

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 871/90

Transfer Application No:
~~XXXXXXXXXXXXXXXXXXXX~~

DATE OF DECISION 28 Jan. 93

Shri P.V.Joshi Petitioner

Smt. S.P.Joshi Advocate for the Petitioners

Versus

State of Maharashtra & Ors. Respondent

Shri M.I.Sethna Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri M.Y.Priolkar, Member (A)

The Hon'ble Shri V.D.Deshmukh, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

no.

V.D. Deshmukh

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

QA.NO. 871/90

Shri P.V.Joshi

... Applicant

V/S.

State of Maharashtra & Ors.

... Respondents

CORAM: Hon'ble Member (A) Shri M.Y.Priolkar

Hon'ble Member (J) Shri V.D.Deshmukh

Appearance

Mrs. S.P.Joshi

Advocate

for the Applicant

Mr.M.I.Sethna

Advocate

for the Respondents

JUDGEMENT

Dated: 28 Jan. 93 *in*

(PER: V.D.Deshmukh, Member (A))

The applicant was selected and appointed to the Indian Police Service (I.P.S.) in the year 1976 and was then assigned to the Maharashtra State Cadre. The applicant had put in a total of 14 years of service with the State and Central Governments before he filed the present application. During the course of his service, the applicant was appointed as the Principal of Regional Police Training School at Jalna from 26.10.1984 to 10.1.1987. During his tenure the applicant received certain adverse remarks for the year 1985-86/^{which}were communicated to him. The adverse remarks can be divided into two parts which we denote for the sake of convenience as Part (a) & (b).

Part (a) "He has a good personality, originality and comprehension, knowledge of work and power of expression, particularly on paper. He has an inquisitive mind and is very knowledgeable. Willing to accept responsibility and take quick decisions. An intelligent officer."

Part (b) "However, had a tendency to stray during discussions and can certainly improve his relations with his colleagues by being more friendly and co-operative. Has some angularities of performance. An average officer."

2. The applicant made a representation dated 25.11.1986 to the Respondent No. 3, Secretary, Home Department. This representation was, however, decided after about a year and the applicant on 7.1.1988 received a letter dated 22.12.1987 informing that the First Respondent had considered not to accept the request to expunge/^{the}adverse remarks. The adverse remarks were for the year 1985-86. However, this letter mentioned the year as 1983-84. After the applicant brought this difference to the notice of the respondents, by the letter dated 29.12.1987 the respondents clarified that the adverse remarks related to the year 1985-86 and the year 1983-84 mentioned in the letter dated 22.12.1987 be taken as 1985-86.

3. The applicant, thereafter, submitted a memorial to the President. However, that memorial is stated to be still pending.

4. After the application was filed, it was objected on the ground of limitation, however, under the order dated 22.3.1991 passed by this Tribunal, the objection was rejected. Under the same order this Tribunal also directed that if any promotions were made during the interim period ignoring the claim of the applicant, such promotions shall be subject to the final order in the application.

5. The applicant claims that the last part of the remarks which is adverse to him is liable to be quashed on the ground that it is contrary to the first part and also on account that the adverse part came to be put as a result of malafide intentions. He also challenges the validity of the last part of the remarks on the ground that no reasons were given or no opportunity of hearing was given to him when his representation for quashing the adverse remarks was rejected. The respondents have filed their reply and they denied all these contentions. They denied that the adverse remarks were put by any malafide intention. According to them, it was not necessary to give any reasons while rejecting the representation of the applicant as the

A.I.S.(Confidential Rolls) Rules, 1917 do not require so. The respondents contend that the above said rules also did not require ^{that} ~~for~~ any personal hearing should be given before deciding the representation against the adverse remarks.

6. We heard the learned counsels for both the sides and also perused the confidential records for the relevant years of the applicant. The impugned remarks ~~which~~ were for the year 1985-86 no doubt on the face ~~show~~ that the first part and the last part are inconsistent with each other. In the first part the applicant has been praised as having good personality, originality, comprehension knowledge of work and power of expression. The first part also records that the applicant was willing to accept responsibilities and was able to take quick decisions. This part marks the applicant as an intelligent officer. The second part, however, is critical of the applicant. It states that the applicant has a tendency ~~to~~ stray during the discussions and that the applicant could improve his relations by being more friendly and more cooperative and he has some angularities to his performance. In the result, although the first part found the applicant to be an intelligent officer, According to the remarks in the last part the applicant was an average officer. The applicant has challenged and attacked the latter ~~part~~ vehemently. The respondents on the other hand contended that although the immediate superior officer of the applicant had put the complementary first part, the higher authorities, namely, the reviewing and the accepting authority had exercised the power to put their own assessment of the applicant in the confidential report. The confidential report for the year 1985-86 show that the latter part of the remarks was a result of the assessment of the reviewing authority and the accepting authority.

7. The applicant challenged the validity of the adverse remarks on the ground that probably they were put by the authority who was not competent to put those remarks.

However, the confidential report shows that these remarks were put by ^{news paper S.S.P.} the reviewing authority and were accepted by ^{then} the Director General of Police who were definitely the competent officer^s to review or accept^s the remarks. We do not find, therefore, that the latter part of the impugned remarks can be set aside or quashed on that ground.

8. We shall first consider the contention of the applicant that it was necessary for the respondents to give him an opportunity of hearing and to give reasons while rejecting his application for quashing the adverse^{part} of the remarks. The applicant relied upon in this connection on the decision of the CAT, Ernakulam in K.Radhakrishna Menon vs. Collector of Central Excise, Cochin & Ors. O.A.K-38/88 decided on 8.2.1989 (1989) 10 ATC 203, the decision of the Central Administrative Tribunal at Bangalore in N.K.Narayanakar vs. Member(TP) Telecom Board, New Delhi, Application No. 983/88(F) decided on 3.2.1989 (1989) 10 ATC 477 and the decision of the CAT, Jodhpur Bench in OA.NO. 173/88, Ramkishore Mehrish vs. Union of India & Ors. 1989 (4) CAT 287, All India Services Law Journal. However, we find that the present case is fully governed by the decision of the Supreme Court in Union of India & Ors. vs. E.G.Nambudiri, Civil Appeal No.1976 of 1991 decided on 23.4.1991 (1991) 17 ATC 104. The Supreme Court categorically held that when a representation was made against the adverse remarks and the representation was rejected, it was not necessary to give a speaking order where the order did not adversely affect^{any} vested right or involve^{civil} consequences and it was not necessary to give reasons by statutory provisions. No statutory rules have been shown which made it obligatory on the part of the^{while} respondents to give a speaking order ~~by~~ rejecting the representation of the applicant or to give him an opportunity of hearing before the order was passed.

9. We do not find that the order affected adversely any vested right of the applicant or involved any civil consequences. We are of the opinion, therefore, that the order of rejection cannot be set aside on the aforesaid ground. The applicant relied upon the decision of the Central Administrative Tribunal at Madras in G.Nanchil Kumaran vs. Special Commissioner and Secretary to Government, Home Department, OA.No. 571/88 decided on 25.7.1989 (1990) 12 ATC 308. This case dealt with the distinction ^{- clear} between adverse remarks and advisory or instructional remarks and we do not think that it is applicable to the present case.

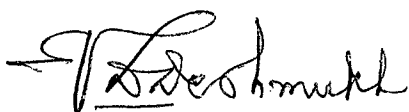
10. As has been discussed earlier, no doubt the first part which has been marked as (a) by us and the second part which has been marked as (b) by us in the impugned remarks are inconsistent with each other. As the confidential report shows the latter part came to be as a result of the assessment of the reviewing and accepting authority. The submission made on behalf of the respondents that such power has to be with the higher authorities also cannot be ignored. Had the contrary remarks been placed by the same authority, certainly those remarks could not be sustained. The applicant relied upon the decision of the Central Administrative Tribunal, Bangalore in S.T.Ramesh, IPS, Superintendent of Police, Bangalore vs. State of Karnataka & Anr. Application No. 72/87 (F) decided on 3.9.1987 (1988) 7 ATC 820. In this case, the first two parts in the impugned remarks praised the applicant while the last part was critical of the applicant. The Hon'ble Members found that the said parts were self-contradictory and where an officer's overall performance was considered outstanding, remarks about his occasionally deficient performance and desirability of further improvement were inconsistent with each other. In the first place, it is not clear whether the

two parts in the remarks in the case before the Tribunal at Bangalore were put by the same officer and in the second place there is a material development in the case before us. The learned counsel for the respondents has placed before us the copy of the Notification dated 2.1.1993 being Notification No. IPS.0689/2779/CR-90-A-POL/1 under which the applicant had been promoted to the selection grade. The Notification mentions that the applicant was not earlier promoted as the departmental enquiry was pending against the applicant but the applicant was exonerated in the departmental enquiry. It is, therefore, ^{obvious} ~~advised~~ that the respondents did consider ~~the~~ the applicant for promotion to the selection grade. The applicant, however, apprehends that the adverse part in the C.R. 1985-86 may come in his way at the time of further promotions. In the circumstances, we find that the interests of justice require that the respondents be directed to ignore the adverse part of the remarks while considering the applicant for further promotions.

11. An attempt was made to show that the adverse part of the remarks was a result of the malafide intention. However, we do not find any substance in the same. The application does not show that the applicant has been superceded as a result of adverse part in the confidential remarks for the year 1985-86.

12. In view of the above discussion, we pass the following order. The respondents are directed to ignore the second and the last part which has been marked by us in this order as (b) while considering the applicant for any future promotions.

13. The application is disposed of finally but without any order as to costs.



(V.D. DESHMUKH)
MEMBER (J)



(M.Y. PRIOLKAR)
MEMBER (A)