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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 77/92

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DATE OF DECISION

15 X 1993

Shri Hemant Vishnu Marulkar Petitioner

Shri B. Ranganathan. Advocate for the Petitioners

Versus

Union of India and others Respondent

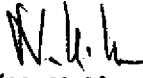
Shri R.C.Kotiankar. Advocate for the Respondent(s)

COHAM:

The Hon'ble Shri N.K. Verma, Member (A)

The Hon'ble Shri

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 ?


(N.K.Verma)
Member (A)

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(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 77/92

Shri Hemant Vishnu Marulkar
V/s.

... Applicant.

Union of India through the
Chief General Manager,
M.T.N.L. Telephone House,
Veer Savarkar Marg.,
Bombay.

The Area Manager (Long Distance),
Prabhadevi Exchange, Dadar
Bombay.

The Traffic Superintendent
(Traffics)(I)
Fountain Telecom Bldg. No.1,
M.G. Road, Bombay.

The Assistant Traffic Superintendent
(MTCE),
MTNL, Office of the Traffic
Superintendent (Traffics) (I),
Fountain Telecom Bldg. No.1,
M.G. Road, Bombay.

... Respondents.

CORAM: Hon'ble Shri N.K. Verma, Member (A)

Appearance:

Shri B. Ranganathan counsel
for the applicant.

Shri R.C. Kotiankar, counsel
for the respondents.

JUDGEMENT

Dated: 15/10/93

(Per Shri N.K. Verma, Member (A))

In this original application the
applicant, Shri H.V. Marulkar working as Junior
Telecom Officer in the Fountain Telecom Bldg. has
prayed for expunging of adverse entry in the
Annual Confidential Report for the year 1991 as
per the impugned communication dated 14.5.91, and
to grant him all the appropriate consequential
reliefs including the promotions etc.

N. Verma

2. The M.T.N.L. have given a detailed written reply to the application why the relief should not be granted. The short facts of the case are that the applicant was working as Junior Telecom Officer in the office of respondent No.2, The Area Manager (Long Distance) Prabhadevi Exchange, Dadar and was conveyed the adverse remarks in the A.C.R. (Annual Confidential Report) vide the impugned letter to which the applicant submitted a representation dated 3.7.91, [REDACTED] which was rejected by the competent authority. This rejection was communicated to him on 20.1.92. The applicant is reported to be in habit of coming late to the office and was not able to mark his attendance on the Attendance Register which was kept in the personal custody of a Supervisory Officer. As a result he was forced to mark the attendance in such register like log books, fault registers etc. The periods of absence due to not being able to sign presence in the Attendance Register were converted into dies-non without giving any show cause notice to him. The applicant made several requests to respondent No.1, the Chief General Manager, MTNL to institute an impartial enquiry into the matter. In the written reply the respondents have stated that the adverse entry in his ACR " punctuality in attendance is very poor during the period under report" was fully justified as the applicant was very often absenting himself from duty without prior intimation and proper sanction of the competent authority and therefore the remark absent was made on the Attendance Register. It was also stated that the applicant was also in the habit of attending duty late and leaving the duty post early without intimation or proper sanction of the competent authority. The Attendance Register was always available on the table of ATS (M) and there was no such complaints on the part

of any other JTOs except the applicant that the Attendance Register was not being made available to him for marking his presence. Besides the applicant was also in the habit of over writing his presence in the Attendance Register by signing on the Attendance Register with later date and over the absent mark or the remarks. The representations which he made were duly replied to and there was no question of any unfair treatment given to him by the Department.

3. The matter was also heard in which the learned counsels for both the parties made their submissions at length. The main contention of the learned counsel for the applicant was that he was being harrassed by the department because he had filed a writ petition in the High Court of Judicature in Bombay for a matter relating to disciplinary proceedings under which he was punished with reduction by three stages for two years on 10.10.1983. The punishment was quashed and after a denovo proceeding, the disciplinary action was finally dropped by the department on 7.11.85. However as a result, the applicant was denied the benefits of promotion, confirmation etc. and thereafter he has been put to several difficulties including the one of not being permitted to sign on the Attendance Register and later converted into dies-non. For exercising the powers the respondents were obliged to issue a show cause notice ~~and to resort to~~ ^{before} the power of stopping the payment of salary for those days. Besides, even the entries in the A.C.Rs making the adverse remarks without prior warning or letters pointing out the punctuality was a ~~colourable~~ exercise of ^{to} administrative power.

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4. The learned counsel for the respondents submitted documentary evidence to show that the applicant was in the habit of coming late to the office which was pointed out to him. Several memos were issued to him from time to time. In the written statement, memos dated 16.1.91, 21.1.91, 14.3.91, 7.6.91, 15.7.91, 19.7.91, 24.7.91, 24.8.91, 27.8.91 and 7.9.91 including photo copy of Attendance Register in which over writing were made by the applicant over the mark of absence or the remarks given on the Attendance Register were attached. In these office memos instances of late coming, absenting without prior permission, leaving the office without prior permission, and over writing etc. were brought to the notice of the applicant and was also advised that these were irregular action on his part of violating the discipline of the office. Hence the contention that the facts relating to his absence without permission and late attendance in the office were brought to his notice are clearly established. Atleast on two instances during the year 1990-91 due intimation was given to him on 16.1.91 and again on 16.3.91 that he needs to improve his punctuality in attendance and his insistence on signing the Attendance Register on 18.1.91 at 1700 hours for absence on 17.1.91. Hence the question of making adverse entries in the A.C.R. for the year 1990-1991 to the effect that his punctuality in attendance was very poor was based on occurrences in which he was warned in advance. The application therefore fails on this ground.

5. Adverse entries are made to point out that inadequacies or short comings observed in the conduct of an official with the intention of bringing improvement

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in the performance of the official by making him aware of the short coming or inadequacies. Representations against such adverse entries are also the method of obtaining the feed back on the merits of the case and if there are proper explanation, the Reviewing Authority could exonerate or remove adverse remarks, so as to meet the needs of natural justice. In this case the representations from the applicant was considered by the Reviewing Authority i.e. the Area Manager, M.T.N.L. Bombay who through an order dated 20.1.92 rejected his appeal against the adverse remarks. The Reviewing Authority had applied his mind in a reasonable and proper fashion and the same cannot be faulted.

6. During the arguments, the learned counsel for the applicant brought to notice that the representations from the applicant to the Reviewing Officer dated 3.7.91 have not been disposed of even though more than six months had elapsed before the applicant chose to file this O.A. on 30.1.92. The learned counsel for the respondents brought to notice that the appeal against the adverse remarks stood disposed of under letter dated 21.1.92 shown as Exhibit A to the written statement filed by the respondents. In view of this it cannot be held that the appeal of the applicant is still pending. The appeal bears the imprint of application of mind and cannot be turned to be non-speaking in the light of the Hon'ble Supreme Court judgement in the case of Union of India V/s. E.G. Nambudiri (1991 SCC (L&S) 813 which stipulated that any order of Administrative Authority communicating his decision cannot be rendered illegal on the ground of absence of reasons.

" .. Where an administrative authority is required to act judicially it is also under an obligation to record reasons. But every

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administrative authority is not under any legal obligation to record reasons for its decision, although, it is always desirable to record reasons to avoid any suspicion. Where a statute requires an authority though acting administratively to record reasons, it is mandatory for the authority to pass speaking orders and in the absence of reasons the order would be rendered illegal. But in the absence of any statutory or administrative requirement to record reasons, the order of the administrative authority is not rendered illegal for absence of reasons. If any challenge is made to the validity of an order on the ground of it being arbitrary or mala fide, it is always open to the authority concerned to place reasons before the court which may have persuaded it to pass the orders. Such reasons must already exist on records as it is not permissible to the authority to support the order by reasons not contained in the records. Reasons are not necessary to be communicated to the government servant. If the statutory rules require communication of reasons, the same must be communicated but in the absence of any such provision absence of communication of reasons do not affect the validity of the order..."

7. In the circumstances it is felt that there is no merit in this application and it is therefore dismissed. There will be no order as to costs.

N.K.V
(N.K.Verma)
Member (A)

15 X 1993