

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 327/98

DATE OF DECISION: 16.12.1999.

Shri C.M. Salunkhe Applicant.

Shri S.P. Saxena Advocate for
Applicant.

Versus

Union of India & Others Respondents.

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? *Yes*
(2) Whether it needs to be circulated to *No*
other Benches of the Tribunal?
(3) Library. *No*

B. N. Bahadur
(B.N. Bahadur)
Member (A).

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A. No.327/98

Dated this Thursday the 16th Day of December, 1999.

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

Shri C.M. Salunkhe,
Chargeman Grade II (Tech.),
Ordnance Factory,
Dehu Road, Pune - 411 113.
(Residing at 45, Bombay Pune Road,
Bopodi, Khadki, Pune - 411 003).

.. Applicant.

Applicant by Shri S.P. Saxena, Advocate

Vs.

1. Union of India, through
The Secretary, Ministry of
Defence, New Delhi - 110 011.

2. The Chairman,
Ordnance Factory Board,
10-A, Shahid Khudiram Bose Marg,
Calcutta - 700 001.

3. The General Manager,
Ordnance Factory,
Dehu Road,
Pune - 412 113.

.. Respondents.

Respondent by Shri R.K. Shetty, Counsel.

ORDER (Oral)

[Per Shri B.N. Bahadur, Member (A)]

This is an application made by Shri C.M. Salunkhe, Chargeman Gr.II in the factory of Respondent No.3 seeking the relief in substance, for directions to Respondents to expunge the adverse entries contained in ACR of 1996-97. The alternative prayer sought as relief is for a direction to Respondents not to take into consideration the ACR of 1996-97 while considering the case of applicant for promotion to the post of Chargeman Gr.I.

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The facts of case are, in short, are as follows. The applicant has been communicated the adverse remarks as contained in his Confidential Report for the year 1996-97 vide communication dated 15.9.97 (Ex.A-II). Representations filed by him on 24.9.97 and 5.10.97 have been considered and rejected by DGM (Personnel) vide his memo dtd. 17.10.97 (Ex.A-I) which is the impugned order.

2. The applicant makes the assertion that he has never been graded 'Average' after his promotion in 1993, or even earlier, and that during this year also his performance was fully satisfactory. It is asserted that it is presumed, in view of his promotion in 1993, that all his CRs prior to this have been 'Good'.

3. Respondents have filed a written statement in reply, in which it is stated that the applicant has been advised a number of times, both verbally and in writing, to improve his performance. Even after such advice/warning there has been no improvement in the performance of the applicant, and therefore he has been graded as 'Average' by the Reporting Officer and that this has been accepted by the Reviewing Officer. Copies of such communications regarding such advise/warning have been annexed at Exhibit R-1 to 4 by Respondents and depended upon substantially for support.



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4. Respondents have denied, in their statement, that the performance of the applicant was satisfactory even during the years 1993-96 and state that his work was not good even during this period. It is admitted, however, that there are no adverse entries in CRs for this period between 1993-96.

Statement of Respondent goes on to say that the promotion to Chargeman Gr.I a selection post is not to be available as per right, but has to be earned.

5. I have considered all papers in this connection including rejoinder and sur-rejoinder filed and heard Learned Counsel on both sides.

6. Learned Counsel for the applicant argued the case in detail. The point made by him are recorded in a gist below.

(a) Learned Counsel referred to the relevant papers including R-1 to 5 and made the point that CRs of the applicant have been good, and that no Br-B adverse entry has been communicated to him, except for this one year, in his service. It was contended that this background has to be considered as an important background.

(b) Learned Counsel for the applicant continued to make this point by stating that the nature of adverse entries is also relevant and says that it has been made in a mechanical manner, without application of mind, where a number of items the applicant has just been shown to be "Average".

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(c) The perfunctory and subjective application of mind are revealed specially where entries are made under the items titled "Intelligence" and "Reliability". It was reiterated, for instance, that reliability can never be average, and either a man could be reliable or not reliable.

(d) In regard to Ex.R-1 to 4, it was argued that all these communications relate to a span of 15 days, and that the applicant was not in good health after his by-pass surgery. The Learned Counsel argued that span of 15 days should not be the basis for making adverse entries. It was further argued that the confidential reports have not been written by the Gazetted Officer, as should have been done.

7. Arguing the case on behalf of the Respondents, Learned Counsel for the Respondents Mr.R.K. Shetty, first contended the point that the authorised officer had not written the confidential reports. The CRs were written by dealing authorised officer ^{Bomb} as clearly pointed out in sur-rejoinder.

(b) With regard to performance of the applicant in earlier years, Learned Counsel for the Respondents strongly reiterated para 6 of his reply, where the quality of work during the year 1993-96 was also stated to be in doubt.

(c) Learned Counsel for the respondents ^{rested} ~~rested~~ ^{Bomb} his case very strongly on the point made regarding advice having been given during the year before CRs came to be written. He took me over in detail, through Exhibits R-1 to 4 and indicated that the quality of work of which officer was such that merited the adverse

entries. Learned Counsel for the Respondents took us through sur-rejoinder and cited the case of Sukhdeo vs. Commissioner of Amravai Dn. and another [JT 1976 (SSC)] in which it was held that sufficient opportunity should be given in writing to the employee in regard to his deficiencies before making adverse remarks and strongly made the point that this requirement was satisfied in the present case.

8. At the outset we reject point that the CR has not been written by the designated official. This is clear from the written statement in rejoinder, as also from the arguments made. There is no need to dwell upon the point further. I have also seen the copy of CR of the applicant for the year 1996-97 which was produced by Learned Counsel for the Respondents. (Incidentally copy of this one CR only was produced).

9. The material for the adverse remarks being communicated has been drawn on the basis of entry at Co.No.5 of the CR, where a number of traits have been listed under the main heading "Special Aptitude/Potential related to his job". It is clear that the word 'A' obviously meaning "Average" as has been recorded against the entries as noted in the order communicating the adverse remarks to the applicant. I have gone through other parts of the CR also carefully.

Ans

10. The conclusion in such cases have to draw in full consciousness of settled law in this regard, to the effect that Tribunals should look into such grievances only when certain matters are come up clearly as being either arbitrary or arising out of malice or show perversity etc. On the basis of well known guidelines for writing CRs, which have been referred to by the Counsel for the applicant, it is to be concluded that recording of "Average" as many as 5 times does appear to be made in manner that can be described as indicative of a perfunctory application of mind.

11. A point is made throughout by the Learned Counsel for the applicant that these traits do not change diagonally only during one year, where for such a long period of service they were positive. This is to some force in this argument e.g. on the question of "Realibility". I did not have before me the entire C.R. file of the applicant. Counsel for Respondent offered to produce it next time. However, since I am not taking up the case for an appeal, and since it is not clearly for the Tribunal to go into the question as it it were an appellate authority ^{the full file} is Ans relevant. However, it is necessary both in fairness of the applicant and in the interest of justice that the second look on the representation of the applicant is made.

12. On the perusal of the impugned order dated 17.10.1997 through which the report/representations it is seen that these aspects have not been considered. It is desirable that the D.G.M.(Personnel), who has disposed of this application has a second look in the matter specially in regard to the observations

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made in this Order. I have also gone through the C.R. of the applicant for the year 1996-97 with regard to the guidelines/rules pertaining in this regard. It will also be relevant to consider the point very strongly made before us that the entire period in which R-1 to 4 have been issued is of period of merely one fortnight.

13. It must be stated here that the question of promotion is not being looked into in the present O.A. It is not a relief sought, in as much as it may or may not arise as a consequential action on the representation which will be decided by the administration.

14. In view of the above discussions, the O.A. is allowed to the extent, and in terms of the following order :-

(a) The impugned order dated 17.10.1997 rejecting the representation of the applicant is hereby quashed and set aside. The competent authority ^{is directed to} reconsider the representation of the applicant on merits, keeping in view all points raised and the relevant observations in the above paragraphs, and pass a speaking order. Liberty is granted to the applicant to make a fresh representation, if he so desires, within a period of four weeks from the date of receipt of this order. The decision of the competent authority shall be taken within a period of two months thereafter.

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(b) If the case of the applicant comes up for promotion, before the competent authority, meanwhile, it shall be considered without taking into consideration the C.R. for the year 1996-97.

(c) There will be no order as to costs.

B. N. Bahadur

(B. N. BAHADUR)

MEMBER (A).

H.