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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.1520 of 1995

DATE OF JUDGMENT: 19 JUNE, 1998

BETWEEN:

M.RAMACHANDRA RAO

.. APPLICANT

AND

1. The Telecom District Engineer,
Ongole,
2. The General Manager (Operations),
Telecom, A.P.,
Doorsanchar Bhavan,
Hyderabad,
3. The Chief General Manager,
Telecommunications,
A.P.Circle, Hyderabad.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr. K.Venkateswara Rao

COUNSEL FOR THE RESPONDENTS: Mr. K.RAMULU, Addl.CGSC

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

JUDGMENT

ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Mr.K.Venkateswara Rao, learned counsel for the applicant and Mr.V.Rajeswara Rao for Mr.K.Ramulu, learned standing counsel for the respondents.

2. The applicant in this OA while working as Accounts Officer, earned adverse comments in his Annual Confidential Report for the year 1992-93. Those remarks were conveyed

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to him by the General Manager (Operations) by his letter No.TA/GM(O)/CRs/92-93 dated 30.6.93 (Annexure A-II at page 11 to the OA). He was further informed the remarks of the Reviewing Officer also by the letter NO.TA/GM(O)/CRs/92-93 dated 22.9.93 (Annexure A-III at page 13 to the OA). The applicant submitted his representation for expunging the adverse remarks to R-3 by his representation dated 25.10.93 (Annexure A-IV at page 15 to the OA). R-3 disposed of his representation rejecting his request for expunging the adverse remarks entered in his ACR for 1992-93 by the order No.TA/STA/59-2/93/10 dted 17.4.95 (Annexure A-I at page 8 to the OA).

3. This OA is filed to call for the records relating to the D.O.No.TA/GM(O)/CR's/92-93 dated 30.6.93 read with D.O. of even number dated 22.9.93 of the General Manager, Operations, and also the appellate order No.TA/STA/59-2/93-10 dated 17.4.95 of R-3 and to quash the same by holding the impugned orders are illegal, arbitrary, discriminatory, motivated and awarded with prejudicial mind.

4. The main contention of the applicant is that he discharged his duties very well and he cannot be blamed if ~~were~~ the bills are not passed in time as there was a restriction in passing the bills due to paucity of funds. As he was pointing out difficulties in passing the bills and to discharge certain instructions given to him, he was given the adverse remarks in the ACR. Hence the whole adverse remarks in the ACR relating to the year 1992-93 have to be expunged.

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5. A short reply has been filed in this OA. The respondents submit that adverse entries in the ACR of the applicant were recorded by the then R-1 judiciously and they were communicated to the applicant vide Annexure A-III to the OA. Orders were passed after verifying the records and facts. Hence those orders are not assailable.

6. In the reported case in 1997(1) SLJ (SC) 45 (M.A.Rajasekhar v. State of Karnataka and another) it was held by the Apex Court that "Adverse entry must be supported with instances". Hence we have called for the details of the short comings informed to the applicant so as to sustain their case. A bunch of letters were produced before us. We have perused those letters. There are seven letters addressed to the applicant indicating the deficiency in his work and also the instances when ~~these~~ were not carried out. ~~these~~ the orders of the senior officials/ We also find from the bunch of these letters that the then R-1 had also complained to the then R-2 ^{with} in regard to poor working of the applicant and also suggested his transfer. The applicant submits that all these letters were fabricated in the sense that they were written to affect his career opportunities and these letters cannot be relied upon. In case the applicant is going to be aggrieved by these letters, the course left to him is to send a representation to the higher officers higher than those who issued such letters for cancelling those letters. But we do not find any such letter in this connection addressed to the higher official for cancelling the letters issued by R-1 or any other official. In the absence of any tangible proof that the applicant had taken action to ~~cancel~~ ^{cancel} the letters

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~~Cancelled or annulled~~

containing the adverse remarks conveyed to him it has to be held that as the applicant was not discharging his duties upto the mark expected of him, those short comings were conveyed to him. The Confidential Report was initiated only after conveying the instances where the ~~had~~ applicant failed to discharge his duties and hence it cannot be said that the respondents acted irresponsibly in recording the adverse reamrks in his Confidential Report without giving him an opportunity to rectify his short comings/mistakes.

7. The applicant had submitted a detailed representation dated 25.10.93. We have gone through the representation. The representation is more or less a catalogue of the work done by him and there is no answer by him for expunging the remarks conveyed to him by the letter dated 30.6.93 or dated 22.9.93. The applicant submits that he was arbitrarily asked to hand over the work being done by him to the another Accounts Officer by note No.150 dated 31.3.93 without giving him any time to hand over. The work handled by him ~~was~~ is such a complicated nature that to hand over the work with all the relevant files ~~was~~ is not possible within a short period of an hour or two. This he submits is to harass him. Hence, that instance itself proves that the adverse remarks in the ACR were written with a bias/mind and hence the adverse entries have to be expunged.

8. The reply by R-3 to his representation vide letter dated 17.4.95 contains the detailed ~~was~~ remarks on all the points in regard to the necessity for entering adverse entries in his Confidential Report. It may be possible

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that the respondents could have at times acted hastily. But such action cannot be taken as harassment as the Department is interested in completing the work expeditiously. As regards Note No.150 dated 31.3.93, it was explained by the learned counsel for the respondents that the said note was given as he refused to accept the telephone bill charges and that necessitated the issue of the note mentioned above and there was no other intention in this connection.

9. An employee of the Department has to adjust himself to the nature of the work entrusted to him. No doubt, some times it may be possible that some orders cannot be executed due to paucity of funds or other reasons; but such instances will be very rare. If such orders are issued, it may be due to pressing demands with rational reasoning. The applicant submits that he was discharging his duties regularly without any complaint. If that ^{was} is so, the reasons for issuing so many letters to him indicating the draw backs in his working have to be explained fully by him. As no such detailed explanation has been given, it has to be held that he had not performed his duties to the expectation of the respondents and that necessitated issue of the letters of caution. We also find from the letters that the details given therein do not go beyond the nature of the duties entrusted to him. The impugned reply to his representation has been written with due care considering all the points as contended by the applicant in his representation. Hence the reply dated 17.4.95 cannot be questioned or cannot be assailed as it was issued on the basis of instances and facts of this

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case.

10. Courts or Tribunal cannot assess the performance of the applicant in the field. It must necessarily be assessed by his superior officer. Channel exists for an aggrieved employee to represent to the higher authorities in case he has been given adverse remarks in his ACR. As stated earlier, the applicant in this case, in our opinion, had not objected to the various letters issued to him by bringing it to the notice of the higher authorities. Further, the adverse remarks entered in his ACR have been examined by R-1 extensively on the basis of his representation and the reply has been issued with reasons. The instances of poor performance of the applicant had been conveyed to him every now and then and hence he cannot complain that the adverse remarks in the ACR were entered without giving him an opportunity during the year in question.

11. In this connection, it has to be stated that the applicant has not made out a case for expunging the remarks as those remarks were entered in his ACR not due to malafide attitude of the reporting officer. Even if it is so, the ACR entries were reviewed by the Reviewing Officer and they were approved by the accepting officer. Hence as a number of check points are available above the Reporting Officer, it cannot be said that the higher officials overlooked to see the malafide intentions of the Reporting Officer while reviewing and accepting the ACR of the Applicant. In his representation addressed to R-3, the applicant had not brought out any detailed remarks, if

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there was any malafide consideration while initiating his ACR by the lower authority.

12. The Tribunal is not an appellate forum in respect of assessment or performance of an employee by the superiors. It can act only if there are reasons to come to the conclusion that the assessment or performance has been done due to malafide considerations. As, such a view cannot be taken, it is not possible for this Bench to give the relief as prayed for in this OA. The above view of ours is also the view of the Apex Court reported in 1997 SCC (L&S) 1768 (State of Orissa v. Jugal Kishore Khatua).

13. In view of what is stated above, we find that the applicant has not made out a case for expunging the adverse remarks entered in his ACR for 1992-93 and to set aside the impugned orders referred to above. Hence the OA is liable only to be dismissed and accordingly it is dismissed. No order as to costs.


(B.S.JAI PARAMESHWAR)
MEMBER (JUDL.)

19.6.98

DATED: 15th June, 1998


(R.RANGARAJAN)
MEMBER (ADMN.)


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vsn

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Copy to:

1. The Telecom District Engineer, Ongole.
2. The General Manager, (Operations),
Telecom A.P., Doorsanchar Bhavan, Hyderabad.
3. The Chief General Manager, Telecommunications,
A.P.Circle, Hyderabad.
4. One copy to Mr.K.VenkateswaraRao, Advocate, CA, Hyderabad.
5. One copy to Mr.K.Ramulu, Addl.CGSC, CAT, Hyderabad.
6. One copy to D.R(A),CAT, Hyderabad.
7. One duplicate copy.

YLKR

8/7/98

II COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B. S. DAI PARAMESHWAR :
M (J)

DATED: 19/6/88

ORDER/JUDGMENT

M.A/R.A/C.P.NO.

in

O.A.NO. 1520/85

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLR

