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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

C.A.No.430/95

Date of order: 26/4/2000

Lachan Singh Verma, S/o Phool Singh, B/o Bharatpur,
working as Sr.Subdivisional Engineer(Phones) Bharatpur.

...Applicant.

Vs.

1. Union of India through the Secretary, Deptt.of Posts,
Min. of Communications, New Delhi.
2. Chief General Manager Telecom, Rajasthan Circle, Jaipur.
3. General Manager Telecom(East) Dhuleshwar Garden, Jaipur.
4. D.P.Paul, Ex.Telcom Distt.Engineer,Sikar, Now DET, C/o
General Manager Telecom, Jaipur Distt. Jaipur.
5. S.C.Misra, Ex.Director Telecom(East) Jaipur, Now Dy.Gen.
Manager(Operations), C/o Chief General Manager, Lucknow.

...Respondents.

Mr.K.L.Thawani - Counsel for the applicant

Mr.M.Rafiq - Counsel for respondents.

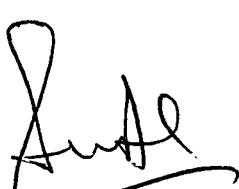
CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to quash the order at Anx.A1 and Anx.A2, being illegal, arbitrary, malicous, capricious and against the prescribed rules and principles of natural justice and to direct the respondents to expunge all the adverse remarks recorded in the ACR of the applicant for the year 1989-90.

2. In brief the case of the applicant is that he was working as SID, Sikar from 18.7.87 to June 1990, but the Sikar City telephone Exchange was not under his control but under the control of the Dy.DET, Sikar. It is stated by the applicant that his performance as SICT, Sikar was superb but this was not liked his superior officers, therefore, respondents No.4 and 5 spoiled the ACR of the applicant by recording adverse entries against the applicant in the ACR of the year 1989-90 which was communicated to the applicant on 27.12.90. It is also stated that the reporting officer has only given general opinion and the remarks given by him against the applicant are factually incorrect and the same have been recorded with bias and malice. It is also stated that the rules regarding writing of ACR were not followed and the ACR was not countersigned by the reviewing authority. It is further stated that the applicant filed C.A No.61/92 against the ACR for 1989-90 on 11.2.92 which was decided on 24.3.95 by giving certain directions to the respondents and in pursuance of these directions, the Chief



General Manager, Telecom Rajasthan, Jaipur, decided the representation of the applicant and ordered retention of the adverse remarks except entry in Sl.No.3(iii) - Human relations and capacity to get work done which was modified as satisfactory. Against the above adverse remark, the applicant has filed this O.A for the relief as mentioned above.

3. Reply was filed. In the reply, the allegations of malice/bias against respondent Nos.4 & 5 were denied. It is stated that the reporting officer has given the adverse remarks against the applicant on the basis of an overall assessment of his performance and the reviewing authority has also reviewed the same and was communicated to the applicant. It is denied that there has been any violation of Rule 174 of the FST Manual and stated that representation of the applicant was considered in the light of the order passed by the Tribunal in O.A No.61/92 and the present O.A is devoid of any merit and liable to be dismissed.

4. Rejoinder has also been filed reiterating the facts stated in the O.A which is on record.

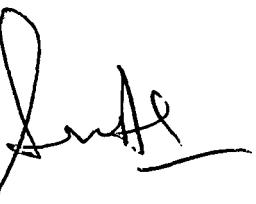
5. Heard the learned counsel for the respondents and also perused the whole record.

6. The learned counsel for the applicant was not present at the time of hearing, therefore, he was directed to submit written submissions within 5 days but he did not file the same.

7. The applicant in this O.A made a prayer for expunging the adverse remarks against him for the year 1989-90 as these adverse entries were made arbitrarily with malice and bias and without any basis. Whereas the learned counsel for the respondents argued that the adverse remarks made against the applicant were on the basis of over all assessment of his performance during the year.

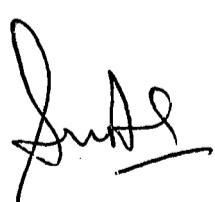
8. The Reporting Officer is required to write down the ACR of the officials subordinate to him according to the rules and regulations provided for the purpose. He must have a definite base to write the adverse remark against the concerned official with certain instances and he should also ensure that an opportunity was given to the applicant to rectify those shortcomings which he has noticed from time to time.

9. There is no statutory definition of the word "Adverse Entry". I have therefore referred to some of the standard dictionaries to ascertain the meaning of adverse entry. In 'Adverse' means opposed to one's interest, unsavourable, harmful, detrimental and prejudicial. According to Random House Dictionary 'adverse' means antagonistic in the purpose or effect, adverse criticism, opposing one's interest. In Corpus Juris Secundum,



Vol. XXVIII, page 634 'adverse' means unfavourable, detrimental. To sum up, any entry which adversely affects the interest of a person is adverse.

10. In State Bank of India & Ors. Vs. Hashinath Thakur & Ors. (1996) 8 SCC 762, Hon'ble Supreme Court pointed out that the object of writing the CR is two fold i.e. to give an opportunity to the officer to remove deficiencies and to inculcate discipline. Secondly it seeks to serve improvement of quality and excellence and efficiency of public service.
11. In Sukhdeo Vs. Commissioner, Amravati Division, (1996) 5 SCC 103, it is also laid down that attribution of malice and arbitrariness to reporting and reviewing officers who are not impleaded as respondents and who have no opportunity to explain their conduct, could not be accepted.
12. In Baidyanath Mahapatra Vs. State of Orissa & Anr., the Apex Court held that "the purpose of communicating adverse entries to the Govt servant is to inform him regarding his deficiency in work and conduct and to afford him an opportunity to make, amend and improvement in his work and further if the entries are not justified the communication affords him an opportunity to improve his work and conduct and also to make representation in the event of the entry being unjustified".
13. In State of U.P Vs. Y.S. Misra, 1997 4 SCC 7 it is laid down by the Apex Court that a confidential report is written to enable an employee to improve his performance in public service. This should be a good input and catalyst to enable the employee to strive towards excellence in accordance with Article 51-A of the Constitution as a fundamental duty in all spheres of individual and collective activity. The second guidelines laid down was that there should be complete objectivity in writing a confidential report because it is primary responsibility of the reporting and reviewing officer. The third guideline was that the confidential report needs to be written accurately on the basis of facts. The reporting and reviewing officer should confront the reported officer with the facts and the adverse inference before forming an opinion to make an adverse remark so that the reported officer gets an opportunity either to improve himself or to explain his conduct.
14. On the basis of the above legal position, it is made clear that there should have been given a chance to the official to correct himself by pointing out the deficiencies before the adverse remarks are written against the applicant concerned.
15. On the perusal of all the averments of the parties, it becomes abundantly clear that no shortcomings were pointed out to

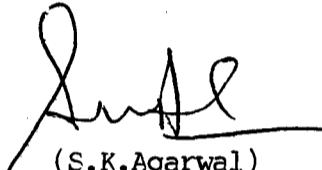


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the applicant in his work. It is stated that targets are set but the applicant had not achieved the same which has been categorically denied by the applicant. No logical or organic relationship of the impugned adverse remark with functional achievements of the officer reported upon could be established by the respondents. Repeated instances have not been made available on record regarding the shortcomings against the applicant, therefore, in view of the legal position as discussed above, the adverse remark made against the applicant having no reasonable basis are liable to be expunged.

16. I, therefore, I allow the O.A and quash the impugned orders at Anxx.A1 and Anxx.A2 and direct the respondents to expunge the adverse remarks made against the applicant in his ACF for the year 1989-90.

17. No order as to costs.


(S.K. Agarwal)
Member (J).