

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 27.02.2003

OA No.525/1999

Ram Gopal Meena s/o Shri Suwa Lal Meena working as UDC in the office of Garrison Engineer, M.E.S., Jaipur residing at Plot No.116, Chand Bihari Nagar, Khatipura, Jaipur- 302013.

.. Applicant

VERSUS

1. The Union of India through the Secretary to the Govt., Ministry of Defence, Govt. of India, South Block, New Delhi- 110 011.
2. Chief Engineer, Jaipur Zone, Power House Road, Bani Park, Jaipur

.. Respondents.

Mr. P.P.Mathur, counsel for the applicant

Mr. P.C.Sharma, proxy counsel to Mr. Sanjay Pareek, counsel for the respondents

CORAM:

HON'BLE MR. JUSTICE G.L.GUPTA, VICE CHAIRMAN

HON'BLE MR. H.O.GUPTA, MEMBER (ADMINISTRATIVE)

O R D E R

Per Hon'ble Mr. H.O.GUPTA.

The applicant is aggrieved of the order dated 27th July, 1999 (Ann.A1) whereby adverse remarks reflected in the ACR for the year 1998-99 have been communicated to him as also the order dated 25.9.1999 (Ann.A3) whereby his representation has been rejected. In relief, he has prayed for quashing these orders.

2. The case of the applicant as made out, in brief, is that:-

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2.1 Having joined the Office of Garrison Engineer, Military Engineer Service, Kota on 3rd January, 1984, he was promoted as UDC on 3rd January, 1987. He was assigned duties of incharge of the Section vide order No. 301 dated 4.8.1998 (Ann.A5). While working in the office of the Chief Engineer, vide order dated 12th January, 1999, the Staff Officer Gde.I, E/M has assigned him the duties of Office Superintendent and made him directly responsible for the discipline of Clerks and Peons. He was also directed to carry out the typing work of the office of the Staff Officer Gde-I E/M and was also responsible for submission of reports and returns during the absence of Shri K.C.Soni. From perusal of the annexure contained in the order dated 12th January, 1999 (Ann.A6), it is apparent that he was directly working under Staff Officer Gde-I E/M.

2.2 To his utter surprise, he received the impugned order dated 27th July, 1999 (Ann.A1) communicating him adverse/remedial remarks. His ACR for the year 1998-99 was initiated in the month of May, 1999. As per Govt. of India OM dated 20th May, 1972, all adverse remarks in the confidential report of the Govt. servant should normally be communicated as far as possible within one month of the completion of the report and in all cases, the substance of the entire report including what may have said to encourage the Govt. servant should also be communicated to him, to let him know the good qualities as well as defects. Vide the impugned order dated 27th July, 1999, the adverse/remedial remarks were communicated after lapse of 50 days and only extract of report was communicated to him which is in violation of Govt. orders on the subject.

2.3 He submitted his representation against the adverse/remedial remarks in the ACR for the year 1998-99. He clearly brought out in Para 1(a) that he was directly working



under the supervision of Staff Officer Gde-I E/M and the report should have been initiated by the Staff Officer Gde-I and not by any officer who has not supervised his work.

2.4 No performance counselling as required under the rules was given to him and without doing so, the adverse remarks were endorsed by an officer who has not supervised his work, contrary to the instructions on the subject. His representation dated 17th August, 1999 has been rejected by a cryptic order without due application of mind and without taking into consideration that he was never issued the performance counselling and the entire substance of the report has not been communicated to him.

3. Briefly stated, the main grounds taken by the applicant are that:-

3.1 The endorsement of adverse remarks in the ACR for the year 1998-99 without affording any opportunity to know his defects and how to remove defect, is contrary to the rules.

3.2 The action of respondent No.2 in rejecting the representation is illegal for the following reasons:-

- (a) Adverse/remedial remarks were not communicated within one month as per rules.
- (b) The entire substance was not communicated and only a extract of report was communicated.
- (c) The applicant was not given an opportunity by the competent authority to explain his case in person.
- (d) The rejection of the representation is without due application of mind and is cryptic.

3.3 The applicant has quoted the following judgments in support of his case:-

- i) G.Nanchil Kumaran vs. Special Commission and Secretary to Govt., (1990) 12 ATC 308 (Madras).



ii) Alphonse Louis Fargayil vs. Secretary to the Govt. of India, (1992) 19 ATC 210 (Ernakulam)
iii) K.B.Mohandas vs. Asstt. Collector of Central Excise, Calicut and Ors., (1991) 16 ATC 177 (Ernakulam).

4. The respondents have contested this application. Briefly stated, they have submitted that :-

4.1 The applicant was made officiating Office Superintendent in addition to his own duties. As per para 3 of the order dated 4.8.1998 (Ann.A5), he was responsible for maintaining the files/documents, correspondence and reports/returns pertaining to maintenance of project (only for Gujrat area) of all the CWF in the zone under the supervision of Lt. Col. A.K.Johri, SO-II (E/M). As such he was under Lt. Col. A.K.Johri, SO-II and not directly under SO-I.

4.2 As per para 2.6 of Chapter-II of Brochure on preparation and maintenance of Confidential Reports, Govt. of India, Department of Personnel OM dated 20th May, 1972, 90 days (3 months) physical service is mandatory to initiate ACR by any initiating officer. The applicant was placed directly under SO-I on 12th January, 99 and he served for less than 90 days during the report period. Hence, his report was initiated by the previous initiating officer Lt. Col. A.K.Johri, SO-II E/M. However, the ACR was reviewed by SO-I E/M Lt. Col. S.K.Tiwari, under whom the applicant was made direct responsible w.e.f. 12th January, 1999 as claimed by the applicant and he also agreed with the remarks endorsed by the initiating officer, though he had full powers as Reviewing officer to expunge any remarks endorsed by the initiating officer. Lt. Col. S.K.Tiwari, SO-I E/M retired on 31st May, 1999. As such the adverse remarks were communicated by the

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initiating officer vide the impugned order dated 27.7.1999 within the prescribed time limit.

4.3 It is evident from the Chief Engineer, Jaipur Section, E-3 Note dated 26.2.99 initiated by Lt. Col. S.K.Tiwari, SO-I E/M that the individual was given a show-cause notice. However, the case file is not traceable as the applicant himself was then performing the duties of officiating O/S of E-3 Section and the subject file was not handed over by the individual with malafide intention to suppress the evidence against him. It is also evident from the application of the individual dated 25.2.99 that he refused to take over the charge as ordered by SO-I E/M and the same has been reflected by the initiating officer in his ACR.

4.4 It is immaterial if the applicant was not communicated any remark prior to 1998-99. In the absence of such communication, it cannot be presumed that the applicant is having a very good record. So far as communication of adverse remarks for the year 1998-99 is concerned, the answering respondents have followed the entire procedure prescribed by the Govt. of India.

4.5 There is no provision under any rule that while deciding the representation, personal hearing is essential.

4.6 The remarks were made after assessing the performance of the applicant. The assessment was objective and based upon the record. The applicant was from time to time advised by the higher authorities about his performance. He was pointed out the defects in his performance verbally, yet the applicant failed to correct the same.

4.7 There is no statutory provision to communicate the adverse remarks within one month. The applicant was communicated the substance of the report. He was given an opportunity to explain his case but he failed to satisfy the competent authority in his representation.

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4.8 The case laws cited by the applicant are not applicable to the present case. The applicant was rightly communicated the adverse remarks as before communicating the same he was verbally apprised about his deficiencies in his service. When he could not improve/correct the same, the competent authority had no option but to make adverse remarks in his service record.

5. The applicant has filed the rejoinder to the reply of the respondents.

6. Heard the learned counsel for the parties and perused the record.

6.1 Based on the ACR of 1998-99 pertaining to the period 1st April, 98 to 31st March, 99, following adverse remarks were communicated to the applicant:-

"attention to routine aspect of work such as proper maint of assistants diary, Guard files, recording, indexing and weeding of files you has to be constantly promoted and supervised. You refused to take charge of a clerk who was to go on posting."

6.2 In his representation, the applicant has himself submitted that he was made directly responsible to SO-1 E/M vide office order dated 12th January, 99. As per DOPT instructions quoted by the respondents, to initiate ACR, an officer is required to supervise the work for 3 months. The office order making the applicant directly responsible to SO-1 E/M is itself dated 12th January, 99 and the ACR pertains to the period 1st April, 98 to 31st March, 99. Obviously, the applicant has not worked for 3 months under SO-1 E/M. Therefore, SO-1 E/M was not authorised to initiate ACR of the applicant. It is on record that in earlier period, the applicant was working under SO-2 E/M and therefore if SO-2 E/M has initiated the report, since he supervised the work of

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the applicant for more than 3 months, the applicant cannot have any grievance on this count.

6.3 The applicant himself admits that the adverse remarks were communicated within 50 days from the date of initiating of the ACR. As per the instructions quoted by the applicant, it is not mandatory that it should be written within one month. The instructions only provide that this should be done as far as possible within one month of the completion of the report.

6.4 It is apparent that the respondents have not complied the instructions of the Government, which provide that substance of the entire report including the good qualities as well as defects are to be communicated to the applicant while communicating the adverse remarks. Though the respondents have not complied this requirement, but we are not convinced that for non compliance of these instructions, the adverse remarks should be expunged. It is not the case of the applicant that his report was written out of malice or with malafide intention.

6.5 The next contention of the applicant is that he has not been given opportunity of counselling or advise/guidance to correct his fault or deficiency during report period before rendering adverse remarks in the ACR. The 1st portion of the remarks relate to improper maintenance of Assistant Diary, Guard files, recording, indexing and weeding of files for which he was constantly promoted and supervised. The applicant has not represented against this remark as seen from his representation. In his representation, he has only stated that no performance counselling was given to him either verbally or in writing. The words constantly promoted and supervised would mean that the applicant was constantly helped/encouraged and supervised implying that he was counselled before endorsing the said remarks. Having not represented against the remarks, he cannot now take the plea that no performance counselling was given to him. We are of the

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view that the remarks as given are obvious facts for which sufficient opportunity was accorded to the applicant before endorsing the adverse remark. The second portion of the remark pertains to his refusal to take charge of a Clerk. The applicant has also not represented against this remark. This portion of the remark would, therefore, be an obvious fact. The nature of this remark does not call for performance counselling.

6.6 The applicant has relied upon the following judgments:-

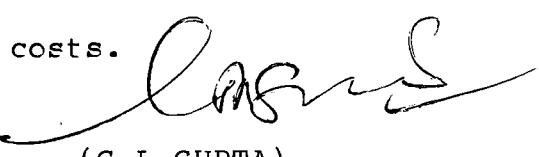
- i) Sri M.A.Rajasekhar v. State of Karnataka, 1996 (5) SLR 643
- ii) Sukhdeo v. The Commissioner Amravati Division, Amravati and Ors., 1996 (5) JT 481
- iii) Shri Vinod Kumar v. Secretary, Ministry of Defence and Ors., SLJ 1998 (1) (CAT) 549- PB,ND
- iv) Swati L.Malve vs. UOI and Ors., SLJ 1999 (2) CAT 344 - Mumbai.
- v) Vinod Kumar v. UOI and Ors., SLJ 1999 (2) CAT 344 (Mumbai)
- vi) Kishan Lal Monhas vs. UOI & ors., SLJ 1999 (3) CAT 227, PB, ND.
- vii) Order in OA No.523/94, R.C.Prasad v. UOI & ors.

We have perused the above judgments. The facts and circumstances of this case are different than those in the quoted judgments. Therefore, these judgments are not applicable in this case.

7. In view of above discussions, we are of the view that this case does not call for judicial interference. Accordingly, this OA is dismissed with no order as to costs.


(H.O.GUPTA)

Member (Administrative)


(G.L.GUPTA)

Vice Chairman