

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No.256/92

Date of Order: 17.3.94

BETWEEN:

S.R.Gurumukhi



.. Applicant.

A N D

1. The Director General of Employment and Training, Shrama Shakti Bhavan, 2nd & 4th Rafi Marg, New Delhi-1.

2. The Union of India rep. by its Secretary to the Ministry of Labour, Shrama Shakti Bhavan 2 & 4 Rafi Marg, New Delhi - 110 001.

3. The Director, Advanced Training Institute, Vidyanagar, Hyderabad.

.. Respondents.

Counsel for the Applicant

.. Mr.S.Ramakrishna Rao

Counsel for the Respondents

.. Mr.N.R.Devraj

CORAM:

HON'BLE SHRI T.CHANDRASEKHARA REDDY : MEMBER (JUDL.)

HON'BLE SHRI H. RAJENDRA PRASAD : MEMBER (ADMN.)

TSB

5. Today we have heard Mr.S.Ramakrishna Rao, learned counsel for the applicant and Mr.N.R.Devraj, learned Standing Counsel for the respondents.

6. Admittedly the adverse remarks extracted above (A-1) are for the period commencing from 1.1.87 and ending by 31.12.87. The accepting authority has already pointed out ~~has~~ communicated the said remarks to the applicant herein as per the proceedings dt. 21/22.3.91. As seen there is 3 years 9 months delay on the part of the respondents in communicating the adverse remarks to the applicant. Mr.N.R.Devraj, learned standing counsel for the respondents tried to explain the delay by pointing out that the said Varma who was the reporting authority was under suspension from 4.12.87 upto the end of February 1991 and so the said Varma was not in a position to write ACRs of the applicant for the year 1987 and so there had been delay in communicating the adverse remarks. No material is placed before this Tribunal to show that the said Varma, the reporting authority had been under suspension for the said period. We have gone through the counter filed by the respondents. It is ~~only~~ ~~pleaded~~ in the counter of the respondents that the Varma had been under suspension. The period that the said Varma had been under suspension is not specifically pleaded in the counter. So, for want of proof we are not in a position to accept that the Varma ~~was~~ under suspension from 4.12.1987 ~~till~~ the end of February 1991. Even taking for arguments sake for the period of 4.12.87 upto the end of February 1991 that the said Varma was under suspension ~~some other~~ persons should have been incharge of the said post was holding during the period. ~~any~~ Varma. There should not have been ~~any~~ impediment on the person who was the incharge of the post of Varma to prepare and

T. C. M.

4/12/91
f.i.

- vii) He has very poor inter-personal relationship with superiors and subordinates.
- viii) He does not have good attitude towards SC/ST/weaker sections of people.
- ix) As the officer has no initiative, his coordinating ability is very poor.
- x) He does not know how to plan his work.
- xi) Supervisor ability, Leadership qualities, Management qualities, Appraising ability-very poor.
- xii) Supervisor ability, Leadership qualities, Management.

3. The adverse remarks were accepted by the counter who is the director of training to the applicant. signing authority/and were duly communicated/ As per the proceedings dt. 22.3.1991 the applicant put in a representation to the Director General who is the Reviewing Authority to expunge the said remarks. But the said adverse remarks were not expunged by the Reviewing authority. Then the applicant put in a representation to the Deputy Secretary to the Government of India on 15.4.1991 that his case may be sympathetically considered and the adverse remarks for the year 1987 may be toned down. As per the proceedings dt. 16.9.1991 the Deputy Secretary to the Government of India (Ministry of Labour) informed the applicant that the competent authority has taken decision after considering all the representations addressed to the DGE&T by the applicant earlier and the reports received against him by the DGE&T and there was no need to expunge or modify the remarks in the ACR for the year 1989. Aggrieved by the proceedings dt. 16.9.91 communicated to the applicant by the Deputy Secretary, Ministry of Labour, Government of India the present OA is filed by the applicant for the relief as already indicated above.

4. Counter is filed by the respondents opposing this OA. Rejoinder is filed by the applicant to the counter of the respondents.

32/18
T. S.

T. S.

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".

7. The said observations apply with an amount of force with regard to the case on hand. So, in view of the delay the adverse remarks are communicated to the applicant herein, the said adverse remarks for the year 1987 are liable to be expunged.

8. This OA had come up before a Single Member Bench on a number of times. It has also come up before Division Bench for the past 6-8 months. No. of ^{the} times ~~the~~ Bench had directed the respondents to produce the relevant material pertaining to this OA. During the course of the hearing of this OA the Bench specifically asked Mr. N. R. Devraj whether there is any material available with the respondents to support the adverse remarks as against the applicant. It is needless to point out to uphold the action of the respondents in passing adverse remarks against the applicant at least there must be some material. But Mr. N. R. Devraj expressed ^{his} inability to substantiate the adverse remarks that had been passed for by producing any material the year 1987/. So, this is a case where absolutely there is no material to substantiate adverse remarks passed against the applicant. So, for want of evidence to support the adverse remarks passed against the applicant for the year the said adverse remarks 1987/ are also liable to be expunged.

9. As already pointed out while narrating the facts, in the representation dt. 15.4.91 to the Deputy Secretary,

T. S. V.

.. 5 ..

the ACR for the period ^{in question and} ~~communicate~~ ^{the} ~~adverse~~ remarks within a reasonable period to the applicant. So, we see any amount of delay on the part of the respondents in communicating the adverse remarks to the applicant. In this context we may cite a decision reported in AIR 1987 SC 1201 in case of State of Haryana v. Shri P.C. Wadhwa, IPS, Inspector General of Police and another. The facts in that reported case would disclose that certain adverse remarks were made by the Home Secretary to the Government of Haryana against Shri Wadhwa, The Inspector General of Police for the period ^(30-6-79 to 25-7-80) ~~the~~ adverse remarks were duly accepted by the competent authority. After such acceptance, the adverse remarks were communicated to Shri Wadhwa by the Home Secretary to his letter dated 4.5.82 about two years three months after the close of the relevant period on March 31, 1980. Shri Wadhwa was the IPS Officer and ^{to} ~~whom~~ the adverse remarks were communicated straightaway ^{filed Writ Petition under} ~~the~~ High Court of Punjab and Haryana to quash the said ^{adverse} ~~remarks~~. The High Court of Punjab and Haryana was pleased to quash the adverse remark ^{passed} ~~by~~ the Home Secretary on the work ^{and} ~~conduct~~ of the said Shri Wadhwa. The State of Haryana ^{and Punjab} ~~went~~ on appeal to ^{the} ~~Supreme~~ Court. The Supreme Court commenting on the delay with regard to the communicating the adverse remarks to Shri Wadhwa had held as hereunder:-

"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. In the instant case, it was communicated to the respondent, the Inspector General of police, Haryana, after 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

T. S. R.

11. O.A. is allowed accordingly. The parties shall bear their own costs.

CERTIFIED TO BE TRUE COPY
[Signature]
Date..... 7/4/94.....
Court Officer
Central Administrative Tribunal
Hyderabad Bench
Hyderabad

Copy to:-

1. The Director General of Employment and Training, Shrama Shakti Bhavan, 2nd & 4th Rafi Marg, New Delhi-1.
2. The Secretary to the Ministry of Labour, Union of India, Shram Shakti Bhavan 2&4 Rafi Marg, New Delhi-001.
3. The Director, Advanced Training Institute, Vidyanagar, Hyderabad.
4. One copy to Sri. S.Ramakrishna Rao, advocate, CAT, Hyd.
5. One copy to Sri. N.R.Devaraj, Sr. CGSC. CAT, Hyd.
6. One copy to Library, CAT, Hyd.
7. One spare copy.

Rsm/-

30. 3/10/94
20. 1/10/94
7. 4/10/94

Cases	0. 256/92
Date	17/3/94
Copy	13/4/94
	(1)