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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH  
(CAMP: NAGPUR)  
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Original Application No: 519/93  
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Transfar Application No:

DATE OF DECISION: 21 July, 1995

Abdul Hamid Petitioner

Mr. R.M. Chaudhary Advocate for the Petitioners

Versus  
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U.O.I. & 3 ors.

-----Respondent

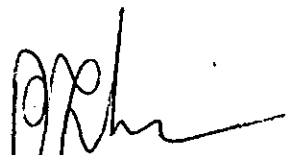
Mr. R.S. Sundaram Advocate for the Respondent(s)

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

The Hon'ble Shri

1. To be referred to the Reporter or not ? yes ARH
2. Whether it needs to be circulated to other Benches of the Tribunal ? No

  
Member (A)

(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6  
PRESCOT ROAD, BOMBAY 1

CIRCUIT SITTING AT NAGPUR

O.A. No. 519/93

Abdul Hamid

..Applicant

V/s.

Union of India & 3 ors.

..Respondents

Coram: Hon. Shri P.P. Srivastava, Member(A)

Appearance:

Mr. R.M. Chaudhary  
Counsel for the applicant

Mr. R.S. Sundaram  
Counsel for the respondents

JUDGMENT:

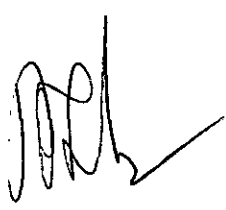
DATED: 21<sup>st</sup> July 1995

The applicant who was working as Junior Accountant in the Department of Posts has challenged the adverse entries made in his Confidential Rolls for the years 1972-73; 1973-74 and 1974-75 as also from 1976-77 to 1980-81. The adverse entries were communicated to the applicant which are placed at Annexures A-II to A-IX, to the O.A. and the applicant has made representations against the adverse entries which are placed at Annexures A-X to A-XIII. All the representations were rejected by the respondents vide orders placed at Annexures A-XIV to A-XVII to the O.A. On the basis of the adverse entries the applicant was held at Efficiency Bar (E.B.) from 1977 to 1982. He crossed the E.B. on 1.2.1982 and his pay was fixed at Rs. 515 instead of Rs. 560/-. Through this O.A. the applicant has sought relief that the adverse entries in the CRs for the year 1972 to 75 and from 1976-77 to 1980-81 be expunged and the order of the respondent no.1 holding up of the applicant at E.B. from June 1978 to 31.1.82 be quashed, and the respondents be directed to

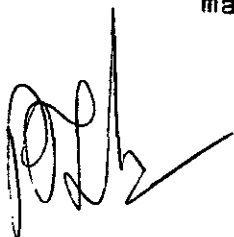
*Adh*

allow the applicant to cross the E.B. from 1.6.1978 refixing his pay at Rs. 515 from that date and pay him the arrears of fixation of pay. The applicant has also prayed that the impugned order of the respondents rejecting the applicants representation against the adverse entries and holding of E.B. be set aside.

2. At the outset the counsel for the respondents raised the question of limitation as well as that of jurisdiction of the Tribunal to entertain this O.A. as the cause of action in this case has arisen before three years of setting up of the Tribunal. Counsel for the applicant has brought out that the applicant had filed an Original Application No. 1353/92 and the said OA was disposed of at the admission stage on 15.3.93 with the direction that the representation should be considered within two months from to day. The judgment dated 15.3.93 also indicated that the respondents have received representation from the applicant dated 24.7.92 and that letter dated 19.1.93 shows that the representations are under consideration and that the representation has been forwarded to the proper authorities. Since the respondents were considering the representations made by the applicant which were finally disposed of by them on 30.3.93 vide Annexure A-I, I am of the opinion that the limitation would start from this date and therefore this O.A. would be considered within time. Since the decision of the respondents dated 30.3.93 is under challenge the Tribunal will also have jurisdiction in the matter.



3. Counsel for the applicant has challenged the adverse entries in the CRs firstly on the basis that the Reporting Officer, one Mr. Pathak, was biased and the adverse entries have been written to harass him. The applicant has brought out in para (x) of the O.A. that Shri Pathak was Secretary and the Applicant was an Executive Member of the Staff (employees) Association, and in one of the meetings the applicant had exposed a lie of the Secretary, Shri M.R. Pathak and from then he has nourished a grudge against the applicant and was waiting to take revenge. Therefore, when he became applicant's Supervisor he took revenge by writing adverse remarks in the CRs. The applicant had not received any adverse entries in the CRs upto 1972 and started getting the adverse remarks only from 1972-73 when Mr. Pathak became his supervisor and Reporting Officer. I have seen the CRs as well as the chart submitted by the respondents showing names of the Reporting Officers, Reviewing Officers and Accepting Officer. It is seen that Shri Pathak was reporting officer for the years 1972-73 and thereafter Shri Pathak was not a Reporting Officer. It is also seen from the original CRs that the reports have been reviewed and accepted by the higher officer and therefore the claim of the applicant that he got the adverse CRs because of the grudge of Mr. Pathak is not tenable. It is also to be noted that no material on record has been placed by the applicant to prove the bias on Mr. Pathak nor he has made Pathak a respondent in this case. Therefore, I am not inclined to accept the plea that the adverse reports are based on malice and are biased.



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4. Counsel for the applicant has pleaded that since all the leave has been sanctioned either on medical grounds or otherwise it cannot form the basis for adverse entry. It has been argued by the counsel for the respondents that it is not a question of irregularity in leave but the irregularity in attendance which has been conveyed and although the leave has been sanctioned it in no way will affect the remark that the attendance of the applicant was irregular. Counsel for the applicant has relied on the judgment in G. PAPAIAH Vs. DIRECTOR, MEDICAL SERVICES, SECUNDERABAD, AIR 1976 A.P.75. It was held in that case that extraordinary leave granted to the delinquent servant for the period nullifies the basis of the charges. It was held that the very purpose of granting the leave being to regularise the petitioner's intentional absence, it is not open to the respondent to initiate any proceedings against the petitioner for his absence from duty for that period. I am afraid this judgment is of no help to the applicant because the respondents have not taken any disciplinary action against the applicant on the basis of unauthorised leave or the leave that has been sanctioned to him and the provisions of this case have no bearing on the present case.

5. Counsel for the applicant has brought to my attention that the column of 'punctuality in attendance' in the CR form was deleted vide respondents letter dated 5th October 1982. It was decided to change the ACR form which provided mention of 'periods of absence from duty on leave' and delete the column 7(a) punctuality in attendance. The counsel for the applicant has argued that the deletion of column on punctuality in attendance shows that this column was against the rules and therefore all the entries made against this column in the CRs of the applicant should

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be deleted and should be treated as against the provisions of Rules, and all the entries against the column 'irregularities in attendance' should be quashed. I am not inclined to accept this argument of the counsel for the applicant as the letter dated 5th October 1992 which has been produced before me does not show in any way that the column 'punctuality in attendance' was against the Rules. It is an improvement in the C.R. Form and in no way take away the effect of the remarks which would have been given against this column in the past.

6. Counsel for the applicant has also argued that the adverse remarks are of general nature and cannot be given without examples being reported by the respondents. The counsel for the applicant has not shown any rule which supports this submission and hence is not acceptable. Counsel for the applicant has also argued that by reading that portion of the C.R. which was adverse and the portion of the C.R. which was not adverse the remarks that were not adverse carry more weight than the adverse remarks and therefore while considering the adverse remarks their effect should have been nullified by the competent authority when the question of crossing of E.B. came for consideration. This argument is not acceptable as it would mean that the Tribunal would sit in appeal over the decision of the Authority which decided the crossing of E.B.

7. Counsel for the applicant has also argued in para 8(c) of the O.A. that the adverse entries for the years 1977-78 was considered against the applicant and on the basis of which the order dated 17.6.78, Annexure A-19, stopping the applicant from crossing the E.B. was passed. This CR for 1977-78 was communicated on 23.5.78 and without waiting for the period of representation of one month which is stipulated, this Confidential Report was considered for deciding the stoppage of E.B.

ARL

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The order at Annexure 19 dated 17.6.78 reads as under:

"Shri A. Hamid, Junior Accountant is hereby informed that he is held up at the Efficiency Bar which he is due to cross in the month of June 1978 as his C.R.s for the last 5 years are not found to be satisfactory. His case will be reviewed after a period of one year".


The respondents have in their reply to this para have mentioned that the official was held at E.B. for consistent bad record for previous five years. It was not based on adverse entry of 1977-78 only. I have seen the original file wherein it has been mentioned that as the record of Shri Abdul Hamid and the reports are not satisfactory for the past five years he may therefore be held up at the E.B. Stage. His case may be reviewed after a year. From the record it is not specifically clear whether the adverse inference in denying the E.B. was based on the adverse entries of 1977-78. The stoppage of the applicant at E.B. has been decided by the competent authority in June 1978 and there is no charge of any bias against the competent authority who had decided the case, I am of the opinion that the decision arrived at by the competent authority in this case is not open to judicial review and does not warrant the same, more so when the representation against the C.R. was ultimately rejected.

7. Applicant's counsel has relied on a judgment of Punjab and Haryana H.C. in GOPI RAM Vs. REGISTRAR COOPERATIVE SOCIETIES & Anor., 1994 LAB. I.C.727 where in the Punjab Civil Services (Punishment and Appeal) Rules 1952 were under challenge. In the facts and circumstances of that case the High Court of Punjab and Haryana had held that opportunity of hearing to the employee should be given where withholding of E.B. is involved. Since the case pertains to the Punjab Civil Services (Punishment and Appeal) Rules 1952 I am of the opinion that it has no

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direct application in the present case which belongs to the P&T department and is governed by a separate rule.

8. I am therefore of the view that the decision taken by the respondents in the case of stopping of the applicant at E.8. does not warrant for any interference by the Tribunal and ~~therefore~~ <sup>Alh</sup> the prayer of the applicant for quashing the adverse entries in the CRs of the applicant is rejected. There would be no order as to costs.

  
(P.P. Srivastava)  
Member (A)

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