

and integrity satisfactory. The resume in your ACR stated by you is partially agreed. The resume mentioned in para 12 and 18 (a), (b), (c), (f), (g) and (j) are found highly exaggerated. Your relationship with superiors was unsatisfactory and had poor relationship with subordinates. Your public relation and attitude towards SC/ST/Weaker sections of society is average. You have an aptitude for Technical administration and teaching.

- (b) As regards your personal qualities "industriousness" is good and average in communication skill, (both verbal/written) decisiveness, dependability initiative/resourcesfulness, judgment, loyalty, moral courage and maturity.
- (c) Your knowledge and application of rules and procedure technical professional knowledge, organisation/planning ability, coordinating ability, foresight/taking anticipatory action, general administration/man management are average.
- (d) As an executive, your attention to CTE's observations/audit objection is good and your quality of work including supervision, promptness in finalisation of DO, measurements, billing and completion of CR Part A and B, financial control, rapport with users, attending to maintenance complaints, preventive/periodical maintenance are average.
- (e) You are an average officer whose performance was barely satisfactory (notwithstanding repeated counselling, guidance and support from your superiors and station authorities). You have shown serious flaws in over provisioning of stores and local purchase and have exhibited bad habit of writing objectionable language to superior Headquarters.
- (f) Overall you have been assessed as an average officer. You have been recommended for confirmation, crossing of EB, retention in service beyond 50/55 years of age or on completion of 30 years of service and staff appointments but not recommended for promotion to next grade and to find suitable for executive appointment and instructional appointments/special appointments."

The adverse remarks for the period 1.6.1991 up to

...3.

25.9.1991 are as follows :

- "(a) Your state of health is average and integrity satisfactory. The resume given by you in the ACR has not been agreed to. You have not mentioned any things about your achievement during the period of review. The resume mentioned in para 13(a), (d), (e), (f), (g) and (h) are found highly exaggerated and your performance does not match with qualitative objectives. Your relationship with superiors, colleagues and subordinates was satisfactory except with labourers and the unions which was strained. Your public relation and attitude towards SC/ST/Weaker Sections of Society was average. You have an aptitude for financial and technical administration. You have been recommended for personal admini and management training.
- (b) In all the personal qualities you have been assessed as satisfactory except in communication skill were your performance has been below satisfactory.
- (c) Similarly you have been assessed as satisfactory in qualities of professional knowledge and application except in general administration where your performance has been below satisfactory.
- (d) As an executive, your quality of work including supervision, promptness in finalisation of deviation orders, measurements, billing and rendering completion report Parts 'A' and 'B', financial control, attention to CTE's observations and audit objections, rapport with users, attending to maintenance complaints, preventive/periodical maintenance have been of average standard.
- (e) Overall you have been an average officer. You need to improve your management and you should not get emotionally upset on small trivial matters.
- (f) You have been recommended for promotion to next grade, for confirmation, crossing of EB, retention in service beyond 50/55 years of age or on completion of 30 years of service. You have been found suitable for staff appointments and not recommended for executive/instructional appointment."

...4.

3. The main contention of the applicant is that the adverse remarks are actuated by mala fides. In OA 583 mala fides are alleged against Respondent No.5 and 6 viz. the Reporting Officer (Commander Works Engineer); R-6 is the same Officer in his personal capacity. In OA 701 mala fides are also alleged against Respondent No.6^{in that O.A} viz. the then Chief Engineer, Calcutta Zone who was the Reviewing Officer.

4. We first of all consider the contention that the rejection of the representation of the applicant against adverse entries was unjust and the letter of rejection is a non-speaking order. We notice that the representation dt. 27.1.1992 against the adverse entries for the period¹⁹⁹⁰⁻ 1991 was rejected by the Chief Engineer, Eastern Command by the letter dt. dt. 9.6.1991 at page 17 Ex. A-2. The applicant had submitted an appeal on 30.6.1992 and the same was disposed of by a detailed order by Engineer-in-Chief vide the order dt. 4.12.1992 at page 18 Ex.A-3.

5. So far as the representation in respect of adverse remarks for the period 1.6.1991 to 25.9.1991 is concerned the same was rejected by the letter dt. 21.3.1994 at page 18 Ex.A-1 in OA 701.

6. We have considered the submission that the representations have been rejected by a non-speaking order. We notice that so far as the letter of rejection in respect of ACR for the year¹⁹⁹⁰⁻ 1991 is concerned, the first letter recites that the representation has no substance and the letter of rejection which is for the period 1.6.1991 to 25.9.1991 also recites that the representation has no substance. It is not necessary that the

letter of rejection should deal with each and every point so long as the letter shows evidence of the scrutiny of the representation and its consideration by the competent authority. Hence we do not accept this contention.

7. We then come to the main contention of the applicant that the adverse entries have been initiated by an Officer who bore a grudge against the applicant and as such suffers from the vice of mala fides. The grounds for this contention are as below:

- (a) It is alleged that the Reporting Officer was in the habit of issuing direct orders to many subordinate staff working under the applicant bypassing and ignoring the applicant. Hence the applicant had issued an order dt.5.10.90 restricting subordinate staff from visiting office of Reporting Officer. This action of the applicant was not liked by the Reporting Officer.
- (b) The Reporting Officer by way of vengeance resorted to the arbitrary action, by issue of a letter dt. 30.5.1991^{restricting stores procurement} by the applicant. This was due to the fact that the applicant had officially informed the Reporting Officer about resorting to procurement of Stores at high rate, regarding payment of sales tax, delivery charges etc. by his letter dt. 26.6.1991. This was not liked by the Reporting Officer.

(c) The Reporting Officer had threatened the applicant that his A.C.R. would be spoiled vide his letter dt. 12.2.1991.

(d) The applicant had submitted to the Reporting Officer that the Government is incurring revenue loss on account of non-recovery of Electricity, water & maintenance charges from K.V.School No.2 at Kalaikunda and also revenue charges from K.V. School at Salua. This was reported to the Reporting Officer vide letter dt. 22.8.1991.

(e) The applicant officially requested for assessment of rent and allied charges in respect of 33 shops & 5 unit shops in reappropriated buildings. The applicant believed that the amounts were recovered at a low rate and they were illegally deposited in the Welfare Fund instead of depositing the same in the Government treasury. This action of the applicant was also not liked by the Reporting Officer.

(f) The applicant had also occasion to point out certain wrong dealings by Senior Barrack Stores Officer in the matter of misuse of official transport, permission to retain quarters to unentitled employees, non-cancellation of quarters of employees who had sublet the quarters etc.

(g) The Reporting Officer had given verbal orders to the applicant for making the storm damages of 1989 worth Rs.3.4 lacs by splitting orders under maintenance instead of special repairs.

The applicant had requested the Reporting Officer to give written orders, this was not liked by him.

(h) One Shri Chanchal Mukherjee an employee who was Union Leader had abused and assaulted the applicant in the office and the applicant had reported the matter to the Reporting Officer, but the Reporting Officer did not want to proceed against the employee who was a Union Leader.

(i) The applicant also contends that Reporting Officer was engaged in bringing up a Golf Court by unauthorised and manipulated use of official capacity and this move of Reporting Officer with the blessings of Reviewing Officer was not supported by the applicant which resulted in great prejudice against the applicant.

8. Regarding reviewing officer about whom allegations are made in OA 701/94, the applicant states that Reporting Officer was very friendly with Chief Administrative Officer of Headquarters 5-Wing and the Reporting Officer along with Administrative Officer listed the facts about the applicant before the reviewing officer which created prejudice in his mind.

9. The Respondents resisted the application so far as the various allegations of mala fides against the Reporting Officer are concerned. The respondents have stated that the adverse remarks are based on an objective assessment of the applicant's performance in the relevant period. Although the applicant makes out that the entries in the ACR for the year 1990-1991 and for the period 1.6.1991 to 25.9.1991 are identical, in fact they are different. It is

contended that based on written complaints by M.E.S. Civilian Union dt. 3.8.1991 and also the Garrison Engineer, an inquiry was conducted by the Commander Works Engineer and this inquiry clearly brings out the poor administration and mis-management by the applicant. It is stated that the Reporting Officer being a senior officer is at liberty to deal directly with the subordinate officer and issue of the office order by the applicant dt.5.10.90 showed his high handedness. Regarding allegations of the applicant about higher rates at which stores were purchased, the respondents concede that the rates accepted by the Reporting Officer were found to be marginally higher for which he has been cautioned, though no mala fide intention could be established. A letter was issued by the Reporting Officer on 30.5.1991 to the applicant, but it was a counselling letter and did not contain any threats. Regarding recovery of charges from the K.V., it has been conceded in the reply of ^{O.A.} 583 that there are three K.Vs. in the area and ^{they are} K.V. No.1 and No.2 and K.V. at Salua ^{and it} is a fact that recoveries were not being made in respect of K.V. No.2 and that action to make recovery has since been initiated. So far as the recovery of rent in respect of 33 shops and 5 unit shops are concerned action to convene the ^{board of} officers has been taken, which has fixed the rent. Regarding allegation that the revenues belonging to Government have been deposited in the Welfare fund, the respondents contend that as per the procedure the money is first deposited in the P.S.I. Fund and the 5-Wing in turn deposits the money in the Government Treasury. Regarding mis-behaviour of Shri Mukherjee, the Union Leader, the Respondents

have accepted that Shri Mukherjee has been warned in writing. Regarding the allegation about Golf Course it is stated in the sur-rejoinder of OA 583 that no M.E.S. resources have been utilised. Thus existence of Golf Course has not been denied, but it has merely been stated that the M.E.S. resources were not used for the same. In the O.A. 701, however, it is stated that no Golf Course exists in the area of G.E.F. Kalaikunda and the question of using Government land does not arise.

16. The respondents also relied on the Judgment of the Supreme Court in State of M.P. V/s. Srikant Chaphekar (1993 LLJ S.C. 662). In this case, the promotion of the applicant was delayed because of certain adverse remarks. The Tribunal went in the merits of the Service Record of the Government employee and came to the conclusion that he could not be superseded for promotion. The Tribunal, therefore, directed that the Government employee would be deemed to have been promoted a day earlier than the immediate junior was promoted. The Tribunal gave this order on the basis of its opinion that the remarks left unexpunged are not such as to dis-entitle the government employee for consideration. The Tribunal observed that

...10.

the remarks "He^{is}/intelligent officer" out - weigh the remarks that he is 'lazy' and late comer", these remarks are vague and are of general nature and they cannot be the sole basis to deny promotion particularly so when such remarks were not repeated in the following years. The Supreme Court set aside the order of the Tribunal in appeal. The Supreme Court held that it is not the function of the Tribunal to assess the service record of the government servant and order his promotion on that basis.

It is for the D.P.C. to evaluate the same and^{make} recommendations based on such evaluation. The counsel for the respondents would urge that in view of the ratio of this Judgment of the Supreme Court this Tribunal is precluded from going into the merits of the adverse remarks recorded in the C.R. of the applicant and the OA should be rejected.

17. In our view, the Supreme Court Judgment is not an authority for holding that the Tribunal has no jurisdiction to go into the adverse remarks in the face of the allegation of mala fides.

In this case we are not concerned with the question of promotion of the applicant.

The question of our issuing any direction to the DPC^{also} does not arise. But the prayer of the applicant is to expunge the adverse remarks because they are recorded by a prejudiced officer and review^{ed} by an equally prejudiced officer. We are entitled to go into the question as to whether in the light of pleadings and the documents on record any case of bias or mala fides is made out.

8. We first analyse the adverse remarks against the applicant into the following. There is first of all characterisation of the Officer under various heads as 'average' and therefore a general assessment that the Officer is overall an 'average' Officer. There is secondly specific adverse remarks as below:

"He has shown serious flaws in over provisioning of stores and local purchase and have exhibited bad habit of writing objectionable language to superior Headquarters."

There is thirdly a recommendation, The recommendation in the C.R. for ¹⁹⁹⁰⁻1991 is:

"is not recommended for promotion to next grade and executive appointment and instructional appointment/special appointment"

The recommendation in respect of the C.R. for June, 91 to 25.9.1991 is as below:

"He has been found suitable for staff appointments and not recommended for Executive/Instructional appointment."

Whatever material has come on record shows that the relationship between the applicant and the Reporting Officer during the relevant period was not smooth. We are constrained to observe that the tone of some communication(s) by the applicant to his superiors was not proper. His action in issuing an office order asking his subordinates not to meet officials of Commander Works Engineer was certainly high-handed and not warranted and is not justified in the normal official routine. Some of his communications relating to recovery of rent are also of a vague and moralistic tone showing the applicant to be in the role of a sole protector of Government interests. In our view, therefore, specific adverse remarks in the C.R. for the year ¹⁹⁹⁰⁻1991 that you have exhibited bad habit of writing objectionable language to superior Headquarters are

fully justified and need no interference. It may be noted that such remarks do not appear in the C.R. for the period 1.6.1991 to 25.9.1991.

9. This is not so, however, so far as the adverse remarks regarding "serious flaws in over provisioning of Stores and Local purchases" are concerned. The Respondents themselves have conceded that it was not the applicant, but it was the Reporting Officer who was found to have been guilty of local purchase at higher rates. This has to be seen in the context of the restrictive orders imposed by the Reporting Officer on the powers of purchase of the applicant. We have no doubt, therefore, that these restrictive orders, as well as, specific remarks referred to by us above were not only factually not correct, but were based on extraneous considerations and cannot be allowed to stand.

10. We then come to the characterisation of the Officer under the various heads as average and his overall characterisation as an average officer. Thus it is stated that the state of health of the officer is average. However, for such characterisation there should have been some evidence regarding an illness of the Officer or a record of frequent absenteeism. Let us also consider the remarks "that your attitude towards SC/ST and Weaker section of Society is average". Again such a characterisation of any officer must be based on some facts which should come out in the day to day dealings of the Officer in question observed by the Reporting Officer. There is no evidence at all that the applicant was insensitive to the plight of SC/ST Officers and did

not treat them properly or ^{was} oblivious of the government instructions relating to special facilities for SC/ST etc. In our view, therefore, these remarks are also not justified and therefore, need to be interfered with.

11. We, therefore, come to the main contention of the applicant that the overall categorisation of the Officer as 'average' and on that basis the recommendation that the Officer should not be considered for promotion to the next grade or for executive appointment or for instructional and special appointments are based on mala fides.

12. We have already observed that the relationship between the applicant and the Reporting Officer was not smooth. We have also noted that for this, both the officers were to be blamed, but we have also to take into account the fact that some of the allegations made by the applicant not only possess a ring of truth, but have in fact been conceded by the respondents in their written statement. Thus, the respondents have conceded that it is a fact that recoveries in respect of K.V. 2 were not made and it was only after this having been pointed out by the applicant that action to make assessment and recovery was initiated. We note that it was not the applicant, but it was the reporting officer who was guilty of local purchase at higher rates. We note that there is no convincing contradiction to the applicant's allegation that he was under pressure to utilise M.E.S. resources for building up of a Golf Course. This comes out clearly from the self-contradictory stand taken by the respondents in their written statement in ^{O.A} 701 and ^{O.A} 583 as

observed by us. It has also been conceded by the respondents that irrespective of the Reporting Officer's opinion that the applicant was guilty of poor management, the Reporting Officer had not taken action to curb the employee who was^a Union Leader and who mis-behaved with the applicant. The Respondents have conceded that action of issuing a warning to the employee/union leader was later on taken. We^{are} therefore, driven to the conclusion that the Wholesale characterisation of the applicant under various heads as an 'average' and the general categorisation of the officer as an 'average officer' not fit for promotion to next grade and not fit for executive/instructional/special assignments appears to have been actuated by the prejudice borne by the Reporting Officer against the applicant and therefore, the applicant deserves relief in this regard.

We^{are} therefore, of the view that the application deserves to succeed partly and we dispose of the same by passing the following orders.

O R D E R

The O.As. are partly allowed by issuing following directions in respect of the respective A.C.Rs.

(a) So far as the A.C.R. for the year¹⁹⁹⁰⁻1991 is concerned, the following remarks should be expunged "your state of health is average" "your public relations and attitude towards SC/ST weaker sections of the society is average" "you have shown serious flaws in over procurement of stores and local purchase and" " but not recommended for promotion to next grade".

(b) We are not making any direction regarding expunction of the other remarks especially

the remarks which contained charecterisation as 'average' under various heads because if the remarks are expunged the C.R would become blank and therefore, there would be no basis for assessing the suitability of the officer for various purposes including promotion. We, however, direct that the next D.P.C which may consider the applicant for promotion should take into account our observation that these remarks are not justified and the D.P.C should consider the officer on the basis that the officer is an above average officer.

(c) C.R for the period 1.6.1991 to 25.9.1991. The following remarks should be expunged "your state of health is average" "Your public relation and attitude towards SC/ST weaker section of the society is average" "not recommended for executive/instructional appointments".

What is stated at para (b) in relation to ACR for 1990-91 would also apply to the remarks in ACR for the period 1.6.1991 to 25.9.1991.

There would be no orders as to costs.

(M.R.KOLHATKAR)
MEMBER (A)