

O.A.No..... 72 of 1998

13-3-2000

DATE OF DECISION.....

Shri Tarini Charan Deka

PETITIONER(S)

Sri J.L.Sarkar, M.Chanda & Smt N.D.Goswami

ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

Union of India & Ors.

RESPONDENT(S)

Sri A.Deb Roy, Sr.C.G.S.C.

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE SHRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER.

THE HON'BLE SMT LAKSHMI SWAMINATHAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the Reporter or not ? *yes*
 3. Whether their Lordships wish to see the fair copy of the judgment ?
 4. Whether the Judgment is to be circulated to the other Benches ?
- Judgment delivered by Hon'ble Judicial Member

Lakshmi Swaminathan

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 72 of 1998.

Date of Order : This the 13th Day of March, 2000.

The Hon'ble Shri G.L.Sanglyine, Administrative Member.

The Hon'ble Smt. Lakshmi Swaminathan, Judicial Member.

Shri Tarini Charan Deka,
 Son of late Priyanath Deka.
 Village- Rukminigaon,
 P.O. Khanapara,
 Guwahati-781022.

. . . Applicant.

By Advocate S/Shri J.L.Sarkar, M.Chanda
 & Smt N.D.Goswami.

- Versus -

1. Union of India,
 through the Secretary to the
 Government of India,
 Ministry of Labour,
 New Delhi.
2. Director General,
 Headquarter Office,
 Employees State Insurance Corporation,
 Kotla Road,
 New Delhi.
3. Shri Debananda Pegoo,
 Regional Director,
 Employees State Insurance Corporation,
 Bamunimaidan,
 Guwahati-781021.
4. Shri M.N.Haque,
 Assistant,
 Office of the Regional Director,
 Employees State Insurance Corporation,
 Guwahati-781021.
5. Mrs Bulu Nag,
 Ex.Manager,
 E.S.I.Corporation Local Office,
 Bamunimaidan, Guwahati-781021.

. . . Respondents.

By Advocate Sri A.Deb Roy, Sr.C.G.S.C.

ORDER (ORAL)Smt.Lakshmi Swaminathan, (J.M)

The applicant is aggrieved by the action of the respondents, namely, (i) the adverse remarks communicated to him by memorandum dated 27.8.1997 and (ii) the promotion order dated 23.12.1997 promoting certain other persons -

18/

UDCs to the post of Assistant, including respondent 4, Shri M.N. Haque by Office Order 103 of 1997 dated 23.12.1997. He has challenged the validity of these orders and has prayed that the impugned orders may be quashed and set aside.

2. The brief facts of the case are that while working as UDC with the respondents, the applicant was communicated Memorandum dated 27.8.1997 conveying certain adverse remarks. He submitted a representation to the Memorandum on 23.9.1997 which was rejected by respondent 3 by his Memo dated 16.12.1997.

3. Before rejection of the applicant's representation dated 23.9.1997, admittedly the respondents held ^a Screening Committee ('SC') meeting on 25.11.1997 for promotion to the post of Insurance Inspector, Assistant and other posts on purely temporary ^{'SC'} and ad hoc basis. The Minutes of the ^{'SC'} meeting ~~are~~ attached to the written statement filed by the respondents. Paragraph 2 of the Minutes of the 'SC' meeting deals with the promotion to the post of Head Clerk/Assistant on ad hoc basis. It is stated that the Committee had considered the confidential reports and other relevant records of three other persons, including respondent 4. It is further recorded that the Committee has not recommended the name of the applicant, a senior UDC due to adverse remarks in his ACR. Following the recommendations of the 'SC', the respondents passed the impugned promotion order - Office Order dated 23.12.1997. promoting certain other officials, including his junior, to the post of Assistant.

4. Shri J.L. Sarkar, learned counsel for the applicant has impugned the aforesaid order on a number of grounds. In the first instance, he has submitted that the Memo dated 27.8.1997 cannot be considered as an adverse remarks as it

only meant that the applicant who was an UDC had to be supervised by his superiors, which was the duty of the latter officer. Secondly, he has submitted that the applicant had made ~~an~~ detail representation to the respondents against the adverse remarks which has been disposed of by a bold order showing non-application of mind ^{and ~~is~~} without any reason. He has also submitted that the reply is vague. Thirdly, he has submitted that while the applicant's representation was still pending, the respondents have constituted the SC which had considered the adverse remarks in the applicant's ACR for the year 1996-97 which could ^{not} have been done in accordance with the relevant rules and instructions. Learned counsel has submitted that before making the adverse remarks, the respondents ought to have been communicated the shortcomings to the applicant in writing, which they have failed to do. His contention is that the Reporting Officer's statement dated 18.11.1997 annexed to the written statement, cannot be relied upon as the applicant has categorically denied receipt of any oral warnings about his performance, and in any case the respondents have also not communicated any written warning previously which they ought to have been done in terms of the rules. The next ground, the learned counsel has submitted is that because the applicant had filed an earlier O.A. against a transfer order passed by the respondents, Respondents 3 and 5 have become bias^{-ed} against the applicant and the adverse remarks is ^a reflection of the mala fide of these officers. Regarding the last point Sri Sarkar, learned counsel has emphatically submitted that even though these officers have been impleaded by name, they have not cared to file any written statement regarding the allegation of bias. His contention is that the vague reply filed by the official respondents, not specifically denying the allegations ^{of bias} is not sufficient. He has

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~~therefore~~, submitted that this clearly shows that respondent
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5 was bias/against the applicant while making the adverse
entries in the ACR. Learned counsel has, therefore, submitted
that the impugned order may be quashed and set aside and the
respondents may be directed to promote the applicant to the
post of Assistant with all consequential benefits, including
pay and allowances.

5. The respondents in their written statement have submitted that they have acted in accordance with the rules while making the promotion of the other officers based on the recommendation of the 'SC' which had been held for this purpose on 25.11.1997. They have also stated that the aforesaid transfer had been made in public interest and hence there was no question of the Regional Director/respondent 3, getting annoyed with the applicant. According to them, as the applicant had not been recommended for promotion to the post of Assistant because of the adverse remarks in his ACR by the Selection Committee, their actions are in order. They have also submitted that the representation made by the applicant on 23.9.1997 has been duly considered by respondent 3, including the comments of respondent 5 who was the Reporting Officer, who has given the reasons why she had made those entries in the ACR for the year 1996-97. Shri A. Deb Roy, learned Sr. C.G.S.C has therefore submitted that in the facts and circumstances, the O.A. may be dismissed.

6. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

7. From the facts given above, it is seen that after the communication of the memorandum to the applicant conveying the adverse remarks in the ACR for the year 1996-97 on 27.8.1997 and while the applicant's representation was still pending, the SC had met on 25.11.1997 to consider the eligible

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officers for promotion on temporary or ad hoc basis as Assistants and for other posts. The reply of the respondents to his representation had been given only on 16.12.1997. This, therefore, shows that the action of the respondents in taking into account the adverse remarks made in the relevant year of the ACR could not have been taken into account by the 'SC' and to this extent the recommendations are not acceptable in law.

8. The learned counsel for the applicant has contended that the Memorandum dated 27.8.1997 cannot be considered as an adverse remark in the ACR because merely having to be supervised in his work should not be considered as an adverse remark. This by itself will not assist the applicant. It is seen from his reply that he himself has treated it as an adverse remark and given his reply thereto. The statements of the Reporting Officer, respondent 5, has stated that she has given certain verbal warning to the applicant, which has been stoutly denied by the applicant in his rejoinder. We see force in the submission made by the learned counsel for the applicant that any such oral caution or warning which is stated to have been communicated to the applicant is not sufficient in terms of ^{the relevant} Government of India, D.O.P & T instructions. The judgments in U.P. Jal Nigam and ors. vs. Prabhat Chandra Jain and Ors. (1996) 33 ATC 217 (SC) and Keshava Datta vs. Director, Industrial Toxicology Research Centre, Lucknow & Ors. (1993 (25) ATC 125, C.A.T., Allahabad (Lucknow Bench) are relevant to the facts of this case.

9. It is also relevant to note that in spite of the fact that the applicant has impleaded respondents 3 and 5 by name, against whom certain allegations of mala fide and bias have been made, they have not chosen to file a reply.

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Even the reply filed by the official respondents is not specific on this point and has merely stated that the applicant's presumption that respondent 3 has got annoyed with him is not correct. We are fully aware that in cases where there are allegations of mala fide or bias, the nature of proof required is of a high order. However, in the present facts and circumstances of the case, as there is not even a categorical denial by the official respondents to those allegations, we have no other alternative but to accept the submission made by the applicant and his learned counsel that the respondents have not refuted the same in any manner.

10. The relevant portion of the Memorandum dated 27.8.1997 which has been communicated to the applicant is as follows :

"3(c) Has to be constantly prompted and supervised.

He has to constantly supervised to these aspects."

Shri Sarkar has submitted that the above remarks are vague and can hardly be termed as adverse, apart from the fact that the Reporting Officer has also not applied her mind, as the remarks conveyed have not even been couched in correct English. We also see some force in this submission because while conveying the adverse remarks to a Government employee which can make or mar his career, the Reporting Officer or the Reviewing Officer should have been more careful, which appears to be lacking in the present case. The Memorandum dated 16.12.1997 has conveyed to the applicant that it has been done after careful consideration of the applicant's representation and getting the comments of the Reporting Officer, copy placed on record. As mentioned above, the comments of the Reporting Officer,

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respondent⁵, in the letter dated 18.11.1997 has only referred to verbal caution given by her to the applicant during the period in question, which has also been denied by the applicant.

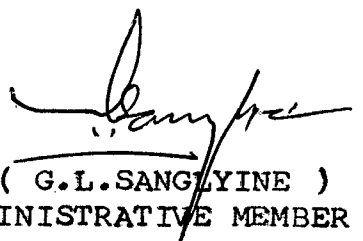
11. Taking into account the facts and circumstances of the case, it appears that the respondents have not fully complied with the relevant Government of India, D.O.P & T instructions for writing and communication of adverse remarks and other related matters. It is also apparent that the Selection Committee which met on 25.11.1997 had taken into account the adverse remarks of the applicant for the year 1996-97 while the applicant's representation was still pending, which action cannot be supported. The allegation of bias and mala fide alleged by the applicant against the Reporting/Reviewing Officers have also not been controverted by even a whisper or by filing reply affidavit by the concerned officials.

12. In the facts and circumstances of the case the application is accordingly allowed. The impugned orders dated 27.8.1997 and 16.12.1997 regarding the adverse remarks in applicant's ACR for the year 1996-97 are quashed and set aside. The respondents are directed to hold a review Screening Committee/DPC to consider the applicant's name for promotion to the post of Assistant from the due date. In case he is found suitable for such promotion, he shall be entitled to all consequential benefits in accordance with the relevant law, rules and instructions. The above action shall be taken within two months from the date of receipt of a copy of this order.

No order as to costs.



(SMT.LAKSHMI SWAMINATHAN)
JUDICIAL MEMBER



(G.L.SANGLYINE)
ADMINISTRATIVE MEMBER