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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH.

AT HYDERABAD

ORIGINAL APPLICATION NO.552/92

DATE OF JUDGEMENT: 17 MARCH, 1993

Between

M.A.Rasheed

.. Applicant

and

1. The Director General,
Indian Council of Agricultural Research
Krishi Bhavan, New Delhi-110 001.
2. The Director,
Central ^{Research} Institute for Dry Land Agriculture
Santoshnagar
HYDERABAD-659
3. The Scientist & the Head of Designs
and Analysis Section
Central Research Institute for Dryland
Agriculture, Santoshnagar
HYDERABAD-659
4. The Scientist-I (Geography)
Designs and Analysis Section
Central Research Institute for Dryland
Agriculture, Santoshnagar
HYDERABAD-659
5. The Sr.Administrative Officer,
Central Research Institute for Dryland
Agriculture, Santoshnagar,
HYDERABAD-659

Counsel for the Applicant : Mr V.Venkateswar Rao

Counsel for the Respondents : Mr E.Madan Mohan Rao

CORAM:

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

JUDGEMENT

This is an application filed under Section 19 of the Administrative Tribunals Act to quash the adverse remarks that were made in the Confidential Report of the applicant and that were communicated vide 2nd respondent's Memo No.F.No.1-1(1)/CRs/Tech.89 dated 1.8.89 and to grant EB increment that was due to the applicant on 1.7.89 in the scale of Rs.2000-60-2300-EB-75-100-3500 with

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all consequential benefits and ~~and~~ pass such other order or orders as may deem fit and proper in the circumstances of the case.

2. The facts so far necessary to adjudicate this OA are as follows:

3. The applicant herein is working as Technical Officer in the Designs and Analysis Section of Central Research Institute for Dryland Agriculture at Hyderabad, The 2nd respondent, who is the reviewing authority ~~for~~ [✓] ~~the CRs~~, as per his memorandum dated 1.8.89, had communicated the following adverse remarks that were made in the Annual Confidential Report (ACR) of the applicant pertaining to the period from 1.1.88 to 31.3.89 by the controlling authority.

"CENTRAL RESEARCH INSTITUTE FOR DRYLAND AGRICULTURE
HYDERABAD

No.1-1(1)/CRs/Tech/89

Dated 1.8.89

MEMORANDUM

The following adverse remarks recorded in the Annual Assessment Report/Confidential Report form for the period from 1.1.88 to 31.3.89 of Sri M.A.Rasheed, T-5 are hereby communicated.

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| 1. Please comment on part II as filled in by the officer and specifically state whether you agree with the answers relating to targets and objectives, achievements and short-falls. Also specify constraints, if any, in achieving the objectives | :: Mr Rasheed is a hard working person. However, he has been unwell this past one year which has affected his work schedule partially |
| 2. State of health (Physical & Mental) | :: Mr. Rasheed has been suffering from Hyper Tension for the last one year |
| 3. General Assessment | :: Mr Rasheed is hard working. However, his additional responsibilities, viz., member of JSC and Benevolent fund affects the work schedule |

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XX	XX	XX	XX	XX
XX	XX	XX	XX	XX
XX	XX	XX	XX	XX

Sd/-
For Director "

4. The applicant was due for grant of EB increment on 1.7.89 in the pay scale of Rs.2000-3500/-. The EB Committee met in the month of September 1989. The applicant's case was considered w along with those who were also entitled to be considered for EB increment. Due to the above said adverse remarks in the Confidential Report of the applicant for the period from 1.1.88 to 31.3.89, and after taking into consideration other material, the EB Committee, did not recommend the case of the applicant for the release of EB increment that became due to the applicant on 1.7.89.

5. The adverse remarks as against the applicant were communicated to the applicant by the 2nd respondent as per his Memorandum dated 1.8.89. In the said memorandum, the applicant was given an opportunity to represent to the competent authority for expunging the above remarks within 6 weeks from the date of issue of the memo with instructions that no representation shall be entertained after the prescribed period. The applicant as per his letters dated 15.9.89 and 1.2.90 requested for extension ~~of~~ of time for submitting his representation against the adverse remarks that were communicated vide memo dated 1.8.89. The representation of the applicant for extension of time was considered by the competent authority and the same was rejected, on the grounds that no proper reasons were shown for the delay. The applicant was informed of the

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above decision on 12.2.90. The applicant subsequently filed OA 170/90 on the files of this Tribunal to quash the adverse entries in the ACR of the applicant for the period 1.1.88 to 31.3.89 and to grant him the EB increment that became due on 1.7.89. The said OA 170/90 was disposed of vide this Bench judgement dated 31.12.91, condoning the delay in the submission of the representations dated 19.9.89 and 1.2.90 and ^{by directing the respondents} to consider the same and to take a decision within two months from the date of receipt of the order, in the OA 170/90. Consequently, the applicant was informed vide 5th respondent letter dated 14.5.92 that his representations dated 19.9.89 and 1.2.90 had been considered and the adverse remarks that were as against the applicant were not liable to be expunged. As already pointed out, the applicant had been denied of his EB increment that became due on 1.7.89. Hence, the present OA is filed for the relief as indicated above.

6. Counter is filed by the respondents opposing this OA.

7. We have heard in detail Mr V.Venkateswara Rao counsel for the applicant and Mr E.Madan Mohan Rao, Standing counsel for the respondents.

8. As could be seen, ^{according to the respondents} there are three adverse remarks in the Annual Confidential Report of the applicant to which a reference has already been made.

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The first remark reads as follows:

1. Please comment on Part II as filled in by the officer and specifically state whether you agree with the answers relating to targets and objectives, achievements and shortfalls; Also, specify constraints, if any, in achieving the objectives.

:: Mr Rasheed is a hard working person. However, he has been unwell this past one year which has affected the work schedule partially

The applicant is a 'hard working' person is not an adverse remark. But in the said remark, it is also recorded that his work schedule had been affected partially. No doubt, the remark is an adverse one; But the relevant material placed before this Tribunal discloses that during the period from 1.1.88 to 31.3.89, the applicant had gone on leave during different periods as he had been sick. As a matter of fact, this goes to show that the applicant had been unwell for the one year during the relevant period. ~~So, as~~ The applicant had been unwell during the period from 1.1.88 to 31.3.89, ~~she~~ he could not attend to his work due to his sickness. The applicant had also obtained leave from the competent ~~xxxxxx~~ authority for the period of his absence from duty due to sickness and so, it cannot be said that the applicant had committed any wrong. If any employee, due to his sickness remains absent from the office, naturally, the work he has to attend suffers. But sickness being the reason for slackness in the work schedule, there cannot be any justification in blaming the Govt. servant especially when he had obtained leave from the competent authority for his absence. So, we do not think there is any justification in recording the adverse remark that the work schedule of the applicant had affected partially in the circumstances of the case, as the same was beyond the control of the applicant. We see no justification in recording the said adverse remark and so the said adverse remark ^{is} ~~one~~ liable to be expunged.

T. C. *[Signature]*

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The second adverse remark reads as follows:

2. State of Health (Physical & Mental): Mr Rasheed has been suffering from Hyper tension for the last one year

It is a common knowledge that many employees do suffer from hyper tension. We do not see any justification in recording hyper tension as an adverse remark and in communicating the same to the applicant; and hence, the same is also liable to be expunged.

The third and final remark is as follows:

3. General Assessment: Mr Rasheed is hard working. However his additional responsibilities viz., member of JSC and Benovolent Fund affects the work schedule."

The adverse remark, as could be seen is that the applicant was a member of JSC and Benovolent Fund and that the same affected the work schedule. If the work schedule or the work which the applicant was discharging was affected, as the applicant was a member in the Joint Staff Council and Benovolent fund, the controlling authority should have served a memo to that effect on the applicant and should have pointed out the deficiency of the applicant at the relevant time. Absolutely, no material is placed before us to show in what manner the work schedule of the applicant got suffered due to his membership in the Joint Staff Council and Benevolent Fund. In the absence of any material before this Tribunal to show that the work of the applicant suffered in any way, we do not see any justification in recording the said remark that the applicant being a member of the Joint Staff Council and benevolent fund affects his work schedule. To put in one sentence, the respondents have not placed any material before this Tribunal to show that the work schedule of the applicant had been affected in any way as the applicant was member of the Joint Staff Council and Benevolent fund. In view of this position this remark also is liable to be expunged. So, as could be seen none of the adverse

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*** We may also point out the legal effect of setting aside of the said adverse remarks would be that the remarks must be treated as non-existent in the eye of law.

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remarks that were communicated to the applicant have no legs to stand and hence, all the above said remarks which are to be treated as adverse by the respondents are liable to be expunged. *****

9. The respondents have placed a Confidential Note dated 15.3.90 before this Bench which is the basis for non-clearance of efficiency bar increment to the applicant. The contents of the said note have not been communicated to the applicant. In AIR 1988 SC 2060 Vijay Kumar, IAS Vs State of Maharashtra, the Supreme Court had dealt with the case of a Govt. servant who was denied grant of senior time scale while his juniors had been granted. In this context, it will be worthy to note the observations of the Hon'ble Supreme Court at Para 3 of the above judgement, which reads as follows:

"The main grievance of the appellant before the Tribunal was that the confidential report relied upon to deny senior time scale has not been communicated to him. It is not disputed that the Confidential report was not sent to the appellant by registered post, nor there is any evidence to indicate that it was received by the appellant. The Tribunal after considering the material on record was of the opinion that there is no proof that the appellant had received the Government letter containing confidential remarks. Yet the Tribunal proceeded on the basis that there was nothing wrong in relying upon that confidential report to deny benefit to the appellant. Indeed, the conclusion of the Tribunal is curious. It is settled principle that an uncommunicated adverse report should not form the foundation to deny benefits to a Govt. servant when similar benefits are extended to his juniors."

So, in this case, the uncommunicated Confidential Note dated 15.3.90 as already pointed out is the basis for denying efficiency bar increment to the applicant here. So, even though a direction is liable to be given to

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1. The Director General, Indian Council of Agricultural Research, Krishi Bhavan, New Delhi-1.
2. The Director, Central Research Institute for Dry Land Agriculture, Santoshnagar, Hyderabad-659.
3. The Scientist & the Head of Designs and Analysis Section, Central Research Institute for Dryland Agriculture, Santoshnagar, Hyderabad-659.
4. The Scientist-I (Geography) Designs and Analysis Section Central Research Institute for Dryland Agriculture, Santoshnagar, Hyderabad-659.
5. The Sr. Administrative Officer, Central Research Institute for Dryland Agriculture, Santoshnagar Hyderabad-659.
6. One copy to Mr. V. Venkateswar Rao, Advocate, CAT. Hyd.
7. One copy to Mr. E. Madanmohan Rao, SC for Agrl., CAT. Hyd.
8. One copy to Deputy Registrar (J) CAT. Hyd.
9. Copy to All Reporters as per standard list of CAT. Hyd.
10. One spare copy.

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~~to the respondents to~~ set aside the orders of the 2nd respondent, dated 1.8.89 and to expunge the above said adverse remarks from the records of the applicant, it has become necessary to give an appropriate direction to the respondents with regard to the clearance of efficiency^{bar}/increment that became due to the applicant on 1.7.89.

10. In the result, we hereby set aside the order of the 2nd respondent dated 1.8.89 communicating to the applicant, the adverse remarks that were entered in the ACR of the applicant pertaining to the period from 1.1.88 to 31.3.89 and also direct the respondents to expunge the adverse remarks entered in the ACR of the applicant for the period from 1.1.88 to 31.3.89 that were communicated to him.

11. We also direct the respondents to serve a copy of the Confidential Note dated 15.3.90 that was filed before this Tribunal (excluding the remarks and orders made thereon) to the applicant within a week from the date of communication of this order. The applicant will be at liberty to submit his representation if any within two weeks to the said copy of the Confidential Note that is served on him. The competent authority on receipt of any such representation from the applicant with regard to the confidential note that was served on him, shall pass final orders within three months with regard to the release of his efficiency bar increment that became due to the applicant on 1.7.89. The OA is allowed with the above directions leaving the parties to bear their own costs."

(T.CHANDRASEKHARA REDDY)
Member(Judl.)

Dated: 17 March, 1993

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