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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 125/93

Transfer Application No:

DATE OF DECISION: 27-9-1994

Commander N.K.Bhanot.

Petitioner

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

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)  
MEMBER(A).

(10)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY.

Original Application No.125/93.

Commander N.K.Bhanot. .... Applicant.

V/s.

Union of India & Ors. .... Respondents.

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

Appearances:-

Applicant present in person.  
None for the Respondents.

JUDGMENT :-

(Per Shri M.R.Kolhatkar, Member(A)) Dt. 27.9.1994

This is an application under section 19 of the Administrative Tribunals Act praying for expunction of adverse remarks recorded in the ACR of the applicant for the year 1989-90 and for related reliefs. The adverse remarks as communicated by the DO letter dt. 18th February, 1991 at (Annexure 18) are as below :-

"PART-V Col.2 :

I agree with the reporting officer that he has made exaggerated claim about his role in the re-organisation of the marine set up. I also agree with the observation of the reporting officer that Shri N.K.Bhanot in his resume has made uncalled for comment about "command and control". I also agree with the comment of the reporting officer that Shri Bhanot's claim of volunteering to take boats etc. in the resume is incorrect. For these reasons and other reasons I would say that he is an indisciplined officer, fond of bragging. He is quite confused about the very technical things, he is supposed to know. His performance is therefore 'below average'.

PART-V Col.4:

His performance has been bad. His grading is 'below average'.

2. Your work has otherwise been reported well."

2. The grievance of the applicant is that the applicant is a professional, is a retired Navy Officer with subsequent experience in Merchant Marine and the duties of his post as mentioned in the advertisement of the UPSC (vide Annexure - A-I) at page 15 and 16 are essentially of supervisory nature. He reported to Joint Director (Marine) who was initially a professional officer, but subsequently a non-professional Officer was given the charge of the post of Joint Director Marine who reports to Director, Preventive Operations at New Delhi. One Mr. S. Mukhopadhyay took over as the Director, Preventive Operations in May, 1988 who is the reviewing officer and it is he who has spoilt the C.R. and otherwise harassed him. As examples of harassment, he has pointed out to the fact that by an order dt. 1.3.1988 (Annexure A-2) he was appointed to exercise the power of Head of Office and for some time even held the charge of the post of Joint Director (Marine), but subsequently not only another Officer viz. Dy. Director Anti Smuggling was appointed as Joint Director (Marine), but was also declared as head of office vide page 28 (Annexure A-5). On 19.5.1989 vide (Annexure A-11) in connection with the visit of Member, (Anti Smuggling) Board of Customs & Excise on 1.4.1989 onwards, (he) made certain observations regarding proper maintenance of the boats and the applicant as the immediate supervisory officer was called upon to explain the circumstances under which various lapses occurred. The applicant replied to the Memo vide his letter dt. 2.6.1989 at (Annexure A-12). The same was considered and the applicant was cautioned to be careful in future by Memo dt. 28.6.1989 (Annexure A-13). The applicant

does not appear to have made any further representation against this Memo of caution which has become final. Thereafter, the Director, Preventive Operations by a Memo dt. 12.4.1990 (Annexure A-16) asked the applicant to show cause as to why disciplinary action should not be initiated against him for certain alleged acts of indiscipline, indiscretions and obstructions in connection with a voyage involving diversion of 4 crafts available at Bombay to the East Coast to meet the pressing operational requirements. The applicant by his reply dt. 22.5.1990 (Annexure A-7) denied the allegations, there was no further action. It was, thereafter, that he was communicated the above adverse remarks. The applicant represented against these adverse remarks, but the same was rejected on 24.7.1991 vide Memo at page 62 in the following terms:

"I am directed to refer to your representation dt. 11.3.1991 on the subject mentioned above and to say that competent authority has considered your representation very carefully and found no valid justification for interfering with the impugned adverse remarks recorded in your ACR for the above cited period as the same have been duly substantiated by the reporting and reviewing officers. Your representation for the expunction of the adverse remarks has, therefore, been rejected.

In case you decide to file an appeal against the decision, you can do so within six months from the date of receipt of this letter."

A further appeal to the President was sent which was also rejected on 20.2.1992 in the following terms:

"I am directed to refer to the appeal dt. 2.12.1991 on the above subject preferred to the President by Shri N.K. Bhanot, Marine Officer and to say that the competent authority has considered your appeal very carefully and found no valid justification for interfering with the impugned adverse remarks recorded in your ACR for the above cited period as the same have been duly

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substantiated by the reporting/reviewing officers.

While no reasons have been found for the malice/prejudice of the reviewing officer as stated in the appeal, it is a matter of record that the reviewing officer had in Col.3, Part-V of the ACR for the year 1989-90 only agreed with the assessment of reporting officer and your assumption regarding dissimilarity of opinion of the reporting and reviewing officer is, therefore, baseless. Moreover, in the absence of instructions to the contrary, adverse remarks can well be based on the exaggerated claims made in the resume."

3. The main contention of the applicant is that the adverse remarks communicated were essentially connected with the two incidents viz. one related to the visit of the Member (AS) <sup>A</sup> second being voyage involving diversion of 4 crafts from West Coast to East Coast. In both these incidents the applicant had occasion to point out the need to observe statutory provisions under the Merchant Shipping Act and the need for strengthening the staff and the equipment. He had also taken the stand that he was a Supervisory Officer and should not be treated as a Navigator. It was because he had bluntly pointed out the failures of the department which was manned by non-professionals that they harboured a prejudice against him which resulted in the recording of the adverse remarks by way of report and review which came to be communicated to him. The applicant further states with reference to the instructions for record and review of the CRs) that the CRs are to be used as a tool for the human resources development and not for fault finding and the self-assessment report cannot be made the basis for recording adverse remarks.

4. The department has denied the contentions of the applicant. According to the department there

there is no rule that the post of JDM should be held by a person with a Marine background. The applicant was frustrated because he wanted to be transferred to the office of Director, Preventive Operations, New Delhi and when the transfer case was not considered, he became desperate and took antagonistic attitude showing negative view towards the activities of the Department. The department has denied that the crafts were unseaworthy or that they were in violation of statutory provisions relating to Merchant Marine Act. The adverse remarks were correctly recorded based on the objective assessment of the performance of the Officer and that his representation was also rejected after considering various points raised by him.

5. The department filed its reply in December, 1993, but took a lot of time in producing the documents, especially the file of the ACR. The case was argued in person by the applicant. The counsel for the respondents remained absent and did not avail of opportunity to file memo of arguments but the departmental officer showed us the file of the ACR. We are deciding the case on the basis of available material.

6. The C.R. file of the Officer shows that his gradings for the various years are as follows:-

"1988-89	- Good
1989-90	- Below Average (the ACR in question)
1990-91	- Very Good
1991-92	- Very Good
1992-93	- Very Good".

The applicant had no access to the ACRs, but he did point out that this was for the first time that adverse entries were intimated to him and no adverse

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earlier entries were communicated to him in subsequent years.

So far as the entries in the ACR for the year 1989-90 (the order in question) are concerned, the same are reproduced below in the order they are recorded.

Reporting Officer

"A.1. Claim at (a) is exaggerated. It was decision of DPO after deliberations with concerned Collectors, JDM and field staff. Comments at (b) are uncalled for and out of purview of resume. Claim of volunteering at (h) is incorrect as the Officer was detailed for the job by the DPO. The other points reflect part of routine jobs performed.

2. The officer is intelligent and his out-put is good.

3. His inspections are exhaustive and penetrating.

B.1. Being an Ex-Naval Officer, he has sufficient initiative and drive as also qualities of leadership.

2. He is prompt in attending to work.

3. He is conscientious Officer.

4. He is well disciplined.

5. Does not arise.

C(a) Nothing worth mentioning.

(b) (2)  (1)

(4)  (2)

(5)  (3)

PART - IV

1. Beyond doubt.

2. The Officer is good and dependable and can provide adequate support with proper guidance.

3. Average.

PART - V (Reviewing Officer)

1. One year.

2. I agree with the reporting officer that he has made exaggerated claim about his role in the reorganisation of the Marine set up. I also agree with the observation of the reporting officer that Shri N.K.Bhanot in his resume has made uncalled for comment about "command and control". I also agree with the comment of the reporting officer that Shri Bhanot's claim of volunteering to take boats etc. in the resume is incorrect. For these reasons and other reasons I would say that he is an indisciplined officer, fond of bragging. He is quite

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new technical things he is supposed to know.

3. I have written in the above para about the agreement on the important issues.
4. His performance has been bad. His grading is 'below average'.
5. No.

Dt. 8.9.1990

".

Thus it was the Reviewing Officer/ recorded adverse remarks which, as mentioned by us, were communicated to him. From an analysis of the report and the remarks of the Reviewing Officer, it is seen that the Reviewing Officer has chosen to comment only on ~~the remarks of the Reporting Officer relating to the self-assessment.~~ the remarks of the Reporting Officer relating to the self-assessment. Thereafter, the Reviewing Officer has stated that for these reasons and other reasons he would state that he is an indisciplined officer fond of bragging. The reference of the Reviewing Officer to that "other reasons" is quite eloquent, it underlines the fact that the Reviewing Officer has used the remarks of the Reporting Officer on the self-assessment as a launching ground for making his observations on the officer. He has not given any examples or other reasons for which the officer is considered to be an indisciplined officer, fond of bragging. Evidently, the Reviewing Officer had in mind the two incidents referred to earlier viz. the incident of maintenance of the boats and the incident relating to diversion of the boats from the West Coast to the East Coast. It is significant to note that the first incident resulted in communication of caution to the applicant, but in the second incident no action was taken after the applicant replied to the memorandum of the Director (Preventive Operations). Thus, what the Reviewing Officer failed to do or could not do by way

dealing with the representation of the Officer about the incident of the diversion of the Ships from the West Coast to the East Coast, the Reviewing Officer did in the guise of reviewing the remarks of the reporting officer on the self-assessment by the applicant. The reference to the Officer being confused about the technical things ~~is/~~ he <sup>which</sup> is supposed to know is also quite vague and the conclusion that the performance is 'below average' is therefore ~~is~~ a non sequitur.

In fact, if the reviewing officer wanted to say that the performance of the Officer was 'below average' he ought to have ~~dealt~~ dealt with various points made by the reporting officer under different headings of the CRs. <sup>remarks at length</sup> We have reproduced these ~~points~~ which indicate that the Officer's performance ~~can~~ by no stretch of imagination be called 'below average'. The Reporting Officer has stated that the Officer is good and that his inspections are exhaustive and penetrating. The Officer has initiative and drive as well as qualities of leadership, the Officer is well disciplined and conscientious. Therefore, the reviewing officer has really dis-agreed with the Reporting Officer by calling him <sup>an</sup> ~~an~~ indisciplined officer, but in the guise of agreeing with the Reporting Officer on his remarks on his self-assessment he has essentially disagreed with the Reporting Officer and evaded his responsibility to give reasons as to why he is dis-agreeing with the Reporting Officer on various points.

7. We have therefore, no doubt, that the various entries in the C.R. are mutually inconsistent and therefore, they are liable to be quashed. In this connection, we refer to the case of Alphonse Louis Earayil v/s. UOI & Anr. (1992) 19 ATC 210<sup>1</sup>

which is a case of Division Bench of the CAT, Ernakulam Bench. In that case the Tribunal has observed as below:

"In the former part of Annexure A-1 it has been stated that the applicant had been discharging his duties extremely well, that he had been taking interest in crime and law and order work, that he was always available for all important duties and that his relationship with public and control over staff had been amply good, excellent and respectful. In the wake of the above observation the latter comment that he has not been effective as Commissioner of Police does not appear to be sound as it is inconsistent with former part. Entries in a confidential report have got far-reaching consequences in making or marring the career of an officer. The reporting and reviewing officers have a solemn duty to evaluate the work and conduct of the officer reported upon in an objective, unambiguous and dispassionate way. The very object of writing confidential report is to have a correct assessment of the qualities of the officer, his work and conduct. If the report is written in a mutually inconsistent and ambivalent manner, it will not give a correct picture regarding the work and conduct of the officer. The applicant has been submitting weekly diaries of his work during the period he has been working as Commissioner of Police and the copies of the reports for the period in question have been produced by the applicant at Annexure A-5. The superior officers of the applicant had been in receipt of these reports. The second respondent has not filed a reply statement so as to enable us to understand whether there has been any instance which justified the damaging remark in the ACR of the applicant that the quality of his executive work had left much to be desired and that he was a failure as a Commissioner of Police, Trivandrum City which observation is as observed by us absolutely inconsistent with the observation that he had been discharging his duties extremely well. For this reason alone, the adverse entry in the ACR of the applicant for the period in question communicated under Annexure A-1 is liable to be quashed."

8. The applicant who is a retired Naval Officer has since retired from the Department in question. The existence of adverse remarks in his ACR would not make any difference to his promotion or otherwise. However, the applicant submitted that it was a matter of self respect for him that the adverse remarks

which are unjustified should be expunged and that he should be vindicated. We have no doubt that the adverse remarks in the ACR of the applicant for the year 1989-90 were mutually inconsistent and that this inconsistency stems from extraneous motives. <sup>and hence arbitrary</sup> The same are therefore liable to be expunged. We, therefore, dispose of the application by passing the following order:

O R D E R

The impugned adverse entries in the C.R. of the applicant for the year 1989-90 are hereby directed to be expunged.  
No order as to costs.

*M.R.Kolhatkar*

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(M.R.KOLHATKAR)  
MEMBER(A)

B.