

THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH : JAIPUR.

ORIGINAL APPLICATION NO. 304/2002.

Date of Decision : _____

Smt. V.Bisarya : Applicant.

Anupam Agarwal : Advocate for the applicant.

Versus

K.V.S. & Ors. : Respondent.

Mr.V.S. Gurjar : Advocate for the Respondents

CORAM

The Hon'ble Mr.Justice G.L.Gupta, Vice-Chairman,
The Hon'ble Mr. A.P.Nagrath, Member (A).

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

(A. P. NAGRATH)
MEMBER (A)

(G.L.GUPTA)
VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Decision : 5/5/2003

O.A. No. 304/2002.

Smt. V. Bisarya wife of Shri Pushpendra Bisarya, Education Officer, resident of Quarter No. IV/12. C/o KVS, R/o 92, Bajaj Nagar, Jaipur.

.... APPLICANT.

versus

1. Kendriya Vidyalaya Sangathan through its Joint Commissioner, Dy. Commissioner, 18 Institutional Area, Shaheed Jeet Singh Marg, new Delhi.
2. The Addl. Secretary and Vice Chairman, Kendriya Vidyalaya Sangathan, Ministry of Human Resources and Development, Shastri Bhawan, Govt. of India, New delhi.
3. The Asstt. Commissioner, Regional Ofice, 92 Bajaj Nagar, Jaipur.
4. Shri s. K. Jain, Asstt. Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area Shaheed Jeet Singh Marg, New delhi.

... RESPONDENTS

Mr. Anupam Agarwal, counsel for the applicant.

Mr. V. S. Gurjar, counsel for the respondents.

CORAM

Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.

Hon'ble Mr. A. P. Nagrath, Administrative Member.

: ORDER :

(per Hon'ble Mr. A. P. Nagrath)

The applicant is working as Education Officer in Kendriya Vidyalaya Sangathan Regional Office, Jaipur. Vide communication dated 22/25.6.2001 (Annexure A/1), some

adverse entries recorded in her ACR for the period from 1.4.2000 to 31.3.2001 were communicated to her with the advice to bring improvement in her performance in future. She represented against the said adverse entries vide letter dated 21.7.2001 (Annexure A/6). Her representation was rejected vide letter dated 4.10.2001 (Annexure A/2). She further submitted an appeal against the rejection of her representation but her appeal was turned down vide letter dated 10.4.2002 (Annexure A/3). By virtue of filing this OA, the applicant seeks the following reliefs :-

- "i) that the adverse remarks so communicated to the applicant for the year 2000-2001 may kindly be expunged/quashed and set aside with all consequential benefits to the applicant.
- ii) the respondents be directed to reconsider the case of the applicant for her promotion by holding a Review DPC and if nothing adverse is existing against her in fact there exists no adversity then the applicant be ordered to be given promotion from the date her juniors were given such promotion with all consequential benefits to the applicant.
- ii) Any other relief which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may also be granted in favour of the humble applicant.

2. The main ground, on which the impugned communication dated 22/25.6.2001 (Annexure A/1) has been challenged is that the same has arisen at the instance of Shri S.K. Jain, the then Assistant Commissioner, KVS, Jaipur as the applicant alleged

that Shri Jain was personally biased against her and these adverse entries were made on account of malafide on his part. Shri Jain has been impleaded as party respondent in this case. While narrating the background for the alleged malafide on the part of Shri Jain, the applicant has stated that she was asked to fill ACR of the Principal, KVS, Anoopgarh despite the fact that she was not competent to do so as the ACR of the Principal can only be filled up by an officer not below the rank of Assistant commissioner. She had also been asked to write the ACRs of teaching staff of KV No.4-Jaipur, KV No.1-Udaipur, KV Lalgarh and KV Mount Abu. According to her, she apprised the then Assistant Commissioner that she was not competent to write ACR of the Principal and also that it would not be proper for her to assess the performance of teaching staff of KVS referred to supra as she had not exercised any control over these teaching staff during the year for a period of more than three months as was the requirement of the rules. She asserts that her expression of inability to write these ACRs was not taken in the right spirit by Shri S. K. Jain. It has been averred that despite her making all efforts to resolve the grievances of the staff brought to her notice, adverse notings have been made in this regard without any basis. Regarding mention of non performance in Scout & Guide activities in the ACR, her case is that no complaint was brought to her notice. Charge of Scout & Guide was taken away from her and no reason have been given

to her. She has also alleged that the then Assistant commissioner permitted some of the teaching staff to other places for scouting without informing her, which was breach of discipline. She has also alleged that because of these adverse entries in her ACR, she has been ignored for promotion to the next higher level and her juniors have been promoted.

3. Another ground urged by the applicant is that during the course of the year, she was never given any warning or advice bringing to her notice any shortcoming or asking her to improve her performance. Thus, she contends, these adverse entries are not sustainable.

4. Respondent No.4, Shri S. K. Jain, has filed an affidavit wherein he had denied the allegation of bias and has asserted therein that there is not even an iota of evidence to sustain the allegation which resulted into communication of adverse entries/remarks to the applicant. It is also stated that the allegations of mala fides levelled against him are totally false, baseless and without factual foundation.

5. The respondents in their reply have justified the communication of entries vide Annexure A/1 and have asserted that there is enough material available on record against the applicant. Such an action can in no way can be considered as arbitrary. It has been stated that the applicant was asked to write the ACRs of the Principal, KVS Anoopgarh and all other

teaching staff of different KVS in the backdrop of the fact that the officer who is required to write ACR of the Principal is the Chairman, Vidyalaya Management committee. The Chairman had retired and similarly principles of other KVS had also retired or had gone on transfer. The applicant had looked after the schools for two or three months and that is why she had been asked to write the ACRs. The respondents referred to annexure R/3 to R/9 to establish that the attitude of the applicant towards the teaching staff and towards Scout & Guide activities was negative. There were complaints by other teachers against the applicant and she had been advised to bring improvement in her work, to which she did not give any regard. It was the contention of the respondents that the applicant was asked to explain the reasons for inordinate delay in submitting the documents received by the applicant from KVS Nasirabad. Annexure R/10 and R/11 are stated to be the documents which shows negligence on the part of the applicant. Annexure R/12 is a document by which Shri B.P. Singh made a complaint against the applicant. The case of the respondents is that the applicant had been warned from time to time to improve her work and conduct but there were complaints from the other teaching staff including from Dr. Charu Rawat.

6. Rejoinder has been filed by the applicant wherein she has reiterated what has been said earlier in her averments in the OA.

A handwritten signature in black ink, appearing to be a stylized 'B' or a similar character.

7. During the course of arguments, while referring to the alleged complaint made by one Shri Dr. Charu Rawat and Shri B.P. Singh, the learned counsel for the applicant stated that these documents cannot be relied upon as they are not genuine. He vehemently asserted that during the year under review, the applicant was never given any warning about her performance and thus suddenly giving communication reflecting adverse entries is not sustainable in law.

Another point raised by the learned counsel for the applicant is that the representation and appeal of the applicant against the adverse entries have been rejected in a cryptic manner without assigning any reason therefore. His contention was that this rejection ought to have been through detailed and reasoned order touching upon all the points raised by the applicant in her representation/appeal.

8. The learned counsel for the respondents took us through various annexures filed with the reply. The respondents make out a case that the applicant was warned from time to time to improve her performance but she failed to do so. He also referred to complaints made by Dr. Charu Rawat and Sh. B.P. Singh and stressed such attitude of the applicant towards staff was not desirable. He strongly urged that there was no case for

A handwritten signature in black ink, appearing to be a stylized 'S' or a similar character, followed by a horizontal line.

interference by this Tribunal. The adverse entries are based on specific material available on record. The learned counsel placed reliance on the case of Bharat Ram Meena vs. Rajasthan High Court 1997 (3) SCC 233 and State Bank of India vs. Kashinath Kher 1996 (8) SCC 762 to emphasise that procedure followed in this case was reasonable and that this application has no substance.

9. Before considering the arguments advanced before us by either side, we consider it relevant to reproduce the entries communicated to the applicant vide impugned Letter dated 22/25.6.2001 (Annexure A-1).

"(PART – III)

Nature and quality of work

Partly agreed.

Comment on Part.II as filled by the Officer and specifically state whether You agree with the answers relating to targets and objectives achievements and shortfalls. Also specify constraints, if any, in achieving the objectives.

Though she is working as Regional Grievance Officer yet she is not able to solve the problems of vidyalays. She was given duty of Scout & Guide activities. As Complaints started coming so I had to give this responsibility to another E.O.

Attributes

Analytical ability

Average

Comment on the officer's ability Relating to analysis of pros and Cons ; formulation of alternatives And their evaluation for solving problems, ability to indicate decision areas.

She delays in taking decision and keeps files pending for long period.



Attitude to work

Comment how far the officer can Be relied upon, her sense of Responsibility, the extent to which She is dedicated and motivated her Willingness to learn and systematise her work.

Yes she can be relied upon for general duties. Has average sense of responsibility, lacks dedication and willingness to learn.

Ability to inspire and motivate

Comment on the capacity of officer to Motivate to obtain willing support By own conduct and capacity to Inspire confidence.

Lacks ability to inspire and motivate and obtain willing support from subordinate Staff.

Inter personal relations and team work

Comment on the quality of relationship with superiors, colleagues and subordinates, and on the ability to appreciate other's point of view and take advise in the proper spirit. Please comment on her capacity to work as a member of a team and to promote team spirit and optimise the output of the team.

Not very cordial.

(PART - IV)

General Assessment

Average.

Give an overall assessment of the officer with reference to her strength and shortcomings and also by drawing attention to the qualities if any, not covered by the entries above."

Overall performance of the officer is just average. She needs improvement in areas as stated in Part-III of report.

10. It is clear from the above that the overall performance of the applicant has been rated as "Average". On perusal of the remarks against individual items we find that these are mostly advisory in nature. In respect of analytical ability and attitude or work, she has been graded as average. The grading as average cannot be construed as adverse even though in the instant case, the same has been communicated to the applicant. The mere



fact of communication does not change the nature of entry. The assessment is required to be made by the Controlling Officer of an employee and it is not for Courts or Tribunals to act as Appellate Authorities in respect of the entries made in the Confidential Report. Entry as 'Average' in the ACR had come up for consideration before the Full Bench of this Tribunal at Hyderabad in the case of Shri V. Pallam Raju vs. Union of India & Ors., 148 A.T. Full Bench Judgements 1994-96. It was held in that case that it is not the requirement of principles of natural justice that a government servant who has been given an entry of 'Average' should be given notice of that entry so as to enable him to improve his performance so that his chances for promotion may improve. The obvious meaning of this is that the average remarks are not even required to be communicated and mere communication does not make them adverse in any way. The only remarks which make them appear as adverse in the applicant's ACR under consideration are, where under the heading 'Attributes' against 'Analytical ability'. It has been mentioned that " She delays in taking decision and keeps files pending for long period" and again in respect of 'ability to inspire and motivate' where it has been stated 'Lacks ability to inspire and motivate and obtain willing support from subordinate staff'. We proceed to discuss the sustainability of these adverse remarks in the ACR. The principle established by Hon'ble the Supreme Court in their judgements in the case of State Bank of



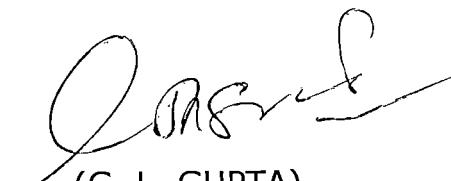
India vs. Kashinath Kher, referred to supra, in Sukhdeo vs. Commr. Amravati 1996(5) SCC 103 and in State of UP vs. yamuna Shanker Mishra 1997 SCC (L&S) 902, is that before forming an opinion to make adverse entries in ACR, the Reporting/Reviewing Officer should share the information with the officer concerned. If, despite giving such opportunity, the officer fails to improve, then it would be obvious that such a material would form the basis in support of the adverse remarks. In the case before us, the respondents have stated that the adverse entries have been made based on the material available on record and for which the applicant had been warned duly during the year. In this context, learned counsel for the respondents had drawn our attention to Annexure R/10 and R/11 to justify the entries in respect of the delays in taking decisions and keeping files pending for long period. These documents are dated 19.07.2001 and 30.07.2001 and obviously cannot be considered as relevant for the period for which this ACR has been written. Similarly on the entry in respect of the lack of ability to inspire and obtain willing support from the subordinate staff no material has been shown to us to indicate whether any counselling was done to the applicant during the year in this regard. For this reason, these adverse entries are liable to be quashed and deleted from the ACR. In respect of the remaining entries, since these are advisory in nature no interference is called for by this Tribunal. Based on



the material placed before us we do not find any reason to accept that these adverse entries have been made at the behest of Shri S. K. Jain, the then Assistant commissioner. The applicant has failed to establish any nexus between the entries and the incidence because of which she has alleged mala fide against Shri Jain. We do not consider it necessary to go any further into the allegations of mala fide made against Shri Jain, the then Assistant Commissioner.

11. For the reasons stated in the preceding paragraphs, we allow this OA in part. The two adverse entries to which we have referred in Paragraph above are expunged and deleted from the ACR. In respect of other entries no interference is warranted and the same shall continue to be retained. There shall be no order as to costs.

(A. P. NAGRATH)
MEMBER (A)


(G. L. GUPTA)
VICE CHAIRMAN