

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 27/98

Date of Decision:

13/8/99

Shri S. K. Mago

Applicant.

Shri S. P. Saxena

Advocate for
Applicant.

Versus

Union of India & 4 Ors.

Respondent(s)

Shri R. K. Shetty

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. B. N. Bahadur, Member(A).

Hon'ble Shri.

(1) To be referred to the Reporter or not? No
(2) Whether it needs to be circulated to other Benches of the Tribunal? No

abp.

(B. N. BAHADUR)
MEMBER(A)

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

GULESTAN BLDG. NO. 6, 4TH FLOOR,

PRESCOT RD, FORT, MUMBAI-400 001.

ORIGINAL APPLICATION NO:27/98.

DATED THE 13th DAY OF ^{August} JULY, 99.

CORAM:HON'BLE SHRI B.N.BAHADUR, MEMBER(A).

By Advocate Shri S.P. Saxena.

v/s_a

1. Union of India,
Through The Secretary,
Ministry of Defence,
DHQ PO, NEW DELHI-110 011.
2. The Director General of
Military Training,
Sena Bhavan,
DHQ PO,
NEW DELHI-110 011.
3. The Commandant,
National Defence Academy,
Khadakwasla, Pune. 411 023.
4. Dr. S.C.Joshi,
Offg. Principal,
National Defence Academy,
Khadakwasla, Pune-411 023.
5. Maj. Gen. M.A.Gurbaxani,
Deputy Commandant,
National Defence Academy
Khadakwasla,
Pune-411 023.

... Respondents.

By Advocate Shri R. K. Shetty.

ORDER

¶ Per Shri B.N.Bahadur, M(A) ¶

This is an application made by Shri S.K.Mago,
a civilian Group 'A' Officer in the National Defence

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Academy, Khadakwasla, Pune seeking the relief as follows:-

- a) to quash and set aside the impugned order,
- b) to expunge the adverse entries in the A.C.R. of the Applicant for 1996-97.
- c) to direct the Respondents not to consider the adverse entries for any other purpose in respect of the Applicant.
- d) to pass any other orders which may be just and proper in the facts and circumstances of the case,
- e) to award cost of application.

In short, therefore, the relief sought is for quashing of adverse remarks made in his Confidential report for the year 1996-97, and communicated to him accordingly.

2. The facts of the case, as brought out by the applicant, are that he was appointed as Lecturer under Respondent No. 3 after selection through UPSC in August, 81 and promoted as Senior Lecturer in 1988. Applicant contends that he has not been promoted further as no screening committee meeting has been held since 1993., and contends that his record of service has no blemish and that he was never communicated any adverse entries earlier. The applicant contends that Dr. S.C. Joshi, who is officiating Principal, had written his earlier Confidential Reports also from 1992 onwards, but no adverse remarks had ever been communicated to him. Thus he contends that is itself evidence that his work is good and satisfactory.


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2.1 Applicant states that he received a letter dated 5/5/97, issued by respondent No.5 communicating the extract of applicant's Confidential Report for the period from 1/4/96 to 31/3/97. ^{bnd} He submitted a representation against it dated 2/6/97 which was rejected vide Impugned order dated 9/6/97. Applicant alleges prejudice against respondent No.4 in view of what he says were "petty/trivial incidents/happenings" as detailed in Exhibit-A-4. Thus he alleges that Confidential Reports were written with bias.

2.2 The applicant further gives details regarding the incidents in para-4.13 onwards and prays for the expunction of the adverse remarks communicated to him for the year ACR-1996-97.

3. The reply has been filed on behalf of all respondents, in which it is stated that there is no merit in the case of the applicant. It is stated that the applicant had been advised/warned on several occasions and that these letters have been annexed to the Written Statement as Exhibit R-1, R-2 and R-3. The adverse entries communicated to applicant are very much related to these warnings given to the applicant from time to time, it is alleged by the respondents. Details of some of these are given in sub para-(a), (b), (c), of main para-1. It is stated that the services of Civilian Academic Officers of National Defence Academy are governed by Civil Service Rules, and all service conditions applicable to colleges under UGC package are not applicable to such personnel in National Defence Academy.

Ans

The respondents deny the allegations made by the applicant that the rejection of his representation has been done in a summary fashion or without application of proper mind. They also deny the contention that the adverse entries are vague and refer ~~to~~ to the earlier mentioned communications of advice, etc in this regard. No favour has been shown to Dr.N.K.Kumar nor any bias held against the applicant, aver the respondents.

4. The Rejoinder and Sur-rejoinder have also been filed in the case. These two, as also the other documents/papers in the case have been seen. Arguments on behalf of learned counsels on both sides have been heard in detail.

5. The points made by the learned counsel ~~in his arguments~~ ^{me} for the applicant are, in gist, as below:-

- a. Learned counsel took ~~over~~ ^{me} the Annexures filed by him in detail, and reiterated that this was the first time ~~an~~ adverse entry was communicated to him and that this was a result of malafide against him by respondent Nos. 4 and 5 who have been made party by name.
- b. The adverse remarks were vague and no justification by way of incidents was offered.
- c. Learned counsel for applicant specially dwelt on developments on 2/1/97 when, he contends, the applicant was asked to take 5 lectures out of 7 and then asked to combine one more. It was contented that

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others who were free and had short load were not given adequate work because of prejudice and malafide.

d. DOPT instructuons regarding advise and warhings prior to writing adverse remarks being necessary were not followed and there was inconsistency in the attitude of the same reporting officer.

e. In regard to reply of the respondents at page-2, it was stated that the adverse entries detailed out related to period prior to 1987, and were irrelevant, since applicant had been given a promotion also after 1987. The learned counsel for applicant contended that UGC rules provided that not more than 3hours work should be given to lecturers and that on the day in question referred to also he had taken classes for three hours and 20minutes.

f. The learned counsel also reiterated the other points made in his application.

6. The learned counsel for respondents ^{in his arguments} stated that in respect of the last point made above, the applicant had put in less than 50% of the work load of 40 hours a week stipulated. In any case, he contended that these conditions of UGC were not binding on the National Defence Academy Academic staff; only conditions regarding pay scales and qualifications were relevant. ^{Further points made in his arguments are as below:-}

(a) The Supervisory staff of National Defence Academy have been consulting the lecturers.

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etc., before giving duty, indicating a democratic style of working. However, the applicant had walked off in a huff on the day of the incident detailed out, and that this kind of conduct would not be tolerable, specially in an institution like the National Defence Academy (NDA).

b. The issue of notices of warnings/advise was done at the high level of Deputy Commandant and no prejudice was involved. It was not an individual action of one person.

c. It was contended by the learned counsel for respondents that there was no vagueness in the adverse entry and that only one incident was highlighted throughout by the applicant.

7. The learned counsel for respondents produced before the Tribunal the Register of assignment of duties for lecturers, as also the original file containing the Confidential Reports of the applicant. These were perused.

8. The following cases were cited on behalf of the contesting parties.

I. Cases cited by Counsel for Applicant.

i) SLJ 1998(1)(CAT)-76-

S. Krishnadoss v/s. The Secretary, Central Board of Customs and Central Excise, New Delhi.

ii) 1997-II-LLJ-15(SC)

State of U.P. v/s. Yamuna Shankar Misra & Anr.

iii) 1998(1)(CAT) SLJ-549

Vinod Kumar v/s. Secretary, Ministry of Defence & Ors.

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II. Case cited by Counsel for Respondents.

1) 1993-II-LLJ-658(SC)-

Air Vice Marshal S.L.Chhabar, VSM(Retd)

v/s. Union of India and Anr.

9. One argument advance by learned counsel for the applicant was that the adverse remarks communicated are vague in nature and also that no justification is given for these adverse remarks. A reading of the communication of adverse remarks plainly shows that they cannot be said to be vague. The communicated point observed in the application have been recorded with clarity in regard to language and otherwise. This stand of vagueness was also taken by the applicant in the representation he had made on 2/6/97. This has been considered by the appropriate authority and the representation disposed of. It would not be for this Tribunal to go into the other details which only an Appellate Authority can go into.

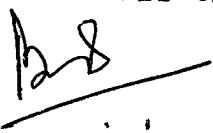
10. The "incident" of 2nd January, 97 when additional duties were given to the applicant, was also gone into in great detail by the learned counsel for applicant at the time of arguments. The basic point that we would like to see in this regard relates to the arguments made before us that negative qualities should not be brought in the confidential report like a ~~bullet~~ from the blues but some evidence of earlier warnings/advise should be discernable. We find that this is available on record. It cannot thus be said that no intimation or knowledge was given to the applicant by the authorities. In any case here also the analysis as can be made ^{only} ~~by~~ by a Appellate Authority

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cannot be made by the Tribunal.

11. On the point that no detailed reasons have been cited while communicating the adverse remarks, it was argued on behalf of applicant that the communication of adverse remarks is not done in the nature of speaking order and hence suffered from this defect. In this connection, it is noted that the settled position in this regard is that it is not incumbent on the Appellate Authority dealing with the representation to write a very detailed speaking order but it would suffice if records are kept in this regard in the office file. In this connection, the original confidential report file as also the other relevant records relating to DPC etc were produced before me by learned counsel for respondents. (AIR 1991 SC 1216) have been seen and it is observed that the appropriate authority has applied his mind to the facts brought out in the representation and taken a decision in consideration of all aspects. It would not lie within the jurisdiction of this Tribunal to sit in a kind of appeal on these issues.

12. It was also argued on behalf of the applicant that this is the first time in his career that an adverse entry has been communicated and this is a result of malafides. On this issue I have considered all the facts brought out in the pleadings and documents and in the arguments adduced by learned counsel. The applicant has not been able to bring out with conviction any reason to sustain the plea of malafides in the writing of his Confidential report. In regard to the point made about the hours of work given to the applicant being higher than



the three hours stipulated under the UGC rules, it is seen that there is mention of only one incident in the first place. Secondly, and more importantly, it has been brought out by respondents that it was only in regard to pay-scales and qualifications that service conditions of UGC were applicable to the Academic staff of the National Defence Academy. In no other matter are UGC conditions of service applicable to the Academic staff of National Defence Academy. While this is not a per se issue before us and need not be gone into, there is no reason to believe that any service condition has been violated in the assignment of hours of work to the applicant from the material before us.

13. In regard to the ^{three} citations brought before the Tribunal by learned counsel for applicant (cited at para-8), it is seen that in S. Krishnadoss's case, files and record were not produced for perusal of the Court. This judgement cannot be said to be applicable as records were produced in this case for perusal. Similarly, the case of Vinod Kumar, decided by Principal Bench of this Tribunal, cited would also not appear to help the case of the applicant because the adverse remarks in the instant case cannot be said to be vague, unintelligible and cryptic, as in the case relied upon. Similarly, other issues in that case would not apply in the present case before us. The judgement in the case between State of UP and Yamuna Shankar Misra has also been perused. The judgement in this case also cannot help the applicant.

14. It is well settled that the jurisdiction of this Tribunal in interfering in matters relating to



adverse entry in Confidential Reports is limited. The judgements cited by the learned counsel for respondents (AVM Chhabár v/s. Union of India) also points in this direction. The Tribunal is bound to see if any injustice is caused to the applicant but in that process cannot sit in the kind of review that only an Appellate Authority can take. It cannot substitute its own judgement in analysing the propriety of remarks. There is no injustice apparent to the applicant in the present case, and no grounds for interference have been convincingly made.

15. In the facts and the circumstances of this case, as discussed above, it would be clear that no ground is made out by the applicant for interference by this Tribunal in granting him relief/s that he seeks. In consequence, the application is hereby dismissed with no orders as to costs.

abp.

Bn Bahadur

(B.N.BAHADUR)
MEMBER(A)

13/08/99