

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 328/93

Transfer Application No:

DATE OF DECISION: 22.9.1994

G.Haldar. Petitioner

Shri S.P.Saxena. Advocate for the Petitioners

Versus

Union of India & Others. Respondent

Shri R.K.Shetty. 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).

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY.

Original Application No. 328/93.

G.Haldar.

... Applicant.

V/s.

Union of India & Ors.

... Respondents.

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

Appearances:-

Applicant by Shri S.P.Saxena.
Respondents by Shri R.K.Shetty.

JUDGMENT :-

(Per Shri M.R.Kolhatkar, Member(A)) Dt. 21.9.1994.

This is an Original Application under section 19 of the Administrative Tribunals Act seeking for the relief of expunction of the adverse entry in the C.R. of the applicant for the years 1991-92 and for consequential reliefs.

2. The applicant was directly promoted as Assistant Works Manager in the Ordnance Factory Organisation and at the relevant time he was working as Works Manager. By the Memorandum dt. 29.10.1992 he was informed that his capacity for conceptualisation and innovation and his communication skills are limited. The applicant made a representation on 16.11.1992 (Ex. A-3) alleging several grounds. The representation has been rejected by the Memorandum dt. 14.1.1993 (at page 11) in following terms:

"There is no sufficient and valid ground in his representation.... the advice given to Shri Haldar was with a view to afford him the opportunity to overcome the short-coming reflected in the ACR and that he should take the same in the correct spirit."

3. It is this memorandum which has been impugned

by the applicant in this Original Application. The counsel for the applicant urged the following grounds for our consideration. Firstly, the applicant is working in an Explosives Factory, there is no R & D involved and in fact no innovation is permissible because the applicant is required to work according to specifications. Thus the applicant is not required to innovate nor is the applicant required to communicate. There are other organisations in which these qualities would be necessary like D.R.D.O etc. but the applicant's Organisation is not one of them. Secondly, it is urged that no adverse remarks prior to the above adverse entry were ever orally or in writing communicated to the applicant. Thirdly, there have been no subsequent adverse remarks. Fourthly, procedurally the communication of adverse remarks was delayed, inasmuch as, according to the standing instructions, the adverse remarks are required to be communicated to the concerned Officers within a period of 1½ months, and therefore, adverse remarks being for the period ending 31.3.1992 ought to have been communicated by the middle of May, but they have been communicated in November, 1992. Another procedural deficiency is that the memorandum rejecting the representation is not a speaking order although the applicant had made several points in his representation and the respondents were bound to deal with those points. Fifthly, the applicant states that there are instructions dt. 6.1.1993 apended at (Annexure A-4) which lay down that vague adverse remarks without quoting specific instances should not be made in the ACR and the impugned adverse entries are against these standing instructions. Lastly, the applicant has pointed out that he was subsequently given on 15th August, 1993 a Cash Award of Rs.500/- in recognition of his contribution to Defence Production

with ingenuity and innovation and the adverse entries that he did not have the capacity for conceptualisation and innovation was prima facie unwarranted in the face of this award which related to the same period.

4. The Respondents have stated that the adverse remarks were recorded in the normal course, the same having been scrutinised at three successfully higher levels on the basis of bona fide assessment of performance. So far as, the procedural objections are concerned, the instructions regarding communication of adverse remarks within one month of the completion of the report have the qualification "as far as possible" and the instructions are not mandatory, in any case, there is no great delay. The reply to the representation is specific enough and it cannot be assailed on the ground of being non-speaking. The departmental instructions dt. 6.1.1993 relating to non-recording of vague remarks relating to entries like 'Average', 'Highly Indisciplined', 'Careless and Casual' etc. and not to the type of short comings which have been communicated to the applicant. So far as the award for innovation is concerned the Respondents have stated that the award given to the applicant on 15.8.1993 was in recognition of the contribution made by the applicant subsequent to the period 1991-92. From the details furnished by the Respondents it is seen that the award was in respect of the reporting cycle October, 1992 to April, 1993 and the Award was given to the applicant as a Supervisory Officer. The basic innovation was attributed to the persons who work under the applicant.

5. In his support, the applicant has referred to the following case laws. In K.B.Mohandas V/s. Asstt. Collector of Central Excise (1991) 16 ATC 1771 it was

held in para 4 of the Judgment that when no reason for rejection of the appeals has been given ~~but~~ ^{and} also there is no indication as to whether the competent authority had exercised its mind and passed the order, the impugned orders viz. the adverse entry, as well as, the communication rejecting the representation are liable to be set aside. In our view, the facts in this case are different and the above Judgment does not apply. Next reference is made to Alphonse Louis Earayil V/s. Secretary to Govt. of India & Anr. I(1992) 19 ATC 2101, here again, the memorandum rejecting the representation by a non-speaking order was held to be illegal. Again on facts, the ratio of this case does not apply. The next case relied ^{on} by the applicant is C.K.Gajanan V/s. Union of India I(1991) 15 ATC 5861 in which it has laid down that when the adverse remarks are vague and when there is no material, then the adverse remarks can be ignored and when the rejection of the representation is made by a non-speaking order adverse entries are liable to be expunged. In our view, again the ratio of this case does not apply to the facts present of the case.

6. Regarding the award received by the applicant we find that the factum of receipt of the award is not conclusive as to non-existence of alleged short comings of the applicant both because the award period was different and because the role ^{of} ~~in~~ the applicant in the receipt of the award was only indirect. The Respondents have referred to the Supreme Court Judgment in Air Vice Marshal S.L.Chhabra, VSM (Retd.) V/s. UOI & Anr. I 1993 (3) SLJ 491 in which it was held by the Supreme Court that while exercising the power of judicial review, a Court shall not venture to assess and appraise the merit or the grading.

of an officer. The respondents, ~~xxx~~ therefore, state that the scope of the judicial review in respect of adverse entries in the C.R. is severely limited. In our view, these observations of the Hon'ble Supreme Court do not say that there can be no judicial review of the adverse entries in the CRs. We are, however, satisfied that this is not a fit case in which judicial interference is called for. The instructions regarding timely communication or ~~the~~ regarding the mode of recording of the adverse entries are only directory. The adverse remarks are neither vague nor can it be said that they lack material. The memorandum rejecting the representation does not disclose lack of application of mind. We, therefore, consider that the O.A. has no merit, it is accordingly rejected. There would be no order as to costs.

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

B.