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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 684/91

~~TRANSMITTAL APPLICATION~~

DATE OF DECISION 18.2.93.

Miss Aruna Tatyram Bhosale Petitioner

Ms. K.U. Nagarkatty Advocate for the Petitioners

Versus

Union of India and others Respondent

Shri R.K. Shetty. Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice S.K. Dhaon, Vice Chairman

The Hon'ble ~~Shri~~ Ms. Usha Savara, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
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

U. Savara
(USHA SAVARA) 18.2.93.
MEMBER (A)

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(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 684/91

Miss Aruna Tatyram Bhosale

... Applicant.

V/s.

Union of India through
The Secretary and Financial
Advisor (Defence Service)
Ministry of Defence.
New Delhi - 110 001

The Controller General of Defence
Accounts), Office of the C.G.D.A.
West Block 'V' R.K. Puram
New Delhi

The Controller of Defence Accounts
(ORS) South, K. Kamaraj, Road,
Bangalore - 560 001

The Pay and Accounts Officer (ORS)
Bombay Engineering Group and
Centre (B.E.G. & C), Kirkee,
Pune - 411 003

Mrs. P.P. Kulkarni, AAO
Office of the PAO (ORS)
Bombay Engineering Group and
Centre (B.E.G. & C), Kirkee
Pune - 411 003

... Respondents.

CORAM: Hon'ble Shri Justice S.K. Dhaon, Vice Chairman
Hon'ble Ms. Usha Savara, Member (A)

Appearance:

Ms. K.U. Nagarkatty, counsel
for the applicant.

Shri R.K. Shetty, counsel
for the respondents.

JUDGEMENT

Dated: 18-2-'93

¶ Per Ms. Usha Savara, Member (A) ¶

This application has been filed praying for
expunction of adverse remarks given to the applicant
for the year ending 31.3.'89. The applicant is a
Senior Auditor in the Defence Accounts Deptt. under
the Controller General of Defence Accounts (CGDA)
New Delhi is posted in the office of the Pay and Accounts
Officer, Pune, under the Controller of Defence Accounts,
Madras. She was transferred to Bangalore in 1986 and
was brought back to Pune in July 1988 in the office

of Pay and Accounts Office Bombay Engineering Group,
Kirkee, Pune.

Due to her prolonged illness, she only joined the office on 1.9.'88, when she was posted in the Ledger Section- I. On 12.6.'89, she received extract of the A.C.R. for the year ending 31.3.'89 communicating the following adverse remarks.

PART III

Para 11 C - Has to be constantly prompted and supervised.

Para 14 iv - Slow and tends to delay.

Sd/- S.O.(A)
25.4.'89

PART III A

I agree with the remarks of S.O.(A), graded as average - Sd/- A.O. 2.5.'89.

The applicant filed an appeal to the C.D.A., South (App.2), she pointed out, that her "work book" record would show conclusively that her performance had been appreciated, when on 6.2.'89 she was given the remark " very good clearance of letters". However, her representation was rejected without giving any reasons. She represented her case to the C.G.D.A. on 15/17.11.1989 but her appeal was rejected on 14.3.'90 by a non-speaking order. Thereafter, she has filed this application.

A reply has been filed on behalf of the respondents. No doubt the applicant has received positive comments from her reporting officer for her accomplishment on some occasion, but this does not mean that the total work entrusted to her was completed satisfactorily. It is alleged that the applicant was slow, and therefore, was subject to constant supervision, and it was only because of prompting and supervision that she could achieve results. The applicant has tried to bring extraneous issues into the picture. If she had any

complaints against her S.O.(A) the same should have been brought to the knowledge of the higher authorities immediately. At this late stage, no credence can be given to her allegations, which are mischievous and unsubstantiated. Her appeals had been fully examined by the appellate Authority, and rejected as the grounds advanced by her were not found to be valid. Her submissions had been considered, and rejected after application of mind. As per rules, only two appeals are permitted, and both her appeals were considered on merits.

Shri R.K. Shetty, learned counsel for the respondents, submitted that the applicant has tried to give "caste colour" to the issue, instead of trying to show that the adverse remarks were uncalled for. There are other staff members of the S.C. community, and there is not a single complaint from them. The Reporting Officer has showed that the applicant is a slow worker and it was necessary to get help from other group Auditors to avoid delay. The applicant's claim that the remark about her being slow and tending to delay has not been substantiated in so far as not a single incident has been mentioned in support thereof, is not correct, as the Reporting Officer has stated that the applicant was given a warning several times, but did not show any improvement in her work. The adverse remarks have been given to give her an opportunity to become aware of her failing, and improve herself. The applicant has failed to prove any personal prejudice, and her appeal has been decided after taking into account the comments of the Reporting Officer. Principles of natural justice have not been violated and the procedures laid down by the Department of Personnel have been followed for writing of A.C.Rs.

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We have heard the learned counsel at length. The A.C.R.'s of the applicant as well as the correspondence file pertaining to her appeals was produced by the Respondents. ^{The same have been perused.} The main plank of the applicants arguments is that the adverse remarks were given to her due to malafide on the part of the Reporting Officer. It is alleged that the Reporting Officer had asked her to buy some saries from her, but due to her pecuniary circumstances, she was in no position to buy them, and therefore the Reporting Officer has inflicted this punishment on her. Surprisingly, the counter filed by the respondents is silent on this point. However, in all fairness to the respondents, it must be mentioned that the Reporting officer was asked to give her comments on the representation of the applicant. She has stated that she had warned the applicant verbally time and again to follow office discipline, but the applicant did not pay any heed to her warning. The accounts Officer, who forwarded the appeal and the comments of the Reporting Officer admits that there is no record of the warnings given by the Reporting Officer verbally, but he sees no reason to disbelieve her comments.

The Deputy C.D.A. forwarded the representation, the remarks of the Reporting Officer and the remarks of the Accounts Officer to the C.D.A. (South). He has pointed out that the applicant was recovering from a prolonged illness of over a year, and had requested him for a light charge. He has also mentioned that he examined her pay summary of quarter ending 2/89; Abstract of Receipts and charges and work book etc; on a couple of occasions, the Reporting Officer had given remarks, " Very good " on work book for the quarter ending 2/89. Admittedly, the applicant had made baseless charges against the Reporting Officer, and alleged that she is being harassed being a schedule caste. However, the Deputy CDA

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recommended that the adverse remarks be expunged in view of her performance during the year.

The file was put up to the C.D.A. thereafter. It is evident from the above that the order of rejection was not passed in a mechanical manner, but there had been due applications of mind by the concerned officers. The question is whether the rejection was made on merits or whether it was made on extraneous considerations. A reading of the note put up before the C.D.A. makes it amply clear that extraneous considerations have weighed heavily in his mind while rejecting the appeal. Firstly, there are no written warning issued by Reporting Officer, and it is only her statement that she warned the applicant orally: there is no evidence that the Reporting Officer even gave a single warning to the applicant as required by departmental instructions. The record does not disclose when the Reporting Officer brought the applicant's shortcomings to her notice. No record is also produced to show on what basis these remarks were passed and whether there is any truth in the same. Secondly, the Reporting Officer had given the remarks " very good " on 2/89 on the work book of the applicant, i.e. just one month prior to 31.3.89, the Reporting Officer found her work to be very good. How could there be such a fall in standard and behavior in the short period of one month ?

Lastly, what has impelled the C.D.A. to reject the appeal is the fact that if the remarks were to be expunged, " the applicant would give wide publicity and it would forment indiscipline in the minds of like minded individuals"....

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This quote is extracted from the note put up before the C.D.A. for his consideration of the appeal filed by the applicant. From a scrutiny of the record, we find that the decision not to expunge the adverse remarks has been taken, not on merits, but on extraneous considerations. This decision is patently unreasonable, and no reasonable person could have arrived at it. The material giving rise to this decision is totally irrelevant.

In the circumstances, the impugned remarks given to the applicant for the year ending 31.3.'89 are quashed, and the respondents are directed to expunge the same from the A.C.R of the applicant. The application is allowed, but there is no order as to costs.

Usha Savara
18.2.93
(USHA SAVARA)
MEMBER (A)

S.K. Dhaon
(S.K. DHAON)
VICE CHAIRMAN

NS/