

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.6 of 1992

DATE OF JUDGMENT: 2nd March 1993

BETWEEN:

Mr. Mohd. Afzal Ali .. Applicant

AND

- 1. Union of India represented by the Secretary, Ministry of Communications, New Delhi-1.
- 2. The Director General, Department of Posts, *Dak Bhavan, Sansad Marg,* New Delhi-1.
- 3. The Postmaster General, A.P.Southern Region, Kurnool-518005. .. Respondents

COUNSEL FOR THE APPLICANT: Mr. K.Radhakrishna Murthy

COUNSEL FOR THE RESPONDENTS: Mr. N.V.Ramana, Addl.CGSC

CORAM:

Hon'ble Shri T.Chandrasekhara Reddy, Member (Judicial).

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JUDGMENT OF THE SINGLE MEMBER BENCH DELIVERED BY THE HON'BLE
SHRI T.CHANDRASEKHARA REDDY, MEMBER (JUDL.)

This application is filed under Section 19 of the Administrative Tribunals Act, 1985 to expunge the recordable warning from the Confidential Report Dossier of the applicant dated 10.8.1990 passed by the Deputy Director General, Vigilance I Section of Ministry of Communications, Department of Posts. The facts giving rise to this OA in brief are as follows:-

The applicant is a direct recruit to Indian Postal Service in the year 1991. The applicant had worked as Senior Superintendent of Post Offices, Durg, Madhya Pradesh during the period from 9.12.1983 to 19.7.1985. For the alleged irregularities/illegalities said to have been committed by the applicant during the period from 9.12.1983 to 19.7.1985, the said 'warning' that had been recorded in the C.R. Dossier of the applicant was communicated to the applicant as per the orders dated 10.8.1990 passed by the Deputy Director General, Vigilance I Section of Ministry of Communications, Department of Posts. As against the adverse remarks that were communicated to the applicant, he put in a representation dated 23.10.1990 to the Secretary, Dept. of Posts, Parliament Street New Delhi to remove the said adverse remarks from his CR Dossier. The Government of India, Ministry of Communications, Department of Posts,

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by its order dated 22.2.1991 conveyed to the applicant that the representation of the applicant dated 23.10.1990 had been rejected. The present OA is filed for the relief as indicated above.

2. Counter is filed by the respondents opposing this O.A.

3. In the counter filed by the respondents it is maintained that in view of the earlier OA 875/90 filed by the applicant herein ^{and} the Judgment therein ^{this O.A.} is hit by constructive resjudicata and hence this OA is not maintainable. It is further maintained by the respondents that with a view to bring the defects to the notice of the applicant that the said warning had been issued so that the applicant might correct himself and conduct properly as a responsible officer.

4. None present on behalf of the applicant. There is no representation on behalf of the applicant. Mr. K. Radha Krishna Murthy, counsel for the applicant is not present. After hearing Mr. N.V.Ramana, Standing Counsel for the Respondents, we proceeded to dispose of this OA. Admittedly, the said warning which is ~~of~~ ^{an} adverse ~~in~~ ⁱⁿ nature had been communicated to the applicant in the month of October 1990. The period for which the said adverse remarks had been communicated is from 9.12.1983

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to 19.7.1985 when the applicant was working as Senior Superintendent of Post Offices, Durg, Madhya Pradesh. Now the main question that has got to be considered is the legal effect of the adverse remarks that ~~have~~ ^{are} ~~been~~ ^{written} and communicated to the applicant roughly after four years the alleged misconduct, irregularity etc., ~~had~~ ^{has} been committed.

5. In AIR 1987 SC 1201 "State of Haryana Vs. Shri P.C.Wadhwa, the Supreme Court has held that adverse remarks should be communicated within seven months and disapproved the action of the authorities in communicating them after 27 months. It would be pertinent to extract the relevant para in the said Judgment at page 1202 which reads as follows:-

"The whole object of the making and communication of adverse remarks is to give to the officer concerned an opportunity to improve his performances, conduct or character, as the case may be. The adverse remarks should not be understood in terms of punishment, but really it should be taken as an advice to the officer concerned, so that he can act in accordance with the advice and improve his service career. The whole object of the making of adverse remarks would be lost if they are communicated to the officer concerned after an inordinate delay.

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In the instant case, it was communicated to the respondent, the Inspector General of Police, Haryana, after ~~tw~~twenty seven months. It is true that the provisions of Rules 5, 6, 6A and 7 are directory and not mandatory, but that does not mean that the directory provisions need not be complied with even substantially. Such provisions may not be complied with strictly, and substantial compliance will be sufficient. But, where compliance after an inordinate delay would be against the spirit and object of the directory provision, such compliance would not be substantial compliance. In the instant case, while the provisions of Rules 5, 6, 6A and 7 require that everything including the communication of the adverse remarks should be completed within a period of seven months, this period cannot be stretched to twenty seven months, simply because these Rules are directory without serving any purpose consistent with the spirit and objectives of these Rules." (*Emphasis mine*)

So, as could be seen from the said Judgment, inordinate delay in communication of the adverse remarks is held as being not proper.

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6. In an another decision reported in (1988) 7 ATC 979 "Ashok Kumar Vs. State of U.P. and another" ^{the Central Admin- stration Tribunal} had held that abnormal delay in recording of adverse ~~remarks~~ remarks invalidates the adverse remarks.

7. So, in view of the legal position that the inordinate delay in recording of adverse remarks would invalidate the adverse remarks, ~~we do not see any other alternative except to allow this OA,~~ ^{liable to be allowed.}

8. In the representation dated 23.10.1990, the applicant ^{had} maintained ^{that} the 'recordable warning' is tantamount to censure as contemplated in Rule 11 of the CCS (CCA) Rules and could not be awarded to the applicant through an administrative memo. So, it is the contention of the applicant that he had no reasonable opportunity to overcome the allegations on the basis of which the said 'warning' had been issued, that the principles of natural justice are very much violated and so the OA is liable to be allowed. ~~So, in writing the Confidential Report of a Government servant, one need not strictly adhere to the principles of natural justice and writing of Confidential Report is not in the nature of penalty even though the ^{Recording} writing may be adverse to a Government employee. ~~But~~ it is nevertheless to say that the said 'warning' is issued as could be seen from the order dated 10.8.1990~~

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(Annexure-I of the material papers) on the following irregularities said to have been committed:-

- "i) Shri Ali issued orders of transfers/postings of certain officials and then cancelled the same without stating the grounds and considerations involved. He also failed to observe the norms laid down in the instructions on the subject in ordering some transfers/postings.
- ii) He delayed the regular appointments of certain EDBPMs with the result that candidates originally given adhoc appointments continued and orders for selected candidates were cancelled. Some of such appointees even turned out to be ineligible for the post.
- iii) He approved disposal of old records at the rate of Rs.125/- per quintal by calling fresh quotations, instead of either waiting for the approved tenderer to lift the waste paper at the accepted rate of Rs.231/- per quintal, or considering the offers of other tenderers, whose rates ranged from Rs.205=57 to Rs.235=50 per quintal, with the result that the Department was put to a loss of over Rs.8,000/-."

As could be seen, the irregularities committed by the applicant are ~~such~~ ^{of} a serious nature and as a matter of fact the department should ^{have} initiated regular departmental inquiry ~~and then action ought to have been taken if in~~ ^{on the alleged irregularities} ~~the Departmental inquiry, the charges on which the irregularities that had been framed were proved. But the~~ respondents for the said irregularities which are grave

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in nature never appeared to have thought of taking any disciplinary action. For what reasons disciplinary action ~~could~~ ^{had} not ~~have~~ been taken against the applicant, we are not able to understand. ~~Whatever it is, Nothing should~~ ^{Be it what may.} ~~have precluded the respondents from taking disciplinary action against the applicant if there is no material to show that the applicant had committed the said irregularities as in Annexure-I, to which a reference is made.~~

9. O.A.No.875/90 had been filed by the very same applicant herein to expunge the adverse remarks for the period relating to 1984-85 and 1985-86. The said OA 875/90 had been decided as per ~~its~~ ^{the} Judgment dated 29.11.1991. The period for which the adverse remarks in this OA were written is different from the period in OA 875/90 even though ^{there is} slight overlapping with regard to the periods the adverse entries are written in this OA and in OA 875/90. As both the OAs are framed ^{on} ~~and~~ distinct ^{and} in different cause of action, no question of resjudicata/constructive resjudicata arises and hence, the present OA being barred by the principles of resjudicata/constructive resjudicate cannot be accepted. ~~As already pointed out, this OA is liable to allowed.~~

10. In 1989(1) SLJ CAT 526, the Delhi Bench of this Tribunal in its Judgment dated 20.1.1989 had held that 'warning' entered in the character roll amounted to imposing the penalty of censure and such a step without following the CCS (CCA) procedure is illegal. So, in view

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of this position also, the adverse remark of 'warning' entered in the CR Dossier of the applicant is liable to be expunged.

11. Mr. N.V.Ramana, learned Standing Counsel for the Respondents maintained that in communicating the adverse remarks there is no delay but only in recording the adverse entry there has been delay ~~and that~~ due to the fact that the complaint against the applicant had been received as late as in 1985 and that investigation had been started and could be finalised only in 1990 ~~as~~ the complaint received against the applicant which ^{ran} into the series of allegations. We do not think in view of the facts and circumstances of the case that, it required 4 to 5 years on the part of the respondents to inquire into the truth or otherwise of the allegations. They could have completed the investigation in regard to the allegations as against the applicant within a reasonable period of 5 or 6 months after the complaint in the year 1985 was received as against the applicant with regard to the said allegations. So, we do not see any justification on the part of the respondents in recording the adverse entry of 'warning' after such a long period of four years.

12. In the result, we set-aside the impugned order No.17-2-/86-Vig.1, dated 10.8.1990 passed by the Deputy Director General, Vigilance 1 Section of Ministry of Communications, Department of Posts and direct the respondents to expunge the adverse entry of 'warning' recorded

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in the Confidential Report of the applicant for the period from 9.12.1983 to 19.7.1985.

13. The application is accordingly allowed. The parties shall bear their own costs in the circumstances of the case.

T. Chandrasekhara Reddy
(T.CHANDRASEKHARA REDDY)
Member(Judl.)

Dated: 2nd March 1993.

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Deputy Registrar

To

1. The Secretary, Union of India,
Ministry of Communications, New Delhi-1.
2. The Director General, Dept.of Posts, New Delhi-1.
3. The Postmaster general, A.P.Southern Region, Kurnool-5.
4. One copy to Mr.K.Radhakrishna Murthy, Advocate, 1-1-336/10
vsn Viveknagar, Hyderabad.
5. One copy to Mr.N.V.Ramana, Addl.CGSC.CAT.Hyd.
6. One spare copy.

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COMPARED BY

CHECKED BY

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR. V. NEELADRI RAO :V.C.

AND

THE HON'BLE MR. R. BALASUBRAMANIAN :M(A)

AND

THE HON'BLE MR. CHANDRA SEKHA REDDY T
:MEMBER (J)

AND

THE HON'BLE MR.

DATED: 2-3-1993

~~ORDER~~/JUDGMENT:

R.P./C.P/M.A. No.

in

C.A.No.

6/92

T.A.No.

(W.P.No.)

Admitted and Interim directions
issued.

Allowed

Disposed of with directions

Dismissed as withdrawn

Dismissed

Dismissed for default

Rejected/Ordered

No. order as to costs.

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29/3/93

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Central Administrative Tribunal
DESPATCH
- 4 APR 1993
HYDERABAD BENCH.