

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 629/95

Transfer Application No.

Date of Decision 25-04-96

Shri G.S.Rathore

Petitioner/s

Applicant in person

Advocate for
the Petitioners

Versus

Union of India & ors.

Respondent/s

Advocate for
the Respondents

CORAM :

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

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)

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

OA.NO. 629/95

Thursday, this the 25th day of APRIL 1996

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

Shri G.S.Rathore ... Applicant
Applicant in person

v/s.

Union of India & Ors. ... Respondents

O R D E R

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

This is an original application in which the applicant has prayed for expunction of adverse remarks in his Annual Confidential Report for the year 1993-94. The applicant is working as District Electrical Engineer in Railways and the adverse remarks which are impugned are to be seen at pages 9 to 11 of OA. The same are reproduced below :-

"Part-III REMARKS OF THE REPORTING AUTHORITY :

(A) NATURE AND QUALITY OF WORK :

2. Task-relevant knowledge :

" Having worked as DEE (TRD)-UJN, expected to have fair knowledge of CHE design but application of this is far from satisfactory. During CHE blocks at Ranoli he unilaterally made changes in approved CHE layout which had to be undone/modified causing excessive time of Power blocks."

3. Quality of Output :

" He does not adhere to any project objectives such as abnormally long-time in commissioning of D.G. sets at BRC Loco Sheds, so much so his AEE(C)-BRC, had to be given independent charge of Power works."

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4. Aptitude & Potential :

"He does not seem to have any aptitude for work."

PART-IV GENERAL

3. General assessment :

He does not care to listen to oral/written instructions/plans or objectives. He does not take timely action to keep superiors informed about his plans of work, progress etc."

As DEE (C)-JP.

PART-III REMARKS OF THE REPORTING AUTHORITY :

(A) NATURE AND QUALITY OF WORK :

1. Comment on Part-II.

"None of the work was completed by DEE(C) within the T.D.C. He was advised to improve his performance but no improvement have been noticed so far."

2. Task-relevant knowledge :

"..... but their applications in day-to-day working is not satisfactory."

3. Quality of output :

"He does not work at all and he did not complete any work assigned to him. Hence the remarks on quality of works cannot be given."

PART-IV GENERAL:

3. General assessment.

"He does not take initiative on railway works and also try to create hindrance smooth railway working. He does not shoulder the responsibility and always try to shift responsibility on others."

PART-V - REMARKS OF THE REVIEWING OFFICER :

3. Do you agree with the assessment of the officer given by the Reporting Authority? Is there anything you wish to modify or add? etc..

"I tried to counsel him several times and issued confidential letters but no improvement has been noticed. He is obstructive and does not carryout the instructions of superiors. He has no regard for discipline."

2. The contention of the applicant is that these adverse remarks are vague, baseless and written with malafide intention. Thus, the adverse remarks under the heading 'Quality of good work' do not speak about good work done by the applicant but something which is irrelevant. The adverse remarks under 'Aptitude & Potential' are vague. The general assessment is biased and written with malafide intention and in particular it was written because the applicant had not obliged a contractor whom Dy.C.E.E. wanted to favour.

3. The applicant had made a representation against the adverse remarks on 8.6.1994 at page 12 of the OA. The same was rejected by the department by the letter dated 3.10.1994 at page 26 of the OA.

4. At the stage of final hearing the counsel for the respondents did not appear and I, therefore, proceeded to hear the matter ex-parte. The applicant has taken me through his OA, and has also gone over the written statement of the respondents. The respondents while opposing the OA, have stated that the adverse remarks were communicated with a view to making him aware of his own limitations. It is denied that the remarks are either vague or irrelevant or biased or malafide. It is contended that the applicant had failed to supervise the work of the contractor on site and is trying to shift the blame. With reference to the allegations made by the applicant, the written statement has given examples to show as to how the adverse remarks were required to be incorporated with

reference to specific examples. It is also contended that the remarks in the Confidential Report were made by two different officers, namely, Reporting officer and Reviewing officer, after watching the performance of the applicant. The allegation of the bias is stated to be entirely baseless.

5. At the argument stage the applicant had tried to bring additional material on record showing that he was making daily reports with regard to various projects and it was with a view to enable the contractor to change parts of equipment that power shut down was ordered. The same material has not been taken on record.

6. I have gone through the pleadings and considered the arguments advanced by the applicant. This Tribunal had occasion to consider the scope of judicial review in the matter of expunction of the adverse remarks from time to time. Some of the reported cases are as below :-

(1) S.S.Mishra vs. Central Board of Direct Taxes 1994(3)(CAT)SLJ 238.

In this case it was held that the adverse remarks which were not supported by data are liable to be expunged.

(2) V.K.Sood vs. Union of India 1995(3)(CAT)SLJ 243.

In this case adverse remarks were directed to be expunged because they were seen to be recorded on account of extraneous considerations.

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(3) S.K.Iyengar vs. Union of India
1995(1) ATJ 598

In this case when there were adverse remarks against two items and the same were substituted by a phrase which had no relation to the first item but was related to second item, then it was held that the adverse remarks in respect of first item were deemed to be expunged. Secondly, in relation to the second item, it was held that when the adverse remarks were identical with adverse remarks recorded in respect of an earlier year which were subsequently expunged, the same adverse remarks could not be allowed to stand.

(4) Smt.S.R.Shenoy vs. Union of India
1996(1) ATJ 157

In this case adverse remarks were directed to be expunged because they had not been written by a person who had the opportunity to see the work of Government worker, moreover they were based on an incident which took place in a subsequent year.

(5) Commander N.K.Bhanot vs. Union of India & Ors.
1995(I) CAT MAT 29

In this case, inconsistent and arbitrary adverse remarks were held liable to be expunged.

7. I find that the material on record as well as the arguments advanced to not make out a case for interference by this Tribunal. The applicant has placed heavy reliance on the malafides on the part of the Deputy

Chief Electrical Engineer who wanted to favour a contractor but no factual foundations have been laid to establish allegations of bias.

I am ,therefore, of the view that the OA. is without merit which is accordingly dismissed with *K* no order as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)

MEMBER (A)

mrj.