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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 469/92

Transfer Application No: --

DATE OF DECISION: 4-13-95

Smt. S.R. Shenoi

Petitioner

Mr. S.R. Atre

Advocates for the Petitioner

Versus

Union of India & Ors.

Respondent

Mr. V.S. Masurkar

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri M.R. Kolhatkar, Member(A)

The Hon'ble Shri --

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?

M.R.Kolhatkar
(M.R.KOLHATKAR)
M(A)

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(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
BOMBAY

O.A. NO:469/92

Monday the 4th day of 7-12- 1995

Hon'ble Shri M.R.KOLHATKAR, MEMBER(A)

Smt.S.R.Shenoi

(By advocate Mr.S.R.Atre)

.. Applicant

-versus-

Union of India & Ors.

(By advocate Mr.V.S.Masurkar)

.. Respondents

O R D E R

(Per M.R.Kolhatkar, Member(A))

In this O.A. u/s. 19 of the A.T. Act the applicant has impugned the adverse remarks in her confidential report for the year 1990 conveyed to her under the memorandum dt. 26-3-91 at Annexure A-13, page 46. These adverse remarks are as below :

1) Human relation (His/her conduct with his/her colleagues/superiors) and capacity to get the work done. Her behaviour with her colleagues/subordinates and superiors is extremely poor. Hence finds herself difficult to get the work done through her subordinates.

2) Intellectual honesty, creativity and innovative qualities. She prevaricates in her presentations, Creativity is very good and attempts mechanically to the problem situations. "

2. It needs to be observed that in accordance with the rules, the officer in whose C.R. there is an adverse entry is required to be communicated the gist of the C.R. as a whole. Accordingly these adverse

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remarks are to be read in conjunction with the subsequent memorandum dt. 4-6-91 appearing at Annexure A-15, page 53. The same reads as below:

" General comments on the results achieved and the quality of the performance and application of knowledge, delegated authority and conceptual and professional skills on the job. : Average

Commitment to the tasks assigned : Average

Devotion to duty : She is a good worker.

Integrity : Her integrity is beyond doubt."

3: The applicant has impugned the adverse remarks on several grounds. It is firstly contended that the adverse remarks for the year 1990 do not reflect any objective assessment of the applicant's work. In fact they are arbitrary and self contradictory. They have been entered without taking into account the quality of applicant's performance of the duties assigned to her and her conduct in general and the adverse remarks have been entered only with malafide intention.

4. The applicant has not adduced any reasons in support of her contention as to why the Reporting Officer viz. Respondent No.4 and the Reviewing Officer viz. Respondent No.3 bore a grudge against her but has relied on a series of communications issued subsequently to her indicating that the concerned officers bore a

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grudge against her. Memorandum dt. 5-7-91 at page 54 shows that she failed to attend the office on 13-4-1991 and 14-6-1991. The applicant had replied to this memorandum on 12-7-1991 pointing out that she had attended election duty directly and that the Deputy Returning Officer refused to give her permission to go back in response to summons from office. Memorandum dt. 2-8-1991, at page 56, states that the applicant uttered some derogatory words to D.D.(i/c) in the presence of two Gazetted Officers in the D.D.(i/c)'s cabin on 10-1-1991. At page 42 to 45 are the proceedings relating to the enquiry held leading to this memorandum. Apparently the whole matter related to the short absence of the applicant in her seat when she was called for some work and the applicant got an impression that somebody was bent on spoiling her record, and she had taken the stand that she did not want the matter to be magnified or extended further. At page 57 is the memorandum dated 30-8-1991 which points out a mistake regarding omission of a bill from the expenditure statement. On 24-1-1992, at page 59, a memorandum was issued regarding an amount of Rs.1453/- which was a bill on account of payment made to a Tailor to which the applicant had given a reply pointing out that she had paid the bill on the basis of a requisition slip of her colleague who had failed to send the receipt inspite of reminders. The applicant states that respondent No.3 wanted to recover the amount from her and threatened to send her to jail. At page 65 dt. 4-2-92 is the memorandum asking the applicant to explain why a representation has been sent directly to respondent No.1 viz.4/-

head of department. At (page 66) dt. 5-2-92 is the memorandum regarding applicant's absence without permission and memorandum dt. 5-2-92 (page 67) is regarding her failure to adjust a T.A. Bill.

5. Applicant next contends that her CR is required to be written by respondent No.2 viz. The Director General, National Test House, in the absence regular Director. Respondent No.3 who is only Deputy Director (incharge) has no right to write or review the CR. The applicant has further contended that the CR has been written by respondent No.4 who had seen her work only for a period of two months and 22 days i.e. for a period of less than 3 months because it is only by an order dt. 9-10-1990, Annexure A-4, that Shri Bijendrakumar, Assistant Director (TRP) R.No.4 was placed in overall charge of N.D.T. Laboratory and Accounts Section and the applicant was directed to report to him. The applicant also contends that ^{consideration} apart from this ^{even otherwise} the respondent No.4 belongs to the same rank viz. Asstt. Director and it was / not competent for him to write her CR.

6. The respondents have filed their written statement and they have denied the contentions of the applicant. It is contended that in the absence of regular Director, Deputy Director was given all the powers of ~~Deputy~~ Director including the power of Reporting and reviewing the CR's of the subordinate officers. Regarding respondent No.4 being of the same rank, it is contended that he belongs to Gr. 'A' Gazetted post in the scale of pay of Rs.2200-4000 whereas the

subordinate for a sufficiently long period to ensure ~~xxxxxx~~ an objective assessment. In this particular case this safeguard has been violated because the Reporting Officer has seen the work of the officer only for a period of two months and 22 days. The statement of the respondents that the Reporting Officer has seen the work of the applicant for $5\frac{1}{2}$ and months is not borne out by any evidence \angle it appears to be based on the assumption that the reporting period is for the period/financial year and not calendar year. But in this particular case the reporting period is calendar year and I have no alternative but to conclude that the reporting officer could not have written the report of the applicant under the Rules.

11. Taking account of all the relevant considerations namely that the internal evidence shows that the reporting and reviewing officers have recorded assessment which is prima-facie contradictory and appears to have been influenced by an incident which took place after the reporting period and from this point of view the report cannot be said to be an objective assessment coupled with the finding that the reporting officer has not seen the work for the minimum period of three months, I am constrained to interfere with the adverse entries in the CR of the applicant for the calendar year 1990. I, therefore, dispose of this O.A. by passing the following order :

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towards superiors since Feb.1991 after taking certain administrative measures. " Obviously this administrative measure referred to the enquiry conducted through B.R.Meena, Deputy Director which regarding the incident/happened on 10-1-1991 of which the proceedings are to be seen at pages have 43 to 45. Although the respondents/averred that the incident of January'91 has nothing to do with the C.R. as recorded, it is clear from the record itself that this incident was at the back mind of Reporting and Reviewing Officer who reported and reviewed the C.R. on 14-3-1991. Prima-facie therefore the adverse remarks entered for the year 1990 have been influenced by extraneous matter.

10. It is well settled that the confidential remarks are expected to record the objective assessment of the reporting and reviewing officers but that the subjective element/ cannot altogether be excluded. The same officer may be assessed differently if there is a change in the identity reporting and reviewing officers. The Tribunal therefore will be very slow to interfere with the adverse remarks in the CR since the procedure prescribed tries to build in adequate safeguards to ensure maximum objectivity. One of the safeguards is to see that the officer who reports on the subordinate has seen the work of the subordinate for a minimum period of three months. Normally a period of less than one year is/ not adequate to assess the qualities of any official in full but the minimum period of three months has been laid down to ensure that the reporting officer has seen the work of the

O R D E R

The O.A. is allowed.

The adverse remarks for 1990 under the heading "Human Relations" are directed to be expunged in full. The adverse remarks under the heading "Intellectual honesty, creativity and innovative qualities" are directed to be expunged except the remarks "Creativity is Very Good".

Respondents are directed to expunge the adverse remarks from the CR of the applicant for the year 1990 and carry out the corrections in this regard within three months of the passing of the order.

Respondents are also directed to ensure that for all relevant purposes like promotion etc. the applicant's CR with the adverse remarks expunged in terms of this order is alone to be taken into consideration. It is further to be observed that on respondents' own admission the remark relating to the officer being Average is not to be taken as an adverse remark.

There will be no order as to costs.

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M.R. Kolhatkar
(M.R. KOLHATKAR)
Member(A)

average. Her behaviour with colleagues, subordinates and superiors is stated to be extremely poor.

It is evident that her behaviour towards seniors was not perceived as upto the mark but the basis for holding her behaviour with her colleagues,

subordinates ~~as exaggerated~~ as poor has not been set out. Regarding intellectual ^{honesty} it has been

stated that she prevaricates in her presentations which would imply that she changes her stand

when asked to explain something. In regard to innovative qualities it is stated that she

attempts mechanically to the problems and situations. This remark itself is not clear; probably conveyed is that what is sought to be she reacts mechanically

to the problems but such an impression would not go well with the comment on creativity about which it is stated that her creativity is Very Good.

Against the heading please indicate if on any of the items in this part the Reporting Officer admi-

nistered any written or oral warning or counselling and how the officer reacted thereafter it is

stated that "she has been asked to step up her performance and behaviour by counselling and in

writing. However, a bit of improvement on her behaviour has been noticed recently. It would be

seen that what the Reporting Officer states to be

"counselling and written communication" pertained to 1991 &

1992 i.e. after the period in question. This is

confirmed by the remarks of the Reviewing Officer

in which he has observed that "There is a marked

improvement in her attitude to work and behaviour

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applicant holds a Gr.'B' Gazetted post in the scale of pay of Rs.2000 - 3200 and that the rank and status of respondent No.4 is higher than that of the applicant. So far as the period during which respondent No.4 had seen the work of the applicant is concerned, it is contended that respondent No.4 had seen her work for $5\frac{1}{2}$ months.

7. Respondents also contended that the applicant has not exhausted all available alternative remedies including the remedy of making a representation to Respondent No.1 viz. Secretary, Department of supply. It is also contended that the remarks which have been recorded are objective and that they were recorded only after oral and written advice was given to the applicant to improve.

8. So far as various memoranda issued to the applicant in the period after 1990 are concerned it is stated that all of them relate to the period subsequent to the period of reporting, that these various memoranda stand on their own and were issued for valid reasons and that they were not taken into consideration for evaluating the applicant's performance for the year 1990.

9. We, therefore, considered whether remarks as communicated to the applicant can be said to be objective and self consistent. In regard to devotion to duty the applicant is stated to be a good worker. But so far as commitment to the tasks assigned is concerned she is stated to be

head of department. At (page 66) dt. 5-2-92 is the memorandum regarding applicant's absence without permission and memorandum dt. 5-2-92 (page 67) is regarding her failure to adjust a T.A. Bill.

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