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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.642/94

Dt. of order: 2.11.1995

S.L.Bansal : Applicant

Vs.

Union of India & Ors. : Respondents

Mr.K.S.Sharma : Counsel for applicant

Mr.M.Rafiq : Counsel for respondents

CORAM:

Hon'ble Mr.O.P.Sharma, Member(Adm.)

Hon'ble Mr.Ratan Prakash, Member(Judl)

PER HON'BLE MR.O.P.SHAFMA, MEMBER(ADM.).

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri S.L.Bansal has prayed that the respondents may be directed to expunge the adverse remarks recorded in the ACP of the applicant for the year 1977-78 fully and they should be further directed to consider these remarks as wholly inoperative for all purposes. For this purpose, orders Anxx.A1 dated 24.4.1979 by which his appeal against the adverse remarks was rejected by the respondents and Anxx.A2 dated 18.10.93 by which his representation against rejection of his appeal was rejected by the respondents may be set aside with all consequential benefits.

2. The case of the applicant who was at the relevant time working as TES Group-B is that in the ACP for the year 1977-78 certain adverse remarks as mentioned in para 5.1 of the O.A at pages 4 & 5 thereof were recorded. The applicant submitted an appeal on 19.8.1978 against the said adverse remarks. When the appeal remained undecided for some time he sent reminders dated 9.12.83, 16.4.85, 25.11.85, 12.2.87 and 1.12.87. The appellate authority thereafter communicated to the applicant an order dated 24.4.79 (Anxx.A1) rejecting the appeal of the applicant on 10.7.1987, i.e. after a lapse of about 8 years. Aggrieved with the

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said order of rejection of his appeal, the applicant filed a representation Anxx.A4 dated 20.7.1987 addressed to the Director General, Department of Telecommunication, New Delhi. When the said representation remained undisposed of for a long time, the applicant filed an O.A, No.65/88, before the Jodhpur Bench of the Tribunal. The Tribunal vide its order dated 6.11.92 (Anxx.A6) directed the respondents to consider the representation of the applicant on merits and dispose it of by a speaking order within six months of receipt of a copy of the Tribunal's order. Thereafter, the respondents passed an order Anxx.A2 dated 18.10.1993 rejecting the representation of the applicant. The applicant has now preferred the present O.A. against the said rejection of his representation and has also assailed the adverse remarks on merits. He has stated that as per the departmental instructions contained in Director General's letter No.27/4/78-Disc.I dated 19.4.1978 if a representation is not decided within a period of 3 months, the adverse remarks are deemed to be nonoperative. Therefore, since neither his appeal nor his representation were decided within a period of 3 months, the adverse remarks should be deemed to be non-operative. He has also alleged bias and malice against the authorities which recorded the adverse remarks and upheld these remarks. He has given reasons in his application to suggest that the adverse remarks are wholly unjustified. Further according to him no speaking order has been passed by the authorities concerned while rejecting the appeal and representation.

3. The respondents in their reply have justified the adverse remarks recorded in the ACR of the applicant and have added that they are not required to pass a speaking order while rejecting the appeal or representation of the applicant. They have added that the appeal and the representation were carefully considered and thereafter a decision was taken to reject these. As regard delay

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in disposing of the representation of the applicant, the respondents have stated that the applicant was earlier posted in another Telecom Circle and there was delay in receiving the records despite constant reminders. They have denied the allegations of bias, malice, prejudice, etc. against the respondents in deciding the appeal and representation of the applicant.

4. During the arguments, the learned counsel for the applicant produced a copy of the Director General's letter dated 19.4.78 to which a reference has been made in his representation Annu. A4 dated 20.7.87. The learned counsel for the applicant added that in view of item (v) of these instructions from the Director General, the adverse remarks against the applicant should be treated as inoperative because neither his appeal nor his representation against rejection of his appeal were decided within a period of 3 months. He also assailed the recording of the adverse remarks on merits.

5. We have heard the learned counsel for the parties and have perused the records. The instructions at item (v) of the Director General's letter dated 19.4.78 are as under:

"All representations against adverse remarks should be decided expeditiously by the competent authority and in any case, within three months from the date of submission of the representation. Adverse remarks should not be deemed as operative, if any representation filed within the prescribed limit is pending. If no representation is made within the prescribed time, or once this has been finally disposed of, there would be no further bar to taking notice of the adverse entries."

These instructions however do not suggest that the adverse remarks would be deemed to be expunged from the ACR if a representation against these is not decided within a period of 3 months. The implication of these instructions seems to be that as long as the

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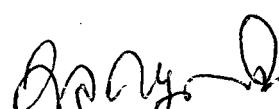
representation against the adverse remarks remains undecided after 3 months of filing thereof, the adverse remarks would remain non-operative. But once the representation has been decided the remarks would again become operative, (if not expunged). For example, if the case of a person comes up for promotion and a representation against the adverse remarks has been made which is pending for more than 3 months, such remarks should not operate as bar to his promotion etc. Ultimately, the respondents dealt with the adverse remarks on merits and rejected the appeal and the representation of the applicant against these. Although allegations of bias and prejudice have been made against the departmental authorities, these allegations are vague in nature and no specific grounds have been given in support of the allegation. Moreover, none of the concerned authorities have been made as respondents to the O.A. by name. The Hon'ble Supreme Court have held in the case of Union of India & Ors. Vs. E.G.Nambudiri, 1991(3)SCC 33 that while there is a requirement that competent authority must act in a fair and just manner and examine all the questions raised by the government servant, no order of 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. If, as further held by Hon'ble Supreme Court, ~~if~~ a representation against adverse remarks in the ACP 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. We have examined the reasons given by the applicant for assailing the adverse remarks. This Tribunal does not act as an appellate authority over the decisions of the departmental authorities. Orders of the departmental authorities in such matters can be interfered with only if they are wholly perverse or *bafsed* on no reasons whatsoever. We are unable to come

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to any such conclusion with regard to the adverse remarks recorded in the present case. In the circumstances, we decline to interfere with the orders of the departmental authorities at Annnx.A1 dated 24.4.1979 and Annnx.A2 dated 18.10.93. In the result, the O.A. is dismissed with no order as to costs.


(Ratan Prakash)

Member(Judl.)


(O.P. Sharma)

Member(Adm.).