

(4)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 512/95

Transfer Application No: -----

8-11-1995
DATE OF DECISION: -----

Arvind Balkrishna Bhangare

Petitioner

Mr. S. P. Patankar

Advocate for the Petitioners

Versus

State of Maharashtra and one anr.

Respondent

1. Mr. G. K. Neelkanth for respondent No. 1

2. Mr. V. S. Masurkar for respondent ^{no. 2} Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri N.K.Verma, Member(A)

The Hon'ble Shri

1. To be referred to the Reporter or not ? yes

2. Whether it needs to be circulated to other Benches of
the Tribunal ? y

M

N.K.Verma
(N.K.VERMA)
Member(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.NO:512/95

(3)

Wednesday, the 8th day of November, 1995

Hon'ble Shri N.K.Verma, Member(A)

Arvind Balkrishna Bhangare
Deputy Conservator of Forests,
Sawantwadi.

.. Applicant

By Advocate
Shri S.P.Patankar

V/S.

1. The State of Maharashtra
through
The Principal Secretary
to the Government, Revenue
and Forest Department,
Mantralaya,
Bombay - 400 032.

2. Union of India
through
Department of Environment,
Forests and Wild Life,
Ministry of Environment,
Paryavaran Bhavan, C.G.O.
Complex, Lodi Road,
New Delhi - 110 003.

.. Respondents

By Advocate
Mr.G.K.Neelkanth
for Respondent No.1

By advocate
Mr.V.S.Masurkar
for Respondent No.2

O R D E R

(Per N.K.Verma, Member(A))

Applicant's case is that he was working
as the Deputy Conservator of Forests at Dahanu and
his case for selection to the higher post was not
considered by the respondents during the year
1991-92 whereupon he approached this Tribunal
for unfair discrimination. Thereafter he received
a confidential letter from respondent No.1 wherein
certain adverse remarks for the year 89-90 were
conveyed to him for his information. The remarks

.../-

(6)

read as follows:

"The Officer has grossly neglected the inspection of field works. He has practically made no efforts to take effective measures to prevent large scale illicit fellings in his jurisdiction. His performance both in the office and field has been mediocre. He should not be promoted unless he shows clear improvement in field and office works."

The applicant thereafter made representations against these adverse remarks and as per letter dated 3-12-1993 from respondent No;1 the following adverse remarks were expunged from his ACR.

"The Officer has grossly neglected the inspection of field works. He has practically made no efforts to take effective measures to prevent large scale illicit fellings in his jurisdiction."

and

"He should not be promoted unless he shows clear improvement in field and office works."

Subsequently the applicant made further representation on 25-1-1994 saying that the adverse remarks

"His performance both in the office and field has been mediocre," be expunged. However, to this he has been replied by impugned order at page:8 dt. 5th September,1994 that his request cannot be granted. Being aggrieved by this order the applicant in this O.A. has prayed for directions to the respondents to consider his representation in a comprehensive manner and also has brought to my notice the delay in communicating the adverse remarks to him within the reasonable time which is in violation of Rule No.8(i) of the All India Services (Confidential Rolls)Rules,1970. He has also brought to the notice that by keeping the portion of the

N.L.W.

adverse remarks regarding his performance being medicore the result of expunction of major portion of adverse remarks has been negatived as the sting of adverse remarks continued inspite of expunction. Therefore the applicant has prayed that the entire adverse remarks communicated to him should be expunged.

2. As per the prayer of the applicant in the O.A. and the submission of the learned counsel for the applicant the ACR file of the applicant was requisitioned for perusal of the Court. One of the points reiterated by the counsel for the applicant was that the reviewing officer who had given the adverse remarks was not supposed to review the ACRs of the applicant in view of the Govt. of Maharashtra notification dt. 20-4-1990 whereby the Principal Conservator of Forest has been designated as the reviewing authority and the Secretary Forest has been designated as accepting authority. In any case the applicant has served under three Conservator of Forest who had given positive report in his favour. It was the Chief Conservator of Forest who had disagreed with the observation of three other reporting officers and given a adverse remark without any foundation. That action had not been communicated to him in time. But for the applicant's own alertness and vigilance in the matter the same would have gone uncommunicated and would have caused grievous injuries to his interest in selections which were held in the past and which would be held now. In view of these irregularities the adverse entries made for the year 1989-90 should be expunged.

W.L.W.

3. Shri Nilkanth and Shri V.S. Masurkar brought to my notice that the circular issued on 20-4-90 was not actually implemented by the respondents and the Chief Conservator of Forest reviewed the ACRs as per the previous orders on the subject. There was no deliberate delay in communicating the adverse entries and there is no contradiction in the remarks now as it stands.

4. I have given serious consideration to both the averments and submissions of both the parties. A perusal of the ACR file indicates that the applicant has generally a good CR for all the years. Even the year under reference, the three reporting officer have given him favourable entries without any reservation. One of the officers has graded him Very Good and also said that he was an excellant officer. This was the CR for the period 7-11-89 to 31-3-90. Normally the reviewing officer should have taken into account the latest observation on the performance of the officer concerned and even if he would have disagreed with the observations recorded, he should have taken pains to find out and record the reasons for opinion which were not complimentary to the officer. Not only he did not do that, he did not even consider it necessary to inform the officer on his own that he had occasion to record adverse entries regarding his performance so that the officer could take proper steps to improve his performance. It is also rather unfortunate that the Accepting officer who happened to be Principal Conservator of Forest agreed with the reviewing officer without indicating or recording any decision of communicating the entries to the applicant. This decision of the reviewing and accepting authority to record uncomplimentary

M.K.W.

remarks about an officer without communicating the same to the concerned party is totally incorrect and improper. What pains more is that even when the applicant sought intervention of this Tribunal to ascertain the reasons for his non inclusion in the select list the entire adverse reports recorded by the reviewing officer was not communicated. There was one complete paragraph in the ACR for the period 3-7-89 to 31-3-90 at para 4 which is not complimentary and which will act against him all the time to come. The reviewing officer has recorded that :

"I do not agree. The officer has not assigned adequate priority to field work and inspection of forest for preventing illicit felling. The General assessment given by the reporting officer is not based on facts."

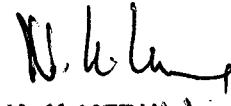
This part of the adverse entry was not at all communicated to the officer and he was not made aware why the reviewing officer was not in tune with the reporting officer. Even after the expunged portion of the ACR for the year ^{is} overlooked, the stint left in the remaining part is good enough to ~~max~~ cause harm for any promotion which he would be getting in years ^{to come} or later in his career.

5. While the system of reviewing and acceptance of the ACR ~~is~~ enjoined by order dt. 20-4-90 is yet to take ~~to~~ proper implementation in the subordinate units of Govt. of Maharashtra, the existing orders relating to the writing of ACRs and communication of adverse entries have not been followed in the letter and spirit as would be evident from the discussions above. The officer

N. K. B.

has already suffered prejudice on account of adverse entries made in his ACR and he would continue to suffer unless a remedy is found regarding this. In the totality of the circumstance I am constrained to order that the entire reviewed CR for the year 89-90 recorded by the then Chief Conservator of Forest Shri R.L.Chowdhary shall be ignored for the purpose of any selection/DPC to be held in respect of this officer. The Secretary of the Department of Forest who has now been designated as the accepting officer should call for the CR of the officer and make proper observation in this regard so that the anomaly created by the order dated 20-4-90 is also removed. The Department of Forest must also ensure that the orders issued under that Govt. circular are complied with, totally without any violation thereof so that no undue prejudice and injury are caused to officers of this cadre.

6. The O.A. succeeds to the extent that the entire adverse entry which were not communicated to the applicant even on 10-2-92 should be ignored for the purpose of any selection procedure to which he would be subjected hereafter. There will be no order as to costs.


(N.K.VERMA)
Member(A)