

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD.

O.A.NO. 558/95

DATE OF JUDGMENT: 14-6-95

BETWEEN:

N.R.Paul.

.. **Applicant.**

and

1. Union of India, rep. by its Secretary,
Ministry of Defence,
Sena Bhavan, New Delhi-11.
2. The Director General,
Electrical and Mechanical Engineering,
Army Headquarters,
New Delhi-11.
3. The Commandant,
Military College and EME
P.O.Trimulgherry, Secunderabad.

.. **Respondents.**

COUNSEL FOR THE APPLICANT: SHRI K.Sudhakar Reddy

COUNSEL FOR THE RESPONDENTS: SHRI N.R.Devraj,
Sr./Addl.CGSC

CORAM:

HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN
HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

CONTD....

J U D G M E N T

I as per Hon'ble Sri R.Rangarajan, Member(Administrative) I

Heard Sri K.Sudhakar Reddy, learned counsel for the applicant and Sri N.R.Devaraj, learned Standing Counsel for the respondents.

2. The applicant in this OA is working as Lecturer in Military College of Electronics and Mechanical Engineering (MCEME for short), at Secunderabad. He joined the post as Lecturer in Metallurgy on 29.11.1979 having been selected by the UPSC. The applicant submits that he was selected to teach only Metallurgy and on that basis he accepted the posting and joined the MCEME, Sec'bad. However, it is alleged by him that he was asked to take subjects other than Metallurgy which is outside branch of his specialisation. As Metallurgy is not taught in MCEME, Sec'bad, He is not able to function satisfactorily in his teaching assignment. He represented the above number of times to higher authorities also and requested to post him at suitable place where he can teach Metallurgy in which subject he is specialised. He even represented to the D.G., EME. But he is not so far favoured with any suitably reply. As he has brought it to the notice of the higher-ups in regard to the fact that his services are not properly utilised, it is alleged by him, that R-3 is harrassing the applicant and assigns him jobs beyond his prescribed duties. It is further alleged by him that his Confidential Reports are spoiled by the respondents authorities. He has enclosed some of the adverse remarks communicated to him in pgs.16 to 21 filed with the OA as material papers.

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3. It is stated by him that no satisfactory reply has been given to him for his request for expunging the adverse remarks. In terms of O.M.No.24(1)/90-D(Appts.) dt. 27.8.91 he has been informed that "adverse entries in the ACRs for the years 1983 and 1986 to 1990 have been examined at appropriate level in the Ministry of Defence. Since representations have no substance for expunging the adverse remarks, the representations of the individual are rejected".

4. Aggrieved by the above reply he has filed this OA for a direction to the respondents to expunge the adverse remarks made in the ACRs of the applicant for the years 1986 ~~and~~ 1987, 1988, 1989, 1990 & 1991 as illegal and arbitrary and without any basis, and void ab initio.

5. From the material papers attached to the OA adverse remarks for certain years (pages 16 to 21 filed with the OA) were communicated to him. It is stated by the learned counsel for the applicant that he had represented for expunging the adverse remarks for each year. Though the copies of representations are not enclosed to the OA, from the various other material papers, it can be reasonably concluded that he might have represented against the adverse remarks for expunging the adverse remarks. It is also stated that no satisfactory reply has been given by the competent authority in regard to expunging the adverse remarks.

6. The submission of the applicant that no suitable reply has been given to his representations for expunging the adverse remarks appears to be in order as the reply given by the respondents in their O.M.No.24(1)90-D(Appts.) dated 27.8.1991 (page-8 of the material papers) cannot be considered/ as a satisfactory reply. The reply given states that the above

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representations for expunging the adverse remarks for the years 1983 and 1986 to 1990 have been examined at the appropriate level and there is no substance for expunging the adverse remarks. This reply cannot be considered as a satisfactory reply. The Central Administrative Tribunal, Calcutta Bench held I (1991) 15 ATC 349 - S.Thiagarajan Vs. UOI and Ors. I that the representation against the adverse remarks can be rejected only by a speaking order. The relevant observations are reproduced below:-

"Any representation against adverse remarks cannot be disposed of preemptorily without assigning reasons. The bland communication to the applicant that his representation had been carefully considered by the competent authority and rejected is not enough and cannot be called a speaking order. Therefore, it has to be quashed."

In view of the above, I find that the remarks given by the competent authority in rejecting the representations of the applicant for expunging the adverse remarks cannot be treated as a speaking order and also cannot be taken as having issued after applying the mind. The reply to the appeals against adverse remarks are to be given year-wise on the basis of the appeal submitted by the applicant on the various items of adverse remarks and has to be given each year separately. The reply cannot be clubbed for number of years as is done in this case.

7. When he submitted further memorials against rejection of his request for expunging adverse remarks by the letter dt. 27.8.1991, he was informed by the Ministry's letter dated 10.9.1994 that it cannot be reconsidered in terms of provisions of para 4.10 of Chapter IV (Adverse remarks in the Confidential Reports) as the memorials were submitted after six months of the earlier rejection. This is also not in order as para 4.10 is applicable only if the original representation is disposed in accordance with law giving a speaking order. It is further

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To

1. The Secretary, Ministry of Defence,
Union of India, Sena Bhavan,
New Delhi-11.
- 2. Electrical and Mechanical Engineering,
Army Headquarters,
New Delhi-11.
3. The Commandant,
Military College and EME
PO Tribulgherry, Secunderabad.
4. One copy to Mr.K.Sudhakar Reddy, Advocate, CAT.Hyd.
5. One copy to Mr.N.R.Devraj, Sr.CGSC.CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

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to be noted that ACRs of Govt. officials plays a very important role in their career. If representations in regard to adverse remarks are not disposed off carefully, it will affect badly the future of the Govt. officials. Hence, non disposal of representation in this regard ~~if~~ not properly done in accordance with law ~~and~~ it has to be reviewed irrespective of the time factor.

8. In view of the above, I feel that a direction has to be given to R-1 to consider the representations of the his contentions or rejecting his contentions in expunging the adverse remarks. The learned Standing Counsel for respondents Sri N.R.Devaraj, also agreed for the above course

9. In the result, the following direction is given:-

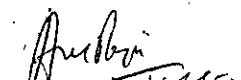
R-1 has to consider the appeals/representations of the applicant for expunging the adverse remarks year-wise for the years 1986 to 1991 and issue a suitable speaking order either accepting to expunge the remarks or rejecting his request for expunging the adverse remarks. In doing so, he will take into account the various remarks entered in the CRs by the initiating and reviewing authorities. The above speaking order should be given within a period of six months from the date of receipt of a copy of this judgment.

10. The OA is ordered accordingly at the admission stage itself. No costs.


(R.Rangarajan)
Member(Admn.)

Dated 14th June, 1995.
Dictated in the open court.

Grh.


Deputy Registrar (T)