

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

3

O.A. NO: 720/91 199  
I.A. NO:

DATE OF DECISION 4.2.92

Shri Gangadhar Rao Petitioner

Shri V.M. Bendre Advocate for the Petitioners

Versus

Union of India & Ors Respondent

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

CORAM:

The Hon'ble Mr. Justice U.C. Shivarkara, Vice-Chairman,

The Hon'ble Mr. A.B. Gorti, 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 ?

mbm\*

U.C. Shivarkara  
V/C

6

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, BOMBAY.

Original Application No.720/91.

Shri Gangadhar Rao. ... Applicant.

V/s.

Union of India & Ors. ... Respondents.

Coram: Hon'ble Shri Justice U.C.Srivastava, Vice-Chairman,  
Hon'ble Shri A.B.Gorthi, Member(A).

Appearances:-

Applicant by Shri V.M.Bendre.  
Respondents by Shri R.K.Shetty.

JUDGMENT:-

Dated: 4.2.92

(Per Shri Justice U.C.Srivastava, Vice-Chairman)

By means of this application the Annual Confidential Reports of the years 1984, 85, 86, 87, 88, 89 and 90 which came to the notice of the applicant during the pendency of another Original Application filed by him against his non-inclusion of his name in the select list to the post of Joint Director the applicant has challenged the said entry in which he is stated to be average and that has led to dropping of his name from the select list instead of giving the entry of 'outstanding' or 'very good' which according to him he deserves.

2. According to the applicant his entries were earlier 'very good' and his work was always appreciated inasmuch as during the period when he was rated as 'average' he was over burdened with work and work of others also given to him continuously with the result that even out of 3 Dy. Directors 60% work was with him and 40% with two Dy. Directors during a particular period and yet with mala fide intentions such entries were given to him and not communicated and even at no point of time he was appraised of the same, there was a down fall in the standard without his grading as far as

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his work is concerned could not have been lowered down, that is why he has prayed that the impugned remarks for the said year in the Confidential Reports may be quashed and the respondents be directed to expunge the same and also direct them to rewrite the annual confidential report in accordance with law and relevant instructions issued in various Office Memorandum and thereafter his remark should be taken into consideration for the purpose of promotion.

3. The facts are not in dispute as emerged out from this lengthy petition filed by the applicant. The averments made by the parties are as follows:

The respondents have only pointed out that the additional work load which was given to the applicant was because of certain administrative reasons and that ACRs contained the marks of the Reporting Officer on various abilities and capacities of Officers in performance of duties and it cannot be said that the applicant was not advised of his short-comings, the applicant must have been advised verbally to show improvement, otherwise his performance subsequently would not have better to deserve the grade of 'good' and 'very good'. According to the respondents as the entries were not adverse in view of the fact that 'average' is not adverse and that there was no question of communicating the same. Thus no evidence on the record have been placed which may indicate categorically that at any point of time the applicant was appraised of his short-comings, ~~xxx~~ <sup>by</sup> some one orally what to say of writing. But vaguely an inference in this behalf has been drawn. The reply on behalf of the respondents has been filed by the Dy. Secretary to the Government of India, who has verified it but no responsible officer or one who

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was connected with the matter including the reporting officer and reviewing officer who are party to the application have filed any reply. The undisputed position appears to be that the applicant joined the service after selection by the UPSC and was appointed to the post of Dy. Director of Training at the Regional Directorate of Apprentices Training, Bombay w.e.f. 25.6.1979. According to the applicant he was entitled to seniority w.e.f. 26th April, 1978 but his position was lowered down, against which he preferred a representation which is still pending. Eversince the applicant was ~~zzzzzzzzzz~~ entrusted with the responsibility of Regional Director, he is functioning with un-blemished record on the same post. The functions those are performed by the various authorities under the Act viz. Apprentices Act, 1961. The functions have been consolidated by the Central Government in its Memorandum dt. 30.6.1966 and the post of Assistant Director of Training/Assistant Central Apprentices Advisor was subsequently in 1978 designated as Dy. Director of Training/ Dy. Director Apprentices Advisor. The applicant has mentioned that the duties with which he was concerned are referred to in certain sections of the act. Among three Dy. Directors including the applicant who were under the Regional Director the applicant was entrusted with additional responsibilities as compared to two other Dy. Directors. He was entrusted with a special assignment of heading a Project under the Swedish International Development Authorities Corporation during December, 1981 and even sent abroad for Fellowship Training during 1983 and his Fellowship report was appreciated by the International Labour Office in Delhi and Geneva, When the applicant resumed his charge ~~his~~ he

9

was entrusted with additional duties again and one Shri B.R.Muddapur thereby sharing the duties and responsibilities of two Dy. Directors and thus according to the averments which has not been disputed 60% of the work of Dy. Directors was with the applicant and 40% with the remaining two Dy. Directors. The work of one Assistant Director was distinguished between the applicant and one Assistant Director in August, 1984. Vide Order dt. 12.11.1984 the applicant was entrusted with additional responsibilities along with other Dy. Directors a copy of the order has been placed on the record. The applicant's target was increased while as Regional Director in April, 1984 and again in November, 1984. On 31.5.1985 the then Regional Director was transferred and the charge of the Regional Director was also handed over to the applicant who performed the said duties in addition to his own duties upto 18th August, 1985 and on which date the charge was handed over to the Respondent No.2 who was then transferred to Bombay. The applicant was also made certain allegations against the said respondent No.2 who according to him in fact is responsible for lowering down his merit and putting him in the list of 'average' Officer instead of 'outstanding' or 'very good' Officer even though every now and then he was saddled with additional responsibilities and if the duties would not have been performed by him satisfactorily and efficiently and his capability then additional duties had at no point of time would have been assigned to him and according to the applicant if he would have been 'average' Officer this could not have been done as it could not be said that it was an experiment in order to improve him without telling him every now and then additional duties or more duties were assigned to him apart from the duties which legally were assignable to him.

4. The applicant continued to perform his target in April, 1987, the Respondent No.2 who earlier reviewed the performance of the applicant again entrusted additional responsibilities vide order dt. 20.4.1987 and the responsibilities which were shared by the applicant were at least 30 to 40% higher than that of his other colleagues. It was in the month of December, 1987 as a measure of protection of one Shri Laxman Swarup, an Office Order dt. 3.12.1987 was passed by one Shri Y.A.Kondaskar, Assistant Director of Training was brought under the control of the applicant and the responsibilities and target was stretched again and the order which is on the record ~~xxx~~ indicate that according to the respondents the duties assigned to Shri Kondaskar was quite distinguishable from the duties assigned to the applicant and the applicant's work in this behalf was not increased. In the year April, 1990 the R-2 who was the Reporting Officer and against whom the applicant worked for during these years was replaced by one Shri D.M.Som Kuwar, Regional Director who also did not alter the target of the applicant but instructed him to continue with the same target. The applicant was not even apprised of the confidential report which were written by the ~~S~~ said Shri D.M.Som Kuwar as was done by his predecessors and the same has not yet been known to him as according to the applicant the same was not relevant for the purpose of this case.

5. The applicant has pointed out that independently has completed every target and that the targets were before the applicant remains to be at least 30% higher to his similarly situated colleagues and at no point of time any sort of short comings was communicated to him and from time to time he filled up typed annual

resume declaring the achievement and the completion of the target which he has also filed along with this application. Although as per the guidelines issued by the Central Apprenticeship Council target of the Dy. Directors Training is 2000 it was always more than 3000 from the year 1984 is an averment which has not been disputed or denied and the applicant from 1984 till today was assigning the responsibility of arranging question papers for trade test for instructions for getting them set by experts and moderators. For implementation of the Apprenticeship Act the applicant had arranged for Inspection of new establishment issued such notices as prescribed under the Act for which the applicant is empowered and he had also to arrange the programme of ~~examined~~ team of Officers working under him empowering them to conduct progressive trade test in the Industries and ITIs and he had also was required to inspect the Industries in various areas where the training is imparted to the Apprentices. He was also entrusted with the special job to study <sup>and</sup> ~~the~~ organise programme for the delegates of Nepal so as to train their supervisory persons by arranging their visits to various industries and training centres by providing necessary guidance, lectures and thereafter on the subject and conduct group discussions to assess the knowledge gained by them through such visits and programmes arranged by him. He was also entrusted with the responsibilities of construction work which was done for and on behalf of the department and was also to look after the entire statistical work and was in charge for preparation of all statutory reports and datas of whatsoever nature from 1984 onwards.

6. From the reply filed by the respondents it appears that the applicant served under the R-2 Shri Jacob Ooman who has been impleaded by name and under Shri G.Jana from 1.1.1985 and 31.5.1985 and from 18.8.1985 to 31.12.1985

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respectively and during the intervening period from 1.6.1985 to 17.8.1985 his work was directly supervised by the Director Apprenticeship Training at DGE & T Headquarter and his reviewing officer during the entire year was Director Apprenticeship Training and the report ~~from~~ for 1985 was written by R-2 and was reviewed by the Director of Apprenticeship Training. In the year 1985 the applicant was graded 'good'. In 1986 also he was graded 'good'. In 1987 the reporting officer gave him remark of 'average' against columns "planning ability, coordination ability and appraising ability". The remarks against other columns were generally 'good'. The overall grading given by the reporting officer was 'average'. In the year 1987 the reporting and reviewing officer graded him only 'good'. In the year 1988~~89~~ the ~~mark~~ reporting officer against the column "attitude to work" has specifically mentioned "good" and for the period 1.4.1989 to 31.3.1990 both the reporting and reviewing officers have graded the applicant as 'very good'. The DFC which met for promotion considered the vacancies for 1987-90 and as the applicant was not in the category of 'outstanding' or 'very good' all the vacancies having been filled up by those who have earned such entries, the applicant was not included therein. In 1984 also his entry appears to be 'good'.

7. The contention on behalf of the applicant is that according to paragraph 5.3 of the ~~Manual~~ of Office Procedure the adverse remarks are to be communicated within one month of the completion of the report, but the same has not been communicated and no lapses in his work was ever been informed during these years and he did not receive any memo pointing out lapses or short-comings of nature commented upon and there was no oral communication regarding his work. In paragraph 5.2 page 189 of the

of the Manual of Office Procedures (Administration) it is the duty of the reporting officer to give the officer reported upon, at all time, the necessary guidance, advice and assistance before reaching the conclusion that the Applicant was casual, easy-going and perfunctory. Paragraph 5.5 of the same Manual also lays-down that "while mentioning any faults or defects in the Annual Confidential Report, the Reporting Officer should also give a communication to the efforts made by him by way of guidance, advice, etc. or results of such efforts". No such communication either orally or in writing was given to the applicant. It is here to be noted that in the year 1985 while commenting upon self appraisal of the applicant in ACR the reporting officer stated "agreed except that his work was of supervisory/ coordinating in nature". This appears to be the details of all the entries. The very entry indicates that only one part of the applicant regarding the supervisory and coordinating in nature of the work of the applicant was seen and in this respect the entry was given and the other duties which have been performed by the applicant was not seen which is *evident* from the entry. <sup>itself</sup> The entry in these circumstances can be said to be perfunctory and not based on the entire assessment of work on which it should have been based. It is true that the 'average' entry or the good entries were not adverse and the same could not have been communicated. But when earlier entries were good and there was fall in the standard of the applicant it was the duty of the authorities to inform him in the fall of the standard and without giving him this information he could not have been down graded and as such entry could not have been given as has been held by the Supreme Court in the case of

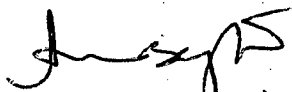
124

and the same thing happened here in this case.

8. It still remains to be seen if there was any down fall or there was any short comings, lapses on the part of the applicant, why additional duties were given to him or while additional duties were not to perform by him were not taken away from him. At one stage additional work has been taken from him or every now and then it was given to him yet on the other place the entries of such a nature which were given to him which were to stand in his way for future promotion. Nowhere it has been stated that additional work was given to the other or they performed more work or more efficiency than the applicant whose entry was 'outstanding' and 'very good' has been good. The facts as stated above indicates that at one place more work was given to the applicant and applicant was considered to be an officer who could be defended upon and relied on and can perform the additional duties work was being given and yet he has been down graded and without appraising him of the same at any point of time. The entry so given to the applicant clearly indicates that they were not based on the entire assessment of the work of the applicant and was based only in respect of one part of the work and at least additional duties which were being performed by him and which was being given to him were not considered. Although the same work ~~and~~ ought to have been considered. In these circumstances the entries which have been given to the applicant cannot be said to be entry which should have been given is according to law following the directions given by the Central Government from time to time or procedure prescribed thereon and these entriest atleast beyond a period of 1984 cannot be allowed to stand and these are to be quashed with a direction that a

15

re-assessment of the applicant's entire work may be done and thereafter entries in respect of these years are to be given. In case the applicant earns good entries which enables him to be considered for promotional post, there appears to be no reason why the respondents will not convene a review DPC within three months of the entries and consider him for promotion. The entries of 1985 ~~are~~ <sup>are</sup> upto 1989 are quashed and the respondents are directed to re-consider the matter and given fresh entries to ACRs in accordance with law and in the light of directions given above within three months from the date of communication of this order. No order as to costs.

  
(A.B. GORTHI)  
MEMBER (A)

  
(U.C. SRIVASTAVA)  
VICE-CHAIRMAN.

4.2.92

B.S.M.