

Date of Decision: 25.5.95.

OA 297/94

R.K. Mahavar s/o Shri Nehnu Ram, aged about 33 years, r/o Qtr. No.344-A, TRD Colony, Shyangarh, at present employed on the post of TCM Gr.II under CTCI Shyangarh, Western Railway.

... APPLICANT.

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. Sr. Dvl. Signal & Telecommunication Engineer (E), Western Railway, Kota Division, Kota.
3. Dvl. Signal & Telecommunication Engineer (E), Western Railway, Kota Division, Kota.

... RESPONDENTS.

CORAM:

HON'BLE MR. GOPAL KRISHNA, VICE CHAIRMAN.
HON'BLE MR. O.P. SHARMA, MEMBER (A).

For the Applicant ... SHRI S. KUMAR.

For the Respondents ... SHRI M. RAFIQ.

O R D E R

FOR HON'BLE MR. O.P. SHARMA, MEMBER (A).

In this application u/s 19 of the Administrative Tribunals Act, 1985, Shri R.K. Mahavar has prayed that the order dated 7.3.92 (Annexure A-1), containing adverse remarks for the year ending 31.3.91, and order dated 24.8.93 (Annexure A-2), rejecting the representation of the applicant against the said adverse remarks, may be quashed with all consequential benefits.

2. The applicant's case is that while he was working as TCM Gr.II, adverse remarks, as recorded in his ACR for the year ending 31.3.91, were communicated to him vide letter dated 7.3.92 (Annexure A-1). The applicant

submitted a representation dated 4.5.92 (Annexure A-3) against the said adverse remarks. The said representation remained undisposed of. The applicant filed an OA (No.1136/92), in reply to which the respondents stated that since the representation submitted by the applicant was time barred, having been filed outside the period granted to him for making representation against the adverse remarks, the representation was ignored by the respondents. The Tribunal, vide order dated 21.7.93 (Annexure A-4), passed in the ^{issued} aforesaid OA/a direction to the respondents to consider the said representation of the applicant on merits. Thereupon the respondents passed order Annexure A-2 dated 24.8.93 informing the applicant that his representation had been considered by the competent authority, who had not accepted it, and the adverse remarks already recorded in the ACR would stand good. Against the said rejection of his representation the applicant filed the present OA. The applicant's case is that none of the points raised in the representation Annexure A-3 have been examined by the respondents and the order passed is a non-speaking order.

3. The respondents, in their reply, have stated that after the receipt of the Tribunal's order dated 21.3.93, the representation of the applicant was examined on merits and communication dated 24.8.93 was sent to the applicant. The competent authority did not find any justification for accepting the applicant's representation. They have denied that the applicant's case has not been considered objectively. They have reiterated that the applicant's work was not found to be satisfactory and he was found ^{to be} below average and adverse remarks were accordingly granted.

4. We have heard the learned counsel for the parties

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and have gone through the records. We had called for the original file of the department, in which the representation of the applicant had been dealt with. The said file was produced for our perusal today. ~~That~~ While the applicant had submitted a detailed representation mentioning various facts and arguments that the adverse remarks are unsustainable, the only ground/reason given for rejecting the representation, as recorded in the file, is; "I have gone through the representation of Shri R.K. Mahavar and finally concluded that the remarks in the C/R are stand good". In the entire file we do not find any consideration of the grounds raised by the applicant in his representation on merits.

5. The learned counsel for the respondents stated that it is the assessment of the performance of the Government servant by the authorities, who supervise his work, that prevails and if in their judgement the applicant is inefficient or incompetent, their assessment cannot ^{ordinarily} be questioned by a court of law. Undoubtedly, the work of a Government servant has to be supervised by his superior authorities, which ^{forms} the basis for recording entries in the ACR. At the same time, however, there is a provision under the rules for submission of representation against the adverse remarks. It is the duty of the respondents to consider such a representation on merits. It is not our view that communication to be sent to the applicant regarding his representation should be a speaking one but if the court insists it must be shown the reason why the representation has been rejected. We cannot accept the proposition that mere recording in the file that the representation has been carefully considered and it has been found to be without merit, constitutes a proper examination of the

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representation.

6. In their judgement in the case of Union of India v. E.G. Nambudiri, (1991) 3 SCC 38, the Hon'ble Supreme Court have observed as follows :-

"There is no dispute that there is no rule or administrative order for recording reasons in rejecting a representation. In the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a government servant against the adverse entries the competent authority is not under any obligation to record reasons. But the competent authority has no licence to act arbitrarily, he must act in a fair and just manner. He is required to consider the questions raised by the government servant and examine the same, in the light of the comments made by the officer awarding the adverse entries and the officer countersigning the same. If the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons. In the absence of any statutory or administrative provision requiring the competent authority to record reasons or to communicate reasons, no exception can be taken to the order rejecting representation merely on the ground of absence of reasons. No order of an administrative authority communicating its decision is rendered illegal on the ground of absence of reasons ex facie and it is not open to the court to interfere with such orders merely on the ground of absence of any reasons. However, it does not mean that the administrative authority is at liberty to pass orders without there being any reasons for the same. In governmental functioning before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion. If the order as communicated to the government servant rejecting the representation does not contain any reasons, the order cannot be held to be bad in law. If such an order is challenged in a court of law it is always open to the competent authority to place the reasons before the court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence aliunde before the court to justify its action."

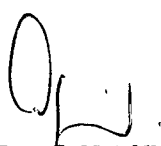
Thus, the respondents can justify the recording of adverse remarks and rejection of the representation of the applicant

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against these by placing reasons before the Tribunal which led to rejection of the representation. However, no such reasons were placed before us. None have been mentioned in the reply except the general observation therein that the applicant's work was not found to be satisfactory and he was ~~not~~ found to be below average. Therefore, in the circumstances, we cannot uphold the action of the respondents.

7. The learned counsel for the respondents submitted that if the consideration of the representation of the applicant has not been found to be proper by the Tribunal, the Tribunal may direct at this stage that there should be a fresh consideration of the representation in accordance with law and rules. This submission is unacceptable for the reason already stated above that the respondents were given one more opportunity by the Tribunal to deal with the representation of the applicant on merits and such opportunities cannot be repeated.

8. In the result, the OA is allowed and Annexure A-2 dated 24.8.93, by which the applicant's representation was rejected, is quashed. The respondents are directed to expunge the adverse remarks recorded in the ACR of the applicant for the year ending 31.3.91, with all consequential benefits. No costs.


(O.P. SHARMA)
MEMBER (A)


(GOPAL KRISHNA)
VICE CHAIRMAN