

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 827/93
~~Transfer Application No.~~

Date of Decision : 26-5-95

N. BHARGAVAN PILLAI

Petitioner

Mr. S.P. SAXENA

Advocate for the
Petitioners

Versus

U.O.I & Ors.

Respondents

Mr. R. K. Shetty

Advocate for the
respondents

C O R A M :

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? X

M.R. Kolhatkar
(M.R. KOLHATKAR)
MVA/

(12)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.827/93

N.Bhargavan Pillai

.. Applicant

-versus-

1. The Engineer-in-Chief,
Army Headquarters,
DHQ P.O.
New Delhi - 110 011.
 2. The Chief Engineer,
Southern Command,
Poona - 411 001.
 3. The Chief Engineer,
Poona Zone,
Poona - 411 001.
 4. The Commander Works Engineer,
Kirkee, Pune 411 003.
 5. The Garrison Engineer(Central)
Kirkee, Pune 411 003.
 6. Major Sunil Kumar,
59, Engineer Regiment,
c/o. 56 A.P.O.
 7. Union of India
through
Secretary,
Ministry of Defence,
New Delhi - 110 011.
- .. Respondents

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

Appearances:

1. Mr.S.P.Saxena
counsel for the
applicant.
2. Mr.R.K.Shetty
counsel for the
respondents.

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

Date: 26-5-95


This is an O.A. under Administrative
Tribunals Act in which the relief sought is to
expunge the adverse entries in the ACR of the
applicant for the year 1991(the period from 1-6-90
to 31-5-91). The applicant started as an LDC

with the respondents from 6-10-65. He was promoted as UDC on 1-12-69, became confirmed UDC from 1-4-74 and was working in the office of Garrison Engineer(Central), Respondent No.5 since 1987. The C.R. for the year 1990-91 comprises the following adverse remarks:

"State of Health - Good, General intelligence and keen to learn - Intelligent, Attention to routine aspects of work such as proper maintenance of assistants diary, guard files such as recording, indexing and weeding of files - has to be constantly prompted and supervised, knowledge of office procedure-good, Knowledge of rules, regulations and instructions in general and with particular reference to the work allotted to him - Good, Quality of work - Average, Capacity for examining cases thoroughly and comprehensively - Average, Quality of noting and drafting - Average, Promptness in disposal of work - Slow and tends to delay, Amenability to discipline - Average, Punctuality in attendance - Punctual, Relation with fellow employees/public relations - Uncordial, Integrity - Average, Has the officer been reprimanded for indifferent work or for other causes during the period under report. If so, please give brief particulars - No. Has the officer done any outstanding or notable work meriting commendation? Briefly mention them - Nil, Recommendation for absorption in regular ty est - NA, Recommendation for crossing EB - NA, Recommendation for fitness for confirmation and grade - Recommended, Recommendation for retention beyond 50/55yrs. or 30 years of service - Recommended, Recommendation for

superiors and rejected vide communication dated 25-6-93 at Ex.A-1.

5. The O.A. has been opposed by the respondents. According to the respondents Surveyor Assistant Grade-I was competent to initiate the CR as per standing instructions. So far as the allegation of malafide is concerned, the same are without any foundation. The applicant is habitual trouble maker who has indulged in insubordination and shouting at senior officers, insulting them and also not doing his duties.

6. The circumstances cited by the applicant to establish malafide are as below: According to him, his superior, respondent No.5/6 was facing a court of inquiry against some misconduct on his part, and he was apprehensive that the applicant may reveal/disclose certain things to the ^{court of} inquiry which may go against respondent No.5/6. He was in the habit of not following rules and regulations relating to opening of tenders and wanted to favour certain contractors. On 4th October '91, which was a date fixed for opening of tender he wanted to postpone the date to which the applicant was not immediately agreeable  it being against Govt. interests. However, he was told by some contractors that for his insubordination he would be finished. The applicant therefore put down the sequence of events of 4th October '91 and subsequent period in his letter dated 14-11-91. The events and ^{the} letter pertained to the period immediately following the period

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for which the CR has been written. According to the applicant his sending this copy of the letter dt. 14-11-91 at Ex.A-6 to Brig. Sunil Kumar, Addl. Chief Engineer was the main reason for respondent No.5 to spoil his CR. The applicant has given certain other particulars relating to his temporary attachment for 89 days to CWE(P) office in Dehu Road and the applicant's request to give him TA/DA etc. ^{which was not given to him} /which shows how respondent No.5 was bent on harassing the applicant. Respondent No.5 also shifted him ^{from} from one section to another section: /E-8 to E-1 and issued showcause notice as to why disciplinary action should not be taken against the applicant. The applicant contends that the disciplinary enquiry has, infact, started against the applicant.

7. Respondents have stated that the letter dated 14-11-91 which is made much of by the applicant was infact examined carefully by the superior officers of respondent No.5 and no substance in the allegations made was found. So far as the episode of temporary attachment is concerned, the applicant had not put in a proper requisition and moreover it was only a local attachment. There was some delay in payment of salary. On the other hand the letters issued by respondent No.5 show the irresponsible attitude of the applicant in mis placing important letters. It has also been pointed out that the applicant had refused to accept certain letters addressed to him thus showing scant regard for official decorum.

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8. The applicant relies on Anand Arjun Manjrekar vs. The State of Maharashtra & Ors., 1990 (CLR) H.C. BOM 208. In this case the overall performance of the applicant was held to be not satisfactory but the High Court held that without informing ^{Govt. servant} the ~~as~~ as to why it was so ~~the remarks cannot~~ be sustained as it is violative of principles of natural justice. On the other hand the respondents rely on the case of Air Vice Marshal S.L. Chhabra vs. Union of India & Anr., 1993 (3) SLJ 49 in which it was held that neither the High Court nor this Court can moderate the appraisal and the grading of the appellant for a particular year. While exercising the power of judicial review, a Court shall not venture to assess and appraise the merit or the grading of an officer.

9. We have considered the case in the light of pleadings and documents on record and the arguments. We first consider the contention that the adverse entries are liable to be interfered on the ground of non competence ^{the} of ~~the~~ initiating officer. Respondents have enclosed a copy of letter dated 17-10-1978 from the Coordination and Personnel Directorate of Army Hqrs. Engineer-in-Chief's Branch on the subject of "Initiation of ACRs: Civilian Personnel" which states in para 4 that "regarding other categories of Class III service, any officer or non-gazetted officer can initiate a report and progress it further for review/ final endorsement by senior officers in the chain of Command." It is stated in para 5 that

"Initiation of ACRs by non-gazetted staff for those who are working under them is permissible vide Govt. directive circulated under this HQ letter No.30599/P/EIR dated 28October,68." The applicant's contention is that Surveyor Assistant is not in the chain of Command. However, on a perusal of office order showing distribution of work among staff, which is enclosed by applicant himself, we notice that the applicant who was UDC incharge of E-8 branch was under the supervision of the Surveyor Assistant Gr.I. Surveyor Assistant Gr.I is therefore entrusted to initiate the CR of the applicant. We,therefore, do not find any merit in the contention of the applicant that adverse remarks are bad for want of competence in the initiating authority.

10. We,therefore, come to the next contention relating to malafides of respondent No.5/6. Respondent No.6 has filed a separate affidavit adopting the written statement filed by official respondents. We have also gone through the voluminous correspondence produced by the applicant. So far as the specific incident of 4th October, '91 is concerned, it fell outside the period to which the CR relates. Apart from this the respondents have enclosed a letter dt. 25-2-92, R-1, to the statement which deals with letter dt.14-11-91 and subsequent letters and it is stated in regard of allegation of postponement of tender that allegations are not justified and the decision of G.E. postponing the same is correct

and justified by facts and the allegations are also to be dismissed. The communication also deals with other allegations made by the applicant. All these allegations, however, relate to the period subsequent to the period of report. Coming to the correspondence we have noticed that the applicant is in the habit of writing following sentences in his letter to the superior officer:

"(i) It speaks of your total ignorance of the office procedure which you are supposed to know better before becoming an officer;

(ii) You are attending some course at IMDR without sanction from competent authority in Govt. vehicle which you are not supposed to utilise after office hours for other than Govt. purposes.

These two points I am bringing out to establish your character, habits and motive."

Vide letter dated 24-10-91 in the post-script the to/letter the applicant requested CWE Kirkee to give permission to attend the on going court of inquiry involving the above officer and make his submissions. It is noted that the applicant has also endorsed his letter dated 14-11-91 to Commissioner of Police, Pune. In a letter dated 9-12-91 addressed to Engineer-in-Chief, after making certain allegations the applicant states that "if the above points are proved wrong I am prepared to forego Rs.500/- for which a crossed cheque is enclosed in favour of E-inC Army HQ."

Various
11. All communications from the applicant show that he has scant regard for his superiors. A govt. employee is certainly

entitled to make a grievance about adverse entries in the ACR but it is expected that the words in which the correspondence is couched should be courteous and the tone should be characterised by minimum civility. Unless these minimum safeguards are observed the communication is reduced to the level of a slanging match in which justice and fairness would be the first casualty.

We would like to express strong disapproval ^{an} on the part of applicant. of such approach / In this matter we are supported by ^a recent division bench judgment of C.A.T Ernakulam Bench in S.Harigovindan(Dr) vs. Director, Vikram Sarabhai Space Centre, Trivandrum and others, (1995) 29 ATC 38,

The Tribunal noted the use of intemperate language by Government employee and at the threshold refused to interfere in the matter observing that it could not invoke its discretionary jurisdiction in favour of the applicant causing serious dent on the quality of public administration because discipline and notions of propriety are indispensable in any organisation or in any system of governance and the Tribunal could not allow erosion of those qualities.

12. So far as the judgment relied ^{upon} by the applicant is concerned it has no applicability to the case of the applicant. We, are therefore of the view that the O.A. has no merit and is liable to be dismissed which we accordingly dismiss. There will be no order as to costs.

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