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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

OA.No.1296/95

Date of order: 19-10-2000

Between:

Ch.Ramanaiah.

... Applicant

A n d

1. The Director,
SHAR CENTRE,
Dept.of Space,
Govt.of India,
Sriharikota (A.P.).
2. The Controller,
Office of the Director,
SHAR Centre, Dept.of Space,
Govt.of India,
Sriharikota, A.P.
3. B.Chandrashekar Reddy,
Dy.Manager,
O/o the Director,
SHAR CENTRE,
Dept.of Space,
Govt.of India,
Sriharikota (A.P.).
4. K.Bhaskar Rao,
Scientist'D'(Engineer),
Office of the Director,
SHAR CENTRE,
Dept.of Space, Govt.of India,
Sriharikota (A.P.).

... Respondents

Counsel for the Applicant - Mr.P.N.Sanghi, Advocate

Counsel for the Respondents - Mr.B.Narasimha Sharma, Sr.CGSC

CORAM:

THE HON'BLE MR.B.S.JAI PARAMESHWAR : MEMBER (JUDL.)

...

O r d e r

Heard Mr.P.N.Sanghi, learned counsel for the applicant
and Mr.M.C.Jacob for Mr.B.N.Sharma, learned standing counsel
for the respondents 1,2 and 4. Notice sent to Respondent no.3
returned unserved, reported to be dead.

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2. While the applicant was working as Tradesman 'C' the Respondent no.1 herein by his proceedings No.CON/ACR/01(3)/93, dt.22.2.93 (Annexure-A, page 13 to OA) communicated the adverse remarks found in the Annual Confidential Report for the year 1992.

3. The adverse entries found in the said Annual Confidential Report are extracted herein below:-

" 2.2 ASSESSMENT OF QUALITIES:

- | | |
|----------------------|--|
| (1) Attitude to work | : Does some work but has some excuses
(POOR) |
| (2) Initiative | : Prefers to Idle
(POOR) |
| (6) Quantity | : Work is often slow
(POOR) |
| (8) Cooperation | : Shows reluctance to cooperate
(BAD) |
| (10) Discipline | : Difficult to handle sometimes. Needs to be told to do his work. Sometimes refuses.
(POOR) |

3.4 Assessment of the Officers overall worth in his particular grade. : FAIR "

4. Against the said adverse remarks the applicant submitted a representation dt.30.6.93 to the Respondent no.1. A copy of the representation is at page-11, Annexure-B to OA.

5. The respondent no.1 by his proceedings of even number dt.6.10.93 informed the applicant as under:

" Please refer to my letter of even number dated 22nd February, 1993 and your appeal dated 30th June, 1993 on the above subject. After considering all the relevant aspects, the Appellate Authority (Director, SHAR) has decided to retain the adverse/unfavourable remarks mentioned in your ACR for the year 1992. "

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..contd..3

6. The applicant being aggrieved has filed this application to call for the records relating to and connected with Lr.No.CON/ACR/01(3)/93, dt.22.2.1993 and Lr.No.CON/ACR/01(3)/93, dt.6.10.1993 and quash or set aside the adverse entries made in the annual confidential reports for the year 1992.

7. The applicant has challenged the impugned order on the following grounds:-

(a) The applicant submits that the problem started with the refusal by him to provide electricity supply to the private contractors working on the premises of the respondent establishment illegally without prior permission or authorisation. He submits that except during the year 1991 when he was working under respondents 3 & 4 the applicant had a clean record of service. The applicant submits that the respondent establishment follows a detailed procedure for preparation of ACRs, according to which the candidate has to appraise of himself about his performance for the period under review. The reporting officer has to assess and put his remarks on a printed format and the reviewing officer has to put his remarks and has to award overall grading. The ACR is finally signed by the countersigning officer. He submits that in his case, for the year 1992, the 4th respondent was the reporting officer and 3rd respondent was the reviewing officer. As the applicant was not responding and their intimidated tactics were not working with the applicant they resorted to the debious method of spoiling his ACRs.

(b) The adverse remarks are vague. They are not sustainable in law. The adverse entries are made against the applicant by respondents 3 and 4 with a malafide intention to spoil his career. The appellate order is not a speaking order, it is not supported by any reasons and grounds. The adverse entries are self contradictory made with the sole intention to spoil the service record of the applicant.

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8. The applicant submits that earlier to the year 1992 he had put in 17 years of service without any blemish and that during the year in question he was posted to work under the Respondents 3 and 4 and that during that period he was subjected to adverse entries in the ACR mainly attributable to Respondents 3 and 4. Further he submits that the Respondent no.1 as the reviewing/appellate authority should have considered the representation dt.30.3.93 in all perspective and should have recorded his reasons when he took a decision to maintain adverse entries in the ACR for the year 1992.

9. The respondent nos.1,2 & 4 have filed ^{their} a reply. The applicant worked in the IREX upto 1993, and that his work and performance of duties in the IREX was not upto the mark, that the work out put by him was too low, during the initial period than expected of the level of his cadre. As he was fresh to the IREX, initially opportunity was given to the applicant to improve his efficiency through repeated oral advices. There was considerable degradation in his performance and work output. Added to this, his relations with colleagues and supervisors and cooperation in the work had started deteriorating, ultimately leading to refusing to carry out the work assigned to him by his supervisors. That even after repeated oral advices he did not improve his performance. Hence these qualities were reflected in his ACR for the year 1992. Further they submit that the decision of the Respondent no.1 on representation against adverse remarks communicated to the applicant on 6.10.93.

10. The applicant has filed this OA after a lapse of more than a year. The contention of the applicant that he could not get promotion because of harrassment and intimidation is not correct as the promotion is considered not only on the basis of CRs but also basing on the performance report, and his

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actual performance in the practical Test/interview. Added he failed to get promotion even during 01.10.1980 batch, which was not covered by 1991/1992 CRs. He did not even attend the DPC for 01.10.1991 and 1.10.1992 batches. Hence his contention is baseless. The averments of the applicant that the Reporting and Reviewing Officer resorted to dubious method for spoiling his C.R.s is baseless. He has not shown any concrete evidence to justify his statement. They rely upon the decision in the case of Bharat Bhushan Vs. U.O.I. decided on 27.1.93 decided by the Chandigarh Bench of this Tribunal. They submit that the ACRs in only printed prescribed formats are used and for each remarks it is not necessary for reporting officer to give specific reasons in the ACR. The remarks are made on the basis of the overall performance of an employee during the period of review.

11. The decision of the appellate authority is quite in order. It is not necessary that the decision of the appellate authority shall be a speaking order which has been held by the Principal Bench of this Tribunal in M.S.Arora Vs. Union of India & Others 1993(1) SLJ (CAT) 560, (Principal Bench, New Delhi), dt.08.1.1993. Thus the entries are based on the performance of the applicant during the year under report. They rely upon certain averments made by the applicant in letter dt.31.3.93 which reflects non cooperative attitude of the applicant. The applicant never made any complaints against his immediate superiors regarding assigning personal work etc. They submit that his statement that there is no 'Prohibition' of an employee going on casual leave is not correct and only shows his non-cooperative nature. In an organisation like ISRO where time bound programmes are undertaken it is incumbent on the part of employees to keep the office informed about their absence so that alternative arrangements could be made, unless there is an emergency.

His contention that the circular issued does not cover casual

leave is not correct. In his case even after issue of the circular he was absent unauthorisedly on 26.5.1992, 05.06.1992 ~~and~~ and 11.06.1992 and when he was asked by his superiors to explain the circumstances under which he availed leave without prior information, he failed to give any explanation. When the memo was issued ^{by} the Establishment Section on 15.9.1992 he replied on 01.10.1992 simply stating that he had already replied to the Memo issued by his superiors. He submits that the applicant availed leave on 26.5.1992 with prior approval.

12. As regards the maintenance of log-book he refused to maintain the log-books. When a memo was issued on 1.10.91 he did not care to reply. Again when a memo was issued on 15.9.1992 then only he came out with a false statement that no log-book was available. However, when the new log-book was supplied in 07/92 he made entries in the log books in an haphazard manner in which process he made entries as if he had done some work even when he was on medical leave from 19.8.1992 to 28.8.1992 (Annexure-G).

13. Thus they submit that the applicant was indifferent ^{towards} ~~with~~ his duties. When he was called upon to explain on 01.10.1991 for his failure to maintain the log book on 30.9.1991 he did not even reply to the same.

... as mentioned by him in para 5(b) is not supported by any proof of documents or otherwise. It is also submitted that no speaking order is necessary for issuing order by the Appellate Authority. Thus they justify the impugned letter issued by the respondent no.1 and retention of adverse entries of ACR in the year 1992.

15. Accordingly they pray for dismissal.



16. The respondents have filed their additional reply dt.6.9.95 to state that while the applicant was working as Tradesman 'G' in the Engineering Maintenance Division he was never directly involved in any launch activities. When the applicant was working in Solid Propellant Space Booster Plant area attending maintenance works in normal shift duties, there was no occasion to refusal of leave in the case of the applicant that the applicant had availed ^{days} 6½ C.Ls in 1994, 1 day Spl.C.L. & 9 days E.L. & 8 days Commuted leave to avail LTC. Thus they attempted to submit that the applicant was granted/sanctioned all kinds of leave applied for by him during 1993-1994.

17. The applicant has filed a rejoinder stating that he had explained the delay in filing the OA and this Tribunal has condoned the delay. Therefore the contention of the respondents that the application is beyond time cannot be accepted.

18. The respondent no.4 has filed a reply. The Respondent no.4 is the Reporting Officer of the applicant during the year 1992. He submits that he made entries in the ACR basing on the performance of the applicant during the year in question and entries were not made due to extraneous reasons as alleged by the applicant. He denied that he was hand in glove of the contractors and subjected the applicant to mental torture and humiliation. He submits that the Electrical power should be extended to the contractor's equipments as per the procedure with approval of higher authorities. The applicant was directed to issue power supply to the contractors without formal application is not based on facts. The allegations are not ~~is~~ specific. Had been instructed to, do so, he should have brought the fact to the notice of his higher authorities instead of keeping quite for all the years. The alleged instance quoted by the applicant is not borne out of any

records and cannot be accepted. The applicant was transferred in the year January, 1993 and ^{it} was only due to administrative exigencies and in no way connected with the incident. The allegation that his promotion was delayed due to harassment and intimidation is not correct. The contention of the applicant that till 1991 he had a clean record of service is not correct. The entries in the ACR for the year 1992 pertain to the performance of the applicant. The applicant had submitted an appeal against the entries in ACR for the year 1992 and the appellate authorities has taken a decision on the representation submitted by the applicant. There are instructions with regard to supply of electricity to the private contractors. Hence the averments made in the application are not acceptable.

19. As regards maintenance of log book the respondent no.4 submits that the applicant refused to carry out the instructions of his superiors to maintain the log book. When a memorandum was issued to him on 15.9.92 he came with an explanation that no log book was available with him. Then it was found that the log book was found the next day of issue of memo. When the applicant was supplied with fresh log book, and in the said log book the applicant made certain entries as if he has done some works even when he was on medical leave from 19.8.1992 to 28.8.1992.

20. As regards sanction of casual leave records maintained in the office themselves speak. The averment that the entries in the ACR for the year 1992 were made with a malafide intention is not correct and that the OA is liable to be dismissed.

21. During the course of arguments the learned counsel for the applicant submitted that except during the period he worked with IREX, he had no blemish in his performance of duties.

Before the year upto 1991 he had put in 17 years of service and that he had no adverse remarks to him.

22. The respondent no.1 without considering any of the grounds made in his representation has rejected the same by ~~the~~ impugned order dt.6.10.93 (Annex-6, page-21 to OA) and that the appellate authority should have disclosed the reasons for rejection of the representations against adverse entries found in the ACR of 1992. In support of the said contentions the learned counsel for the applicant relied upon the decision of the Chandigarh Bench of this Tribunal in the case of K.C.Sharma Vs.U.O.I & Ors reported in 1987(4) ATC 709 and drew my attention to para 7 of the order and also relied upon the decision of the Hon'ble High Court of A.P. in the case of Mir Sabir Ali Vs. Commr.of Police,Hyd(ALD 1999(5)123), to contend that the administrative order if passed without disclosing reasons cannot be sustained. Also relied on the decision of the Hon S.C. in the case of Union of India Vs E.G. Nambudiri. (1991 (3) SCC.38).

23. As against this the learned counsel for the respondents submitted that the entries found in the ACR of 1992 reflected the working performance of the applicant and that there was no malafide or any other intention on the part of the reporting officer i.e. Respondent no.4 to make such entries and that the averments made by the applicant to the effect that such entries were made to spoil the career of the applicant is not correct and that the appellate authority is not expected to disclose the reasons when he took a decision to retain the adverse entries. Further they have explained or narrated certain circumstances wherein the conduct of the applicant was not found proper.

24. The respondents attempted to rely upon the additional reply to contend that they were liberal enough to sanction the leave to the applicant whenever applied. Those relate to the period 1993 to 1994 ^{whereas} the ACR for the year 1992 is under

consideration. Therefore ~~in~~ liberal conduct on the respondents to sanction the leave during the subsequent years cannot be relevant while considering the adverse entries found in the ACR of 1992.

25. The applicant has narrated the circumstances under which ^{the} Respondent no.4 might have made those entries because he was not prepared to supply the electrical power to the contractor without following the rules. On the other hand the Respondent no.4 submits that he had not prevailed upon the applicant ~~to~~ supply power to the contractor against the rules and if that was so the applicant could have brought to the notice of the higher authorities. Further as regards maintenance of log book the respondent no.4 submits that the log book supplied to him was not available, thereafter fresh log book was issued and in that log book the applicant had made certain entries to show that even he had performed duties when actually he had proceeded on leave. If these facts were available to ^{the} Respondent no.4 then I feel the respondent no.4 could have incorporated these instances in the ACR for the year 1992.

26. The learned counsel for the applicant contended that the entries made in the ACR are ^{Vague} ~~vague~~ and contradictory and ^{the} respondent no.4 is the reporting officer. He could have been cautious in making adverse entries in the ACR for the year 1992. Instead of explaining his justification for making entries in ACR 1992 the respondent no.4 could have enclosed certain material papers alongwith ACR for the year 1992 and that could have helped the respondent no.1 to consider the representation against the adverse entries as already observed. The appellate authority—the respondent no.1 has not at all disclosed any reasons while taking a decision ^{to maintain the} ~~of making~~ adverse entries in the ACR 1992.

27. The contention of the applicant that the respondent no.4 made entries in the ACR out of personal vengeance cannot be accepted. Even mala fide intention cannot be attributed to the respondent no.4. Respondent no.4 might have discharged his duties in writing ^{the} ~~his~~ ACRs of the applicant.

28. Therefore I am not prepared to accept the contention of the applicant that the respondent no.4 made the entries in the ACR because of the instances quoted by the applicant.

29. When the respondent no.1 communicated the adverse entries found in the ACR to the applicant and the applicant submitted his representation against the entries, it is for the respondent no.1 to decide whether the entries in the ACR can be retained or not. The respondent no.1 by the impugned order has not clearly disclosed ^{the} ~~his~~ reasons as to why he took such a decision to retain the adverse entries.

30. The impugned order dt.6.10.93 is not a speaking order. The respondent no.1 should have considered various grounds raised by the applicant in his representation and should have taken the judicious decision as regards the retention or otherwise of the adverse entries. The decision relied upon

Mir Sabir Ali Vs. Commissioner of Police, Hyderabad ALD 1999(5)123, clearly applicable to respondent no.1 to disclose the reasons.


31. Therefore in my humble opinion the order dt.6.10.93 passed by respondent no.1 requires to be set aside. The respondent no.1 shall consider afresh the representation of the applicant dt.30.6.93 and take a judicious and impartial decision.



32. Hence the following directions are given:-

- (a) The application is allowed in part.
- (b) The impugned order dt.6.10.93 passed by the Respondent no.1 is hereby set aside.
- (c) The respondent no.1 shall consider the representation dt.30.6.93 of the applicant in accordance with law and take a decision impartially and the same shall be communicated to the applicant by a speaking order.
- (d) Time for compliance is 2 months from the date of receipt of a copy of this order.

33. With the above directions, the OA is disposed of.
No order as to costs.


(B.S. Jai Parameshwar)
Member (Judl.) 19.10.00

'SA'

Dated: 19th October, 2000
(Dictated in open court)



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH: HYDERABAD

COPY TO:-

~~1ST AND 2ND COURT~~

1. HDHND

TYPED BY _____ CHECKED BY _____
COMPARED BY _____ APPROVED BY _____

2. HRRN:MEMBER:(ADMN)

3. HBSJP:MEMBER:(JUDL)

THE HON'BLE MR JUSTICE DH:NASIR
VICE-CHAIRMAN

4. D.R. (ADMN)

THE HON'BLE MR R.RANGARAJAN:MEMBER:
(ADMN)

5. SPARE

THE HON'BLE MR.BS.JAI PARAMESHWAR:
MEMBER(JUDL)

6. ADVOCATE

7. STANDING COUNSEL

DATE OF ORDER - 19/10/2000

~~MA/BA/CP.NE.~~

IN

CA.NO. 1296/95

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED

C.P. CLOSED

R.A. CLOSED

~~DISPOSED OF WITH DIRECTIONS~~

DISMISSED

DISMISSED AS WITHDRAWN

ORDER / REJECTED

NO ORDER AS TO COSTS

