

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 678 /1995.

Date of Decision: 22-08-96

V. K. RAMAKRISHNAN

Petitioner/s

Shri S. P. Saxena,

Advocate for the
Petitioner/s

V/s.

Union Of India & Others,

Respondent/s

Shri R. K. Shetty,

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri M. R. KOLHATKAR, MEMBER (A).

~~Hon'ble Shri M. R. KOLHATKAR~~

- (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).

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 678/95.

Dated this Pronounced, the 22nd day of August, 1996.

CORAM : HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

V. K. Ramakrishnan
Scientist 'C',
Armament Research & Development
Establishment, Pashan,
PUNE - 411 021.
(By Advocate Shri S. P. Saxena)

... Applicant

VERSUS

1. Union Of India through
the Secretary,
Department of Defence
Research & Development,
Ministry of Defence,
South Block, DHQ P.O.,
NEW DELHI - 110 011.
2. The Director General Of
Research & Development,
Defence Research &
Development Organisation,
Ministry of Defence,
"Sena Bhavan", DHQ PO,
New Delhi - 110 011.
3. The Director,
A.R.D.E.,
Pashan,
PUNE - 411 021.

... Respondents.

(By Advocate Shri R. K. Shetty)

: ORDER :

| PER.: SHRI M. R. KOLHATKAR, MEMBER (A) |

In this O.A., the applicant has prayed for
expunction of the adverse remarks in his A.C.R. for the year
1993 as having and been made arbitrarily in violation of rules and
guidelines or in the alternative to direct the respondents

not to act on the said A.C.R. of 1993 of the applicant while considering him for promotion as and when it becomes due. The relevant remarks which are under challenge, are as below :-

" Part-III

Shri V.K.Ramakrishnan is a very slow worker and has to be reminded repeatedly to carry on the tasks assigned to him. He has certain inhibitions and does not come out with confident comments on the field of his work. His work has to be overchecked by other people which is a great hindrance to the project.

This has been conveyed to him verbally many time."

The applicant has made a detailed representation vide dated 14.09.1994 (annexure A-5) against this adverse remarks. In this representation the applicant had stated that it is incorrect to call him a slow worker but on the other hand, the Reporting Officer had hardly seen his work because he was hospitalised on account of back pain many times in 1993. It was further contended that the Reporting Officer was a physics graduate whereas the work done by the applicant is in the field of mechanical engineering. The Reporting Officer sits in a different office and seldom visits his place of work in the Telemetry building in the Range Area. The applicant also alleged that the Head of the Department had passed adverse remarks against the Reporting Officer. The representation of the applicant, ^{however} was rejected vide communication dated 19.04.1995 at annexure A-2. It is this communication which has been impugned by the applicant. According to the applicant, the rejection of his representation has been

done in a casual and summary manner without any application of mind. Moreover, the applicant has worked under different officers but it was only under the present Reporting Officer that he was communicated adverse remarks in the year 1989, 1990 and 1993. According to the applicant, it is incumbent on the Supervising Officer to inform the officer reported upon of his draw backs/ short comings in time, so as to give him an opportunity to show improvement and then only the adverse remarks can be entered and not otherwise. It is further contended that the communication of adverse remarks was done 18 months after the relevant period, namely; 18.01.1994 and on the ground of delay alone, the adverse remarks need to be expunged. It is further contended that the applicant was promoted to the grade of Scientist 'C' on 01.07.1992 inspite of the adverse entries in the A.C.R. for the year 1989 and 1990 and therefore, the previous adverse remarks are required to be ignored.

2. The respondents have opposed the O.A. It is with contended that the promotion of the applicant to the grade of Scientist 'C' w.e.f. July 1992, the adverse remarks reflected in earlier A.C.R. for the year 1989 and 1990 cannot be said to have been obliterated. This is because the promotions are based on quantitative marking. The applicant getting less marks in one of the attributes does not affect his overall average of the last five years. In any case, I am of the view that since the applicant in this O.A. has not challenged the adverse remarks in the year 1989 and 1990, I need say nothing on this aspect of the matter.

3. The respondents have contended that it is not always necessary that the draw backs of the officer of the status of Scientist should be communicated to him in writing only. The applicant was informed of his shortcomings verbally many times. The respondents have denied that the order rejecting the representation of the applicant is arbitrary or betrays lack of application of mind. According to the respondents, the representation has been carefully examined. The applicant has levelled many baseless allegations against his superiors and it was not necessary to deal with them. The respondents have also denied that the applicant did not have adverse remarks in his A.C.Rs. other than those which were under the present Reporting Officer. The respondents have filed a statement showing that apart from 1993, the A.C.R.s. for the following years contained adverse remarks :

1973, 1976, 1977, 1979, 1980, 1989 and 1990.

It is further contended that the A.C.R. for the year 1989 which contained adverse remarks was not completed by the present Reporting Officer. The allegation of the applicant in this regard are therefore baseless.

4. At the argument stage, the counsel for the applicant relied on the judgement of the Bombay High Court in Anand Arjun Manjrekar V/s. The State Of Maharashtra & Others [1990 (II) CLR 208 (Bombay)]. In para 10 of the judgement, the High Court has observed that " oral communication of confidentials is unknown to service jurisprudence and for all that we know that may be figment

of imagination of the person who filed the affidavit on behalf of the second respondent." It is true that the adverse remarks contained the sentence "this has been conveyed to him verbally many times" and it is also true that a Government servant may feel precluded from making a written representation in the absence of written communication of adverse remarks. It would however be difficult to accept the proposition that oral communication of adverse remarks is unknown to service practice. A Reporting Officer may say that some defects were communicated orally and the government employee may deny such oral communication. In such a situation, it would be a question of weighing the word of one officer against another officer. Considering these facts, I am unable to hold, in the absence of any further authority, that some adverse remarks should be expunged merely because they contained a reference to oral communication.

5. Regarding the delay in communication of the adverse remarks, it is true that the relevant government instructions lay down certain time limit. It is however well settled that these time limits are of a directory nature. It has also been held by several authorities that mere delay does not vitiate the remarks. In this connection, the respondents have referred to the judgement of Central Administrative Tribunal, Allahabad Bench, in the case of Dr. N.S. Parihar, Sr. Scientist Indian Veterinary Research Institute V/s. Dr. N.S. Randhawa, Dir. Gen. Indian Council of Agricultural Research & Anr. { 1995 (1) CAT SLJ 454 } and the judgement of Central Administrative Tribunal, Chandigarh

Bench in Lalit Bhatia, I.P.S. V/s. State of Punjab & Others reported at 1994 (3)(CAT) SLJ (1). Regarding the representation being disposed of in a non-speaking manner, I do not consider that the adverse remarks are required to be expunged on this ground alone without there being any further cogent grounds and for this purpose, the observations of the well known Supreme Court judgement in Union of India V/s. E.G. Nambudiri [1991 SCC (L&S) 813] may be relied upon. Regarding the overall record of the applicant, the respondents have clarified the position adequately and no further remarks are necessary on this aspect.

6. It is well settled that writing of A.C.R's in the very nature tends to be subjective. The recording and communication of adverse remarks against government employees, especially in Central Government, therefore, follows precise guidelines which incorporates several safeguards like atleast two superiors considering the remarks recorded (Reviewing Officer and Accepting Officer). The scope of judicial review in this area is very limited. Some of the circumstances under which the Tribunal may intervene, have been referred to in my own judgement dated 25.04.1996 in the case of G.S. Rathore V/s. Union Of India & Others reported at 1996 (II) CAT MAT 13. This case shows that the Tribunal may intervene when adverse remarks are not supported by data or when the adverse remarks are recorded on account of extraneous consideration or when the adverse remarks are based on incidents which took place in a subsequent year or when the adverse remarks are inconsistent with the remarks recorded in the other part

of the confidential report. In the instance case, there are no such factors. There were adverse remarks in A.C.R. for 1989 and 1990 which were not challenged. Adverse remarks in 1989 were by a different Reporting Officer. The applicant has not brought forward any cogent grounds why 1993 assessment needs to be interfered with by the Tribunal. On consideration of all circumstances, I find that the O.A. has no merit. The O.A. is therefore dismissed with no order as to costs.

M.R. Kolhatkar

(M. R. KOLHATKAR)

MEMBER (A).