

**CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI**

ORIGINAL APPLICATION NO. 1276 / 1993

Date of Decision: 10 JANUARY 1997

Ravendra Mohan Dayal

Petitioner/s

Advocate for the
Petitioner/s

v/s.

U.O.I. & Org.

Respondent/s

Mr. G Nilkanth
Mr. V S Masurkar,
Central Govt. Standing
Counsel

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri B.S. Hegde, Member (J)

Hon'ble Shri P.P. Srivastava, Member (A)

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

MEMBER (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, MUMBAI 400001

O.A. No. 1276/93

DATED : THIS 10th DAY OF JANUARY, 1997

Coram : Hon'ble Shri B S Hegde, Member(J)
Hon'ble Shri P P Srivastava, Member(A)

Ravendra Mohan Dayal,
S/o. Late Shri Suraj M. Dayal,
aged about 38 years,
Occupation : Service,
R/o. Jawhar, Thane,
C/o. Deputy Conservator
of Forests,
I.U. Unit, Dahanu,
H.Q. Jawhar,
Jawhar, Thane 401603

..Applicant

v/s.

1. State of Maharashtra,
through Chief Secretary,
Govt. of Maharashtra,
Mantralaya, Mumbai 32
2. Union of India,
through Secretary,
Ministry of Environment,
& Forests, CGO Complex,
Lodhi Road,
New Delhi 110003
3. Shri R L Chowdhary
IFS (Retd.),
AGED ABOUT 60 YEARS,
R/o. Ganga Vishnu Apts.,
Building No.9/F, 48/49,
Plot 'C' Karve Nagar,
Pune 411029.

(Mr. G K Nilkanth, Counsel for
the first respondent)

(Mr. V S Masurkar, Standing Counsel
for Central Government)

(None for the third respondent) ..Respondents



ORDER

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[Per: B S Hegde, Member(J)]

1. Heard the applicant in person. Mr. G Nilkanth, Counsel for Respondent No.1 and Mr. V S Masurkar, Counsel for Respondent No.2. None appeared for private respondent i.e., Respondent No.3.
2. The short question for consideration is whether the adverse remarks passed by the Respondent against the applicant for the years mentioned in the O.A. i.e., 1986-87; 1989-90, and 1990-91 is justified in the facts and circumstances of the case.
3. The applicant is challenging the adverse remarks passed against the applicant for the years 1986-87; 1989-90 and 1990-1991 by Respondent No.3 in his Annual Confidential Reports. The applicant is an Officer of the Indian Forest Service and belongs to 1978 batch of IFS and borne on Maharashtra Cadre has filed this application praying for expunging the adverse remarks, declare DPC proceedings held on 20.1.93 as arbitrary and illegal and for a declaration that the appointments made pursuant to the DPC are bad in law.
4. Earlier the applicant had filed Writ Petition No. 780/83 before the Nagpur Bench of High Court which was later on transferred to the Central Administrative Tribunal, New Bombay Bench, New Bombay, and the Tribunal allowed the application with the observation that the CR

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of the applicant for the year 1981-82 be treated as invalid and adverse remarks be expunged in toto being violative of Confidential Report Rules.

5. The contention of the applicant is that all the subsequent adverse remarks were given by one of the applicant's superior Mr. R L Chowdhary, in different capacities viz., Reporting Officer, Reviewing Authority etc., and are written out of malice and prejudice and are illegal and void as they are written in gross violation of statutory provisions Rule 2(f) of All India Service (Confidential EoII) Rules, 1970 and that the Respondent No.3, who is since retired, has neither issued any memo or warning to the applicant and for that matter none of the respondents have issued any memo or warning to the applicant and the adverse remarks entered in the ACRs of the applicant are entirely baseless. The applicant submits that he raised several objections against the adverse remarks through his representation dated 5.11.1988 addressed to the Respondent No.1 and sought the Government to furnish the basis for such adverse remarks to which the respondents neither communicated the basis and subject matter of adverse remarks in the ACRs of the applicant nor gave any reason for rejecting his representation dated 5.11.88 and his representation against adverse remarks for the year 1986-87 is disposed of by the Respondent No.1 by passing a non-speaking order. The applicant submits that the same is malafide,

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bad in law and arbitrary action on the part of respondent and is violative of natural justice.

6. The applicant submitted that Respondent No.3 has written the Confidential Rolls of the applicant for the year 1985-86 and no adverse remark was communicated to the applicant, but in the subsequent year 1986-87 because of the refusal of the applicant to provide a vehicle to Respondent No.3 for his personal works, the respondent No.3 became biased and with malice he entered adverse remarks in the Confidential Rolls of the applicant for the year 1986-87. The applicant submits that the respondents should have passed an appropriate order within 3 months from the date of submission of the representation, but the same was disposed of after about four years that too without application of mind and passed an inappropriate order which requires to be quashed. Similarly the adverse remarks for the years 1989-90 and 1990-91 were communicated by the respondents vide letter dated 7.5.92 and 20.9.92 respectively. The applicant submitted his representations against these adverse remarks vide representations dated 28.5.92 and 5.10.92 and these representations were forwarded to Shri R L Chowdhary for his remarks under Rule 10 of the All India Services (Confidential Roll) Rules, 1970 as he had given those remarks in the capacity of Reviewing Officer in the ACRs of the applicant for the years 1989-90 and 1990-91. It is submitted that Respondent No.3 never posted nor



held the position / authority of Chief Conservator of Forests (Production) during the relevant periods as he was posted as Chief Conservator of Forests (Conservation), Maharashtra Circle. As per Rules the ACR for the year 1989-90 should have been written by Conservator of Forests, Thane Circle as Reporting Officer and should have been Reviewed by the Principal Chief Conservator of Forests i.e., by Mr. U B Patil for the period from 1.4.89 to 30.6.89 and by Mr. V K Prabhu for the period from 1.7.89 to 31.3.90 and the Accepting Authority being the Secretary (Forests). Similarly for the years 1990-91 the ACR of the Applicant should have been written by the Conservator of Forests, Thane Circle and Reviewed by Shri M G Sardar, Chief Conservator of Forests (Production) the Accepting Authority being the Principal Chief Conservator of Forests, Shri V K Prabhu. Therefore, the remarks made by the Respondent No.3 as Reporting Officer is bad in law and void ab-initio.

7. In the DPC held on 20.1.93 various Deputy Conservators of Forests were appointed in the Super Time Scale of Pay in IFS but the applicant has not been appointd in the Super Time Scale and the promotion orders passed subsequent to the DPC are impugned in the present O.A. Being aggrieved by the appointment of his juniors to the Super Time Scale the applicant has prayed for quashing of the DPC proceedings held on 20.1.93 as the ACRs of the applicant for the years 1989-90 and 1990-91 were considered and evaluated for appointment to the

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Super Time Scale. The contention of the applicant is that the respondents refusal to properly evaluate the merit of the applicant is malice in law by not applying various rules in their proper spirit and the adverse remarks, contained in the ACR are acted upon without disposing of the representation preferred by the applicant against the adverse remarks in the ACRs is not only malacious but also a colorable exercise of power by communicating non-adverse remarks to the applicant for the years 1987-88 and not communicating the basis and subject matter of the adverse remarks of the applicant for the year 1986-87 and disposing the appeal of the applicant by passing a non-speaking order.

8. It is on record to show that the applicant had made a representation to the competent authority on 5.11.88 against the malafide attitude of Respondent No.3 towards the applicant which has not been answered by the respondent adequately. Further, though the Respondent No.3 is impleaded as party respondent by name and malice is alleged against him, the Respondent No.3 did not care to file any reply and none of the private respondents cared to file any reply in this regard. The details of the representations made by the applicant against the adverse remarks in the ACRs is as under:

1986-87 adverse remarks communicated on 18.10.88;
Representation dated 5.11.88 for expunging the adverse



remarks has been rejected by the Government vide letter dated 30.1.93.

1989-90 adverse remarks communicated on 7.5.92; Representation dated 28.5.92 has been rejected by the Government vide letter dated 4.2.94.

1990-91 adverse remarks communicated on 28.5.92; Representation dated 9.10.92 is under consideration. Adverage remarks have been ordered to be expunged vide GO dated 11.5.1994.

From the above, it is obvious that the respondents have taken more than two years in communicating the decision taken by the respondents to the applicant which is contrary to the rules.

9. The respondents vide their letter dated 7.5.92 while communicating the adverse remarks for the year 1989-90 stated that large scale illicit felling was noticed in East and West Kasara Range which indicates lack of vigilance and patrolling of forests on your part. An investigation into high expenditure incurred on trench cum ground fencing and other irregularities in these works have been brought to notice. You have generally neglected your field works and protection works of Forests. The applicant in his report dated 28.5.92 has clearly pointed out that in Alibag Forest Division, East and West Kasara ranges do not exist. Under letter dated.

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5.10.92 the applicant represented against adverse remarks in ACR for the year 1990-91 stated that since the adverse remarks regarding doubtful integrity are recorded a separate secret note should have been sent along with the ACR to ensure follow up action and hence such adverse remarks are required to be expunged as they are actually incorrect allegations. The applicant has made direct allegations against the Respondent No.3 but he did not care to answer any of the allegations. The main thrust of the O.A. is that the Respondent No.3 bore malice against the Applicant after 1986-87 when the Respondent No.3 forced him to place the Jeep, officially allotted to Silva, Pune at his disposal time and again though he was having his official car. This he made it clear in his representation dated 5.11.88, thereby he had intentionally wrote bad remarks in his ACRs. Further he has also stated that though he is not authorised to write his CRs for the years 1989-90, and 1990-91 he took upon himself to write his CRs in order to mar the ~~career~~ of the applicant and not to get any further promotion to the post of Super-Time Scale which according to Rules he is entitled. Respondent No.3 has not chosen to deny the allegations. (Barely-without-going into the particulars) we therefore have no alternative but to draw our own conclusions. The conclusion is irresistible that the Respondent No.3 bore a grudge against the applicant and that the adverse remarks have something to do with his attitude towards the applicant. In our view the adverse

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remarks issued by Respondent No.3 is vitiated by malafides and passed without any application of mind and to the fact of this case, therefore the same is liable to be quashed and set aside.

10. During the hearing, the Ld. Counsel for the respondent No.1 Mr. G Nilmant. was unable to show us the DPC proceedings nor he could produce the ACRs of the applicant for our perusal though directed. He only contends that the DPC did not find the applicant fit for promotion though his name was considered by the DPC and denied that the adverse entries in the ACRs of the applicant were made out of malice and further stated that the respondents pursuant to the direction of the Tribunal in TA No.267/87 declared the adverse ACR remarks for the years 1981-82 as invalid and thereafter senior time scale has been given to the applicant vide order dated 7.12.1993. He further submits that the Respondent No.1 cannot answer on behalf of Respondent No.3 regarding malice and he was not able to give a logical answer or reason why the Respondent No.3 has written the ACR of the applicant as Reviewing Authority and Accepting Authority and was not able to answer coherently regarding Reviewing Authority and Accepting Authority other than the statutory rules issued by the State Government vide Rules dated 20.4.90. He further denied that the adverse remarks in the ACRs of the applicant were taken in the administrative matters including promotion of the



applicant. He has not been able to answer regarding the delay in communicating the reply to the representations of the applicant and further states that as per Rule 10 of the All India Services (Confidential Rolls) Rules, 1970 it is incumbent upon the respondents to obtain remarks of the reporting officer. Rule 10 reads as under:

"10. Consideration of representation against adverse remarks:

1) The Government shall, and if it considers necessary, in consultation with the reporting authority, the reviewing authority or the accepting authority, consider the representation made under Rule 9 by a member of the Service and pass orders as far as possible with three months of the date of submission of the representation :

- a) rejecting the representation, or
- b) toning down the remark, or
- c) expunging the remark"

However, on perusal of the record we find that none of these have been carried out by the respondents by consulting those officers who are no longer holding the said post and consulted those in service. At any rate the decision should have been taken and communicated within three months, whereas in the instant case the communication is done by the respondents after a lapse of 2 years and in one case after five years which is patently not in accordance with the rules and no justification is offered by the respondents in this behalf. It is further noticed that no cogent reasons have been furnished by the respondents while rejecting the representations of the applicant.

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10. Applicant in support of his contentions has cited various decisions whereby the Tribunals have directed expunging the adverse remarks passed by the Respondents. It is observed that the applicant received "Very Good" ACR for the years 1989-90, but again during the years 1990-91 the Respondent No.3 in his capacity as Reviewing Authority has given "Average" remark in the ACR of the applicant in violation of the Rules. Since ACRs are performance oriented running profile and cross section of the conduct and the assessment of the administrative qualities viz., handling of works, competence, conduct, character, capabilities, personnel relationship with colleagues and senior officers etc., in the performance of the official duty. If the employee, while performing the official duty is not upto the mark in any of the administrative qualities and attributes it should be pointed out to the concerned officer by the superior either to clarify on those points or to improve in that regard and if no clarification is given or no improvement is shown in that regard that forms objective assessment and the basis of adverse remarks in the ACRs. If this part of the Reporting Officer's duty is done, there is every justification in recording the adverse entries, which would refer to the defects, which have persisted despite the Reporting Officer having pointed out the defects earlier. The applicant has not been served with any warning nor any memo all these years in his official work and no adverse communication has been issued by his superior officers. Therefore, in the absence of any

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criteria adopted by the Respondent No.3 in passing the adverse remarks and in the absence of any reply to the O.A. from the Respondent No.3 though malice is leveled against him, none of the adverse remarks can stand by themselves and they ought to be expunged as they are uncalled for and unwarranted. If the adverse remarks are not passed on objective assessment they are liable to be quashed. In support of this argument regarding malafide

intentions of Respondent No.3 the applicant has relied on the following judgements:

- A) ASHOK KUMAR Vs. UNION OF INDIA,
1989(4) SLJ (CAT) 2091
- B) G.C. GAJNAN Vs. UNION OF INDIA,
1987 ATC 709, (CHANDIGARH)
- C) K.L. SHARMA Vs. UNION OF INDIA,
1987 ATC 709, (CHANDIGARH)
- D) L. HAYSEELAN Vs. UNION OF INDIA,
1991 2 ATC 309 (DELHI)

Regarding adverse remarks for 1986-87 since his previous years report ie., 1985-86 is shown to be very good his efficiency cannot be dropped within a years time. Therfore, the adverse remarks passed by Respondent No.3 stand to be malice and are required to be quashed. In



this connection the applicant relied on the following judgments:

- A) S.R.JULKA Vs. UNION OF INDIA
1990 6 ATC 18
- B) S. PRATAP SINGH Vs. STATE OF PUNJAB
AIR 1964 SC 72.

The applicant in support of his contention that the respondents acted arbitrarily which is bad in law he relied on the decision of the Apex Court in UNION OF INDIA & ORS. Vs. E.G. NAMBUDIRI in Civil Appeal No.1976 of 71 decided on 30.4.1991, SCSR Vol.I 502, wherein it is observed in para 10 that the competent authority has no licence to act arbitrarily, he must act in a fair and just manner. He is required to consider the questions raised by the Government servant and examine the same in the light of the comments made by the officer awarding the adverse entries and the officer counter-signing the same. The applicant in support of his contention that non furnishing the basis of adverse remarks despite request and treating the same as final representation prematurely by passing a non speaking order is against the principles of natural justice and such remarks are to be quashed and expunged, he relied on the following decisions:

- a) A.L. EARAYIL Vs. SECRETARY TO GOVT. OF INDIA
1992 19 ATC 210 (ERNAKULAM)



- b) G.K. PIRZADA Vs. UNION OF INDIA,
1988 7 ATC 8401
- c) L. JAYSEELAN Vs. UNION OF INDIA & ORS.
1991 2 ATJ 309 (DELHI)
- d) RITA MALHOTRA Mrs. Vs. UNION OF INDIA & ORS.
1990 2 ATJ 145 (CHANDIGARH).

11. Though a copy of the O.A. has been served on the Respondent No.3 he did not care to file any affidavit nor make his appearance before the Tribunal. It amply proves that the charges of malafide are proved/evident against Respondent No.3.

12. In the light of above, we are of the opinion, that the contention and submissions made by the applicant will have considerable merit and thus all adverse remarks passed by Respondent No.3 against the applicant for the years 1986-87, 1989-90 and 1990-91 cannot sustain by themselves and is not based on any material facts. Allegation of malafide against Respondent No.3 is fully established especially in the absence of any rebuttal by Respondent No.3. Therefore, all the adverse remarks are liable to be quashed. The contention of the State Government that though the applicant is liable to be selected on Super Time-Scale on deputation basis that does not entitle him to seek Super Time Scale in the State is not sustainable as it is an admitted fact that his juniors have been promoted in the Super Time Scale before the applicant and we are of the view, but for the



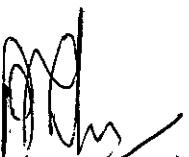
adverse remarks he would have been successfully selected by the DPC to the Super Time Scale and the adverse remarks came in his way of promotion before his juniors were considered and promoted. Selection on deputation to Super Time Scale posts requires the State cadre clearance and on the basis of willingness and merit of the candidate's selection is made and hence the applicant cannot be denied promotion merely on technical plea that by itself does not entitle him to seek for super time scale in the State. In the absence of any relevant record produced before the Tribunal by the Respondents as to why the applicant has not been entitled for promotion to the Super Time Scale in the State, we are perforce to draw an adverse inference against the State Government that he should have been considered along with other eligible candidates i.e., along with his juniors who were promoted as back as as on 6.4.93.

13. In the result, in the absence of any rebuttal from Respondent No.3 and the evasive reply filed by Respondent No.1 we are left with no other alternative but to quash all the adverse remarks passed against the applicant for the years 1986-87, 1989-90 and 1990-91 and set aside the same. In view of our quashing the adverse remarks, Respondent No.1 is hereby directed to consider the case of the Applicant for promotion to Super Time Scale in the State from the date his junior has been promoted i.e., 6.4.93 provided his confidential reports are upto the

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mark, because further promotion is by selection and not by seniority alone and as per norms required for promotion and pass appropriate orders in this behalf within a period of ~~two~~ ^{four} months from the date of receipt of a copy of this order.

13. O.A. is allowed and the same is disposed of with the above direction with no order as to costs.



(P.P.Srivastava)

Member(A)



(B.S.Hegde)

Member(J)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

C.P.No.66/97 in OA.NO.1276/93

Friday this the 5th day of December, 1997

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri P.P.Srivastava, Member (A)

R.M.Dayal

... Applicant

v/s.

Shri P.Subramanyan, IAS,
Chief Secretary,
Government of Maharashtra,
Mantralaya, Mumbai.

By Advocate Shri V.S.Masurkar ... Respondents

Tribunal's Order

Heard the applicant in person and Mr.V.S.Masurkar, learned counsel for the respondents.

2. The applicant has filed this contempt petition alleging that the respondents have not complied with the order passed by this Tribunal dated 10.1.1997 in OA.NO.1276/93.

3. After hearing both the sides, we find that no case is made out for contempt. The operative portion of the order dated 10.1.1997 is that the adverse remarks against the applicant for three years were quashed and the respondents ^h have considered the applicant for Super Time Scale from the date his junior was promoted.

4. At the time of hearing, it is submitted that the adverse remarks have been expunged from the confidential report of the applicant in respect of three years which was the subject matter in the previous OA.

5. As far as direction for considering the applicant for promotion, it has been stated by the respondents that in the light of the Tribunal's order, the applicant's case was considered by the DPC committee but he was not selected.

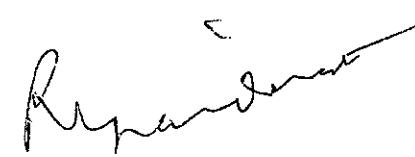
In our view, there is no question of contempt in the admitted facts and circumstances of this case. If the applicant is aggrieved by the non-selection in Super Time Scale inspite of fresh DPC held after the order is passed by this Tribunal, the applicant's ^{any other} remedy is to approach this Tribunal or ~~in the~~ the appropriate forum.

6. In the result, the contempt petition is rejected. No costs.



(P.P. SRIVASTAVA)

MEMBER (A)



(R.G. VAIDYANATHA)

VICE CHAIRMAN

mrj.

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