

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

O.A. No. 459/99  
T.A. No.

199

DATE OF DECISION 01.01.2002

Bojraj

Petitioner

Mr. Arvind Soni

Advocate for the Petitioner (s)

Versus

Union of India & Ors.

Respondent

Mr. Bhanwar Bagri)  
Mr. R. L. Agarwal)

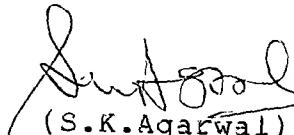
Advocate for the Respondent (s)

CORAM :

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

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR  
O.A.No.459/99 Date of order: 11/12/2002

Bojraj, S/o late Sn.Babu Ram, working as Asstt.

Director, Gr.II, SISI, Govt.of India, Ministry of  
Industry, Industrial Estate, Bais Godown, Jaipur.

...Applicant.

vs.

1. Union of India through Secretary, Mini.of Industry, Udyog Bhavan, New Delhi.
2. The Development Commissioner, Small Industries, Dept of Small Scale Agro & Rural Industries, Mini. of Industries, Nirman Bhavan, New Delhi.
3. Director, Small Industries Service Instt, Bais Godown, Jaipur.
4. Sh.Shyam Dev, Director, Small Industries Service Instt, Kalpi Road, Kanpur (U.P).
5. Dy.Director (Vigilance) Small Scale Industry Service Instt, O/o Development Commissioner, Nirman Bhavan, New Delhi.

... Respondents.

Mr.Arvind Soni : Counsel for applicant

Mr.R.L.Agarwal, proxy of Mr.Bhanwar Bagri, for respondents.

**CORAM:**

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

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

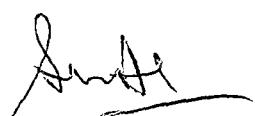
In this O.A filed under Sec.19 of the ATs Act, 1985, the applicant makes a prayer to quash and set aside the impugned order dated 19.1.98 by which adverse remarks in the ACR were communicated to the applicant and order dated 19.3.99 by which representation against the adverse remark was rejected and to direct the respondents not to take any

*Sinatra*

adverse view of the adverse remarks communicated to him for his promotion to the post of Asstt. Director Gr.I.

2. The following adverse remarks in the ACR were communicated to the applicant for the year 1997-98 (period 1.4.97 to 21.7.97) "The officer having not good relation with the senior & junior colleagues. He is not punctual in his duty and his attitude towards immediate senior was not found good"

3. Facts of the case as stated by the applicant are that the applicant was communicated the adverse remarks vide memorandum dated 19.1.98. It is stated that these adverse remarks were given by respondent No.4 who was badly annoyed and prejudiced with the applicant. Respondent No.4 used to harass the applicant against which the applicant submitted various representations to the next higher authorities. It is stated that the applicant also made complaint against respondent No.4 to Central Vigilance Commission from 1992 to 1997 and when no heed was paid to these complaints, the applicant represented the matter to the Development Commissioner. The applicant also met the Development Commissioner personally and also sent reminders. Thereafter, the attention of Director was also drawn. It is stated that writing down adverse remarks in the ACR for the period 1.4.97 to 27.7.97 is nothing but malafide action of Sh. Shyam Dev. The applicant was never pointed out any shortcomings nor any explanation was ever called for and ACR of earlier period and later period are upto the mark. No disciplinary action of any kind was ever initiated against him. It is stated that the applicant represented against these adverse remarks which was rejected vide order dated 19.3.98 in cryptic manner by nonspeaking order without application of



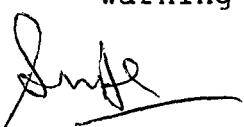
mind. Therefore, the applicant filed this O.A for the relief as above.

4. Reply was filed. In the reply it has been denied that respondent No.4 ever harassed the applicant or he has any malafide or prejudicial attitude against the applicant. Sh. Shyam Dev, the reporting officer has brought to the notice of the applicant verbally as well as in writing about his shortcomings since 1993 but the applicant did not show any improvement. It is stated that the Director, Small Scale Industries Institute also warned the applicant towards his attitude but he did not change his attitude. Therefore, keeping in mind his attitude towards his work these adverse remarks were given by the reporting officer in his ACR for the year 1997-98. It is stated that the applicant made false and baseless complaint/representation against his superior. It is denied that the attitude of respondent No.5 was in any way inhumane towards the applicant. It is stated that the representation filed by the applicant was considered with full application of mind and thereafter the same was rejected. Therefore, the order of rejection of representation cannot be held as illegal merely because the administrative authority communicated the same to the applicant without assigning any reason. Thus, the applicant has no case.

5. Heard the learned counsel for the parties and also perused the whole record and written submissions filed by the counsel for the respondents.

6. The learned counsel for the applicant while arguing his case made the following submissions:

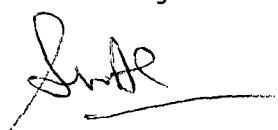
(i) The adverse remarks are without any basis and no notice/ warning of any kind was ever given to the applicant before



writing down the adverse remarks in the ACR of the applicant. In support of his contention, he has referred to 1999(7) Supreme 297, P.K.Shastri Vs. State of M.P & Ors; (ii) The order of rejection of representation filed by the applicant is a non-speaking order and was issued without application of mind, therefore, illegal, unjust and liable to be quashed. In support of this contention, he has referred (1991) 17 ATC SC 104, Union of India & Ors Vs. E.G. Nambudirim 1986(2) SCC 651 R.P.Bhatt Vs.UOI & Ors and 1986(3) SCC 103, Ram Chander Vs. UOI & Ors. On the other hand the learned counsel for the respondents vehemently argued that the adverse remarks in the ACR of the applicant were given after giving due notice/warning to the applicant and there is sufficient basis for recording these adverse remarks therefore this Tribunal should not interfere in the adverse remarks recorded by the reporting officer. Written submissions have also been filed by the counsel for the respondents in support of his contentions.

7. I have given anxious consideration to the rival contentions of both the parties and also perused the whole record.

8. The purpose of ACR is to help the individual to recognise the areas of deficiencies and makes efforts to overcome his deficiencies. The remarks in the ACR have direct bearings of the growth of the career of the individual. These are required to be recorded with great care without prejudice. The Reporting Officer is required to write down the ACR of the official subordinate to him according to rules and regulations provided for the purpose. He must have a definite base to write adverse remarks against the concerned officer with certain instances and he

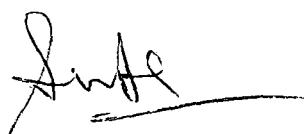


should also ensure that an opportunity was given to the applicant to rectify those shortcomings which he has noticed from time to time. Instead of giving vague and general remarks, the Reporting Officer while making adverse entries must indicate specific instances where the officer reported upon in the assessment of the reporting officer, has been found wanting.

9. Law on the subject has been discussed by the Supreme Court in catena of cases. In State Bank of India & Ors Vs. Kashinath Kher & 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.

10. In M.A Rajasekhar Vs. State of Karnataka (1996) 10 SCC 369 their Lordship stated that the superior authority is obliged to guide the subordinate by pointing out deficiency and since this exercise has not been done, the said adverse remarks are stated to be not consistent with law.

11. 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 collective activity. The second guideline 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

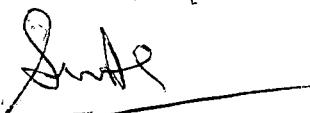


confidential report need to be written accurately on the basis of facts. The reporting and reviewing officer should confront the reported officer with the facts and the adverse inference before forming an opinion to make an adverse remark so that the reported officer gets an opportunity either to improve himself or to explain his conduct.

12. In P.K.Shastri Vs. State of M.P & Ors, 1999(7) Sup. 297, it has held that any adverse remark in the C.Rs could mar the entire career of that officer. Therefore, it is necessary that in the event of a remark being called for in the confidential records, the authority directing such remark must first come to the conclusion that the fact-situation is such that it is imperative to make such remarks to set right the wrong committed by the officer concerned. A decision in this regard must be taken objectively after careful consideration of all the materials which are before the authority directing the remarks being entered in the C.Rs.

13. On the basis of above legal position, it can be said that ACR must have been written according to rules and regulations provided for the purpose and there must be a definite base to record the adverse remarks in the ACR of the officer concerned with certain instances and the official concerned must be given opportunity to rectify those shortcomings which have been noted by the reporting and reviewing officer.

14. In the instant case, the Reporting/Reviewing Officer did not have any basis for the adverse remarks as communicated to the applicant. No opportunity was given to the applicant to rectify the deficiencies as noticed by the competent authority. No specific instance has been made a



basis for these adverse entries. While recording adverse entries, it was the duty of the authority concerned to record reasons which has been alleged by the applicant that unjustified and unreasonable remarks are given in the ACR of the applicant so that promotion can be denied to him. I am constrained to observed that these adverse remarks had without any basis with a view to deprive the applicant from the fruits of promotion, which are liable to be expunged.

15. It also appears that Sh. Shyam Dev, then Dy. Director, Small Industry Service Institute, Jaipur has recorded the adverse remark in the ACR of the applicant for the period 1.4.97 to 21.7.97 only. According to the applicant there has not been any adverse ACR against him before this period or after this period. No evidence has been produced by the respondents' department to controvert this fact. The respondents' department also failed to establish the fact by which it could be established that any explanation/memo was ever been issued to the applicant pointing out his shortfall for this period. In the written submission, copy of some report has been filed but it appears that the same pertains to the period 1993 and not for the period 1.4.97 to 21.7.97. Therefore, any act of the applicant before the period in question should not have been taken into consideration and the reporting officer should not have recorded the ACR of the applicant on the basis of the past performance made in the year 1993 or 1994. The applicant in so many words alleged malafide against respondents No.4 and 5 and were impleaded as necessary parties but none of them has denied the allegations on oath. Therefore, in the absence of any basis, I have no option except to order for expunge the adverse remarks recorded by respondent No.4 in the ACR of



the applicant for the period 1.4.97 to 21.7.97. As at no point of time any shortfall was pointed out to the applicant and there has not been any basis for the aforesaid adverse recording of ACR, therefore, in my considered opinion, the adverse remark communicated to the applicant vide letter dated 19.1.98 are liable to be expunged.

16. I, therefore, allow this O.A and declare to treat the adverse remark given to the applicant for the period 1.4.97 to 21.7.97 as honest and hereby expunged. The order passed on representation dated 19.3.99 is also quashed. The applicant shall be entitled to all consequential benefits thereof.

17. No order as to costs.



(S.K. Agarwal)

Member (J).