

O.A.No.1071/92

Dt. of order: 22.3.1994

B.S.Bagi

: Applicant

Vs.

Union of India & Ors.

: Respondents

Mr. U.D.Sharma

: Counsel for respondents

CORAM:

Hon'ble Mr.Gopal Krishna, Member(Judl.)

Hon'ble Mr.O.P. Sharma, Member(Adm.).

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM.).

Applicant B.S.Gagi has filed this application under Sec.19 of the Administrative Tribunals Act, 1985, wherein he has prayed that the adverse remarks recorded in the confidential report of the applicant for the years ending 31.3.80 and 31.3.82 may be expunged, the adverse remarks should be considered as not standing in the way of the applicant while considering his promotion to the next higher post and that the applicant may be given back his seniority over the persons who have superseded him.

2. Since the applicant had not been attending before the Tribunal in spite of the hearings fixed from time to time, the learned counsel for the respondents was asked on 1.11.93 to furnish the correct present address of the applicant. The was furnished on the same day and thereafter fresh notice of hearing was issued to the applicant on the basis of the said address on 02nd Nov. 1993, by registered post. However, still none has appeared on behalf of the applicant.

3. The case of the applicant is that when he was working as Driller in the Geological Survey of India, adverse entries were recorded in his ACR for the year ending 31.3.80. These were communicated to him vide letter dated 7.10.80. He represented against the said entries vide his letter dated 15.10.80. He has however heard nothing from the respondents thereafter, in this regard. Adverse entries were also recorded in his ACR for the year ending 31.3.82, which were communicated to him vide letter dated 7.4.83. The applicant represented against the said entries vide letter dated 18.4.83. His representation against the said entries was

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rejected vide letter dated 28.6.84 (Annx.A-7). The applicant's case is that adverse entries in the ACR for both these years are vague and the communication dated 28.6.84 by which the representation against the adverse entries for the year ending 31.3.82 was rejected is non-speaking. He has also assailed the adverse entries for both these years on various other grounds.

3. The respondents in the reply have taken a preliminary objection that the application is barred by limitation. They have added that the representation dated 15.10.80 reported to have been made against the adverse remarks in the ACR for the year ending 31.3.80 was never received by them. As regards the representation against the adverse remarks in the ACR for the year ending 31.3.82, it was disposed of by a communication dated 28.6.84. Therefore, according to them the application should have been made within one year from the date of rejection of the said representation. However, the application was made in August 1986 and is accordingly barred by limitation.

5. The preliminary objection of the respondents is not sustainable as regards the application in so far as it relates to the rejection of the representation against adverse entries in the ACR for the year ending 31.3.82 vide communication dated 28.6.84. In view of the provisions of sub-section (2) of Sec.21 of the Administrative Tribunals Act, 1985, the applicant is entitled to file an application in respect of his grievance which arose during the preceding 3 years from the date of setting up of the Central Administrative Tribunal on 1.11.85, and a period of one year from 1.11.85 would be available to him for filing such application. Since the representation against the adverse remarks in the ACR for the year ending 31.3.82 was rejected vide communication dated 28.6.84, the applicant was entitled to file an application against the said rejection till 31.10.86. The applicant filed the present application on 26.8.86. Therefore, the application in so far as it pertains to the adverse remarks for the year ending 31.1.82 is within the limitation period.

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6. Coming to the merits of the case, the applicant's grievance is that the rejection of the representation against the adverse remarks for the year ending 31.3.82 is by a non-speaking order and the remarks were made by one Shri V.G.Rajgopalan, then Director Drilling (Coals) on account of his personal bias and malice.

7. We have considered the matter carefully in the light of the reply of the respondents and after hearing the learned counsel for the respondents. The adverse remarks in the ACR for the year ending 31.3.82 as reproduced by the applicant at page 5 of the application are not vague but are fairly specific. It is not expected that the respondents should communicate the detailed reasons for which the representation against the adverse remarks is not accepted. It is enough that there should be a proper discussion of the matter in the file of the respondents, in the light of the representation submitted by the applicant and various other facts and circumstances of the case. The remarks given by Shri V.G.Rajgopalan on the representation of the applicant have been reproduced by the respondents in their reply at pages 6 & 7. It, therefore, appears that the matter was examined in detail in the file of the respondents and it was thereafter that the representation against the adverse remarks for the year ending 31.3.82 was rejected. As regards the allegation of personal bias and malice against Shri Rajgopalan, he has not been made a respondent in the application by name. In these circumstances it is not possible for us to take cognizance of these allegations against Shri Rajgopalan.

8. As regards the adverse remarks for the year ending 31.3.80, since no representation was even made against these, and since the matter pertains to a period prior to 1.11.82, it cannot be considered by us at this stage. As regards the adverse remarks in the ACR for the year ending 31.3.82, we find no substance in the application. The application is accordingly dismissed with no order as to costs.

(O.P.Sharma)  
Member (A).

C. Krishna  
(Gopal Krishna)  
Member (J).