgement over my own order in the garb of reviewing it.

4. In view of the above the Review Application is rejected at the stage of admission itself.



Sd/-
(P. SRINIVASAN)
MEMBER (A)

TRUE COPY

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