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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 29.7.98

OA 596/94

C.L.Tomar, IOW Gr.I (Special), Gangapur City, District Sawaimadhopur, Western Railway under Kota Division.

... Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. Divisional Railway Manager, Western Railway, Kota Jn.
3. Sr.Divisional Engineer (Establishment), Western Railway, Kota Jn.
4. Sr.Divisional Engineer (North), Western Railway, Kota Jn.

... Respondents

CORAM:

HON'BLE MR.RATAN PFAKASH, JUDICIAL MEMBER

For the Applicant

... None

For the Respondents

... None

O R D E R

PER HON'BLE MR.RATAN PFAKASH, JUDICIAL MEMBER

The applicant herein, Shri C.L.Tomar, has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, to declare as illegal the Annual Confidential Reports for the years 1990-91, 1991-92 and 1992-93 and to set aside and quash Annexure A-1 dated 10.2.94, by which his representation dated 27.11.93 has been rejected.

2. The facts relevant for disposal of this application and as alleged by the applicant are that the applicant was initially appointed as IOW in Kota Division of the respondent Railways on 10.9.84 at Sawaimadhopur. He was given due promotions on the post of IOW Gr.II in the year 1986 and IOW Gr.I w.e.f. 8.5.89.

3. It is the grievance of the applicant that during his service with the respondents he was subjected to six transfers as given under :-

- "(a) IOW Gr.III Sawaimadhopur Sept.1984 to Jan.85.
- (b) IOW (Bridges) Kota. Jan.85 to October 86.
- (c) Promoted & posted as IOW Gr.II BWM on 23.10.86.
- (d) Promoted & retained at BWM as IOW Gr.I as IOW-BWM on 8.5.89 to 2.4.92.
- (e) Transferred from BWM to IOW-SWM on 2.4.92 & remained there upto 4.7.92.

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- (f) IOW (Traffic Work Shop) Kota from 4.7.92 to 6.7.92.
- (g) IOW (Spl) Agra Fort from 8.7.92 to 22.3.93
- (h) IOW (Spl) Gangapur City from 24.3.93 & uptill now."

It has also been averred by the applicant that some railway quarters were built through the contractor at Jhalawar Road Station during the year 1983-89. Their supervision was entrusted to one Shri Onkar Singh, IOW Gr.III and Shri H.P.E.Ieve, IOW (Bridges) Kota. It was a special assignment. It is averred by the applicant that the buildings so constructed were of substandard quality inasmuch as there were cracks in the walls and roofs and they were unsafe for the human dwelling. The applicant was thereafter asked to prepare final bills vide Divisional Office letter dated 1.10.91 (Annexure A-2). He protested against this order vide his letter dated 6.10.91 (Annexure A-3) but did not receive any response. Finding no option, he reported the matter to the higher authorities vide letter dated 5.1.92 (Annexure A-4). Thereafter, the applicant was asked to supply copy of certain letters vide their order dated 20.1.92 (Annexure A-5). It was supplied by him vide letter dated 31.1.92 (Annexure A-6). The grievance of the applicant is that the applicant was compelled by the then Divisional Engineer (South) Kota, Mr.Surendra Nath Sharma, and Chief Engineer (North) Churchgate, Bombay, Mr.S.C.Pansal, on 6.2.92 at Bhawanimandi (BWM) and was persuaded to clear the bills of the contractor. The applicant did not submit to such illegality and hence it is averred that this resulted in annoying the respondents and they planned to harass the applicant and he was also threatened for facing the consequences. The applicant has also narrated in his application that these persons transferred the applicant at five places by way of punishment which were however cancelled by the Tribunal in CA 1104/92 on 17.11.92. Vide order dated 25.2.93 the applicant was again transferred from Agra Fort to Gangapur City and the transfer allowances were also withheld for more than one year without any reason. Similarly, the applicant urges that he was not paid the wages for the period of his sickness between 27.10.92 to 5.3.93 and they were released only after one year on intervention of the CE OCG. It has ^{been} further urged by the applicant that during his posting at Agra Fort between 8.7.92 to 22.3.93 the applicant was intentionally kept idle and not assigned any work by the Sr.DEN (North) Kota, Mr.Dhanesh Gupta. The applicant informed all the concerned authorities through his telegrams and letters dated 27.7.92, 14.8.92, 29.8.92, 11.9.92 and 6.3.93 (Annexures A-7 to A-12), which resulted in causing annoyance to the respondents. Due to this annoyance the applicant avers that the then DEN (South) Kota, Mr.S.H.Sharma, who retired on 31.10.93, and others misused the right of filling the ACEs as a weapon to spoil the career of the applicant. Therefore, the ACEs of the applicant for the years 1990-91, 1991-92 and 1992-93 were spoiled by assessing the performance as below average by the respondents. Though there was no ground for such an

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assessment. He was not asked to give any explanation during the said period of ACRs and no information was sought from him. According to the applicant, the ACRs for the years 1990-91, 1991-92 and 1992-93 were filled up only on 4.11.93 and communicated to the applicant on 19.11.93 (Annexures A-13 to A-15). He made a representation dated 27.11.93 against the said ACRs and reminders dated 10.2.94 (Annexures A-16 to A-18) but the respondents, without giving any reasons, have rejected his representations in one stroke by the impugned order dated 10.2.94 (Annexure A-1). Aggrieved, he has approached this Tribunal to claim the aforesaid reliefs.

4. The respondents have contested this application by filing a written reply, to which no rejoinder has been filed. The stand of the respondents has been that most of the averments made by the applicant in his OA are of not much relevance and that since the applicant has not impleaded the officials against whom he has made allegations of alleged bias or prejudice, this OA is liable to be rejected on this ground alone. On facts it has been asserted that out of the six items about his transfers, narrated in para-2 of the OA, three items pertain to his promotion and as such the averments made regarding his punitive shifting are of no help to the applicant. As per the respondents, the ACRs for the relevant years i.e. for the years 1990-91, 1991-92 and 1992-93 were neither filled nor written by Shri H.P.U.Dave or Shri Onkar Singh nor were written by the signatories of Annexure A-2 dated 1.10.91. The allegations made by the applicant against one Shri S.N.Sharma are baseless because Shri S.N.Sharma did not fill up the ACRs of the applicant for the relevant period. According to the respondents, the ACRs for the year 1990-91 was filled up by one Shri H.B.Modi and the ACR for the year 1992-93 was filled up by one Shri H.H.Gupta. It has, therefore, been alleged that the applicant has utterly failed to substantiate the allegations made by him against the respondents. Regarding the allegation of the applicant having been kept idle at Agra Fort between 8.7.92 to 22.3.93, it has been averred that the applicant himself remained sick for a major period during the period 27.10.92 to 5.3.93 and as such the allegation made by the applicant in this respect is without any foundation. It has, therefore, been asserted that the application has no merit and it deserves to be rejected.

5. Since none of the parties have appeared today even though this OA has been listed repeatedly for hearing, this OA is being disposed of under Section 22 (2) of the Administrative Tribunals Act, 1985 read with Rules 15 and 16 of the Central Administrative Tribunal (Procedure) Rules, 1987.

6. I have gone through the pleadings of the parties and the documents relied upon by the parties. As has been analysed while dealing with the pleadings of the parties, it has come out that the applicant has not made Shri

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S.N.Sharma or for that purpose Shri Onkar Singh as a party in this OA. All the allegations regarding annoyance and displeasure against the respondents cannot be taken note of. It is settled law that when a person is making certain allegations of mala fides against government functionaries, it is incumbent upon him to make them party to his petition by name. Hon'ble the Supreme Court in the case of All India State Bank Officers Federation and Ors. Vs. Union of India and Ors., 1996 (5) SLF 320 (328), has held that persons against whom mala fides are alleged must be made party to the proceedings. Since the applicant has failed to implead the said officials i.e. S/Shri S.N.Sharma and Onkar Singh by name in this application, they being the necessary parties, this application is liable to be dismissed on this ground alone.

7. However, on merits this matter has been examined and it is found that the applicant has not approached the Tribunal by giving correct facts. For example, he has alleged that he was kept idle at Agra Fort between the period 8.7.92 to 22.3.93, whereas the respondents have stated on oath that between 27.10.92 to 5.3.93 i.e. the major period falling between July, 1992 to March, 1993 the applicant has himself remained on sick leave. Moreover, the respondents have further stated on oath that the ACRs for the relevant years i.e. 1990-91, 1991-92 and 1992-93 were neither filled up nor written by Shri H.P.K.Dave or Shri Onkar Singh nor the same were written by any of the signatories of Annexure A-2. According to the respondents, the ACRs for the year 1990-91 was filled by one Shri K.B.Modi and that of the year 1992-93 was filled up by one Shri I.I.Gupta. In this view of the matter, the respondents are very firm to state that none of the ACRs in question were filled up by Shri S.N.Sharma, against whom the mala fides have been alleged by the applicant.

8. In view of the above discussion, it cannot be said that it is because of the annoyance on the part of one Shri S.N.Sharma, who ~~is~~ happened to be the DEM (South) Kota or for that matter any other official of the respondents who intentionally or with mala fide intention filled up the ACRs of the applicant for the years 1990-91, 1991-92 and 1992-93.

9. In view of the aforesaid discussion, I am of the considered view that there is no merit in this OA. It is, therefore, rejected with no order as to costs.


(PATAN PRAKASH)
JUDICIAL MEMBER