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CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

Original Application No.871 of 2005

Jabalpur, this the 18th day of December, 2006.

**Hon'ble Dr.G.C.Srivastava, Vice Chairman
Hon'ble Shri A.K.Gaur, Judicial Member**

N.Srinivasa Rao, S/o late Shri N.Appa Rao, Aged about 35 years, Employed as Jr. Stenographer, Under ADRM/S.E.C.Rly./ Raipur, Residing at: C/o 299/2 Type-II, R.V.H. Colony, Raipur-492001, Tehsil and District: Raipur (CG)

-Applicant

(By Advocate – Shri B.P.Rao)

V E R S U S

1. Union of India, Through: The General Manager, South East Central Railway, Bilaspur Zone, G.M.Office, PO: Bilaspur, Tehsil & District: Bilaspur (CG)

2. The Chief Engineer (Construction), South East Central Railway, Bilaspur Division, Bilaspur, Tehsil & District: Bilaspur (CG)

3. The Deputy Chief Engineer (Survey and Constructions) South East Central Railway, Raipur Division, Raipur, Tehsil & District: Raipur (CG)

-Respondents

(By Advocate – Shri M.N.Banerji)

O R D E R

By Dr.G.C.Srivastava, VC.-

This Original Application has been filed against the adverse entry in the Annual Confidential Report (for short 'ACR') of the

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applicant for the year 2002-2003 as communicated through annexure A-5, dated 13.10.2003 and annexure A-7 dated 23.10.2003. The applicant has prayed for the following main relief:-

“8.2...pass an order directing the respondents to expunge the adverse remarks entered against the applicant by respondents for the year 2002-2003 vide annexure-A-5 (dated 13.10.2003), annexure A-7 (dated 23.10.2003) and also annexure A-10 (dated 24.8.2005) passed by the respondents”.

2. The case of the applicant is that while serving as Stenographer attached to Deputy Chief Engineer (Survey & Constructions) Raipur, he received a communication dated 13.10.2003 (annexure A-5) from the office of the Chief Engineer communicating to him the following adverse entry in his ACR for the year ending 31.3.2003:-

“Overall classification – Below average”

Thereupon, the applicant through his representation dated 15.10.2003 (annexure A-6) requested for details of the remarks so that he could prefer appeal against it. Thereupon, he received communication dated 23.10.2003 (annexure A-7) whereby he was informed of the following remarks:-

“(a) Accuracy in stenographic : Very inaccurate.

(b) Power of drafting : Can never draft independently"

The applicant represented against the above adverse remarks through his representation dated 4.11.2003 (annexure A-8) but having received no reply, he filed OA No.451/2005 which was disposed of on 12.5.2005 (annexure A-9) directing the respondents to consider and decide the representation of the applicant by passing a speaking, detailed and reasoned order within a period of

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three months from the date of receipt of a copy of the said order. Complying with these directions, the respondent no.2 passed an order on 24.8.2005 (annexure A-10) whereby the remarks were retained. In the present OA, the applicant has challenged the adverse remarks as well as the order by which his representation was rejected.

3. The contention of the applicant is that these remarks have been entered without any basis and without any supporting material only because of prejudice on the part of the superior officer against him as he had made a complaint on 7.4.2003 (annexure A-3). The applicant further submitted that the very fact that he was promoted as Senior Stenographer by an order dated 11.3.2003 (annexure A-2) and was also successful in the screening held for a higher post of Protocol Inspector in 2004, show his competence. It has further been alleged that prejudice and bias on the part of the superior officer, respondent no.2 is clear from the fact that he had ~~also~~ ⁶ also got a major penalty charge-sheet issued against the applicant and punished him with totally disproportionate and grave punishment of removal from service on 17.11.2003, although he was reinstated subsequently on 16.4.2004 on appeal.

4. The respondents in their reply have denied the allegations and have contended that the representation of the applicant against the adverse remarks in the ACR was considered and decided on merit. They further claim that the impugned order is a well reasoned order and in view of this fact the OA deserves to be dismissed.

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5. Both the parties submitted their written arguments which were perused by us along with all the pleadings.

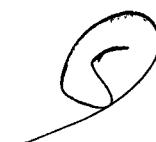
6. It has been contended by the applicant that the respondents have not cited any documentary evidence in support of the adverse remarks entered in the ACR and respondent no.2 rejected his representation only with a view to support his subordinate officer i.e. respondent no.3. In this context, it is seen that the adverse remarks relate to accuracy in stenographic work and power of drafting. Respondent no.2 in his order dated 24.8.2005 (annexure A-10) has clearly mentioned as follows:

“5. Based on your representation against the said communication, I have examined the entire matter carefully connecting all available and relevant records and find no reason to review the observations recorded by your then controlling officer.

Accordingly, the adverse entries of inaccuracy in stenographic work and poor independent drafting qualifies stand. The overall assessment, considering your track record for the year in question, will also remain “below average”.

7. It is apparent that the adverse remarks relate to the basic work that a stenographer is required to do. The best judge whether a stenographer is able to perform these functions properly or not is the officer with whom he is attached. The officer recording the adverse remarks has stated elaborately that the applicant is “Very inaccurate. Needs at least 3(three) corrections”. He has observed that the applicant “can never draft independently”. It has further been observed in the impugned communications that the above remarks were communicated not to discourage him but to afford an opportunity to remove his shortcomings in the required direction. The contention of the applicant that his competence is established by the fact that he has been promoted is of little consequence, as the main job of a stenographer is to transcribe dictations to the





satisfaction of the superior officer to whom he is attached and the best judge of his quality of work is this officer. In the instant case, the officer to whom the applicant is attached is obviously not satisfied with his work and there is no reason to suspect the bonafides of the officer in making adverse remarks.

8. Although it is a fact that the applicant had complained against respondent no.3, a perusal of annexure A-3 shows that this complaint was filed because of denial of promotion to the applicant despite issue of the promotion order. It is seen that the promotion order was issued on 11.3.2003 (annexure A-2) and it was specifically mentioned that this order was subject to the condition that the applicant "should be free from SPE/Vig./D&A cases". Admittedly, a minor penalty charge sheet was issued to the applicant on 14.11.2002 and a major penalty charge sheet on 14.4.2003. In view of the fact that disciplinary proceedings, even though for minor penalty were pending against the applicant, when the promotion order was issued on 11.3.2003, the submission of the applicant that the charge sheet was issued after the date of promotion and that he was not being allowed to take charge of the higher post on irrelevant and untenable grounds does not appear to be correct. More so, because it has no where been contended that respondent no.3 did not allow the applicant to assume the charge of higher post because of any prejudice or bias. On the other hand, the applicant withdrew his complaint on 14.5.2003 (annexure A-4) when it came to his notice that his complaint has been referred to respondent no.3 by respondent no.2.

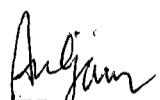
9. It is also noticed that the applicant has not arrayed respondent no.3, by name, in this OA, although he has alleged bias

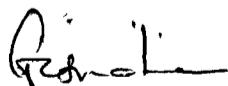


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and prejudice on his part in the matter of recording adverse remarks in the ACR. It is a settled law that in the absence of any clear allegation against any particular official and in the absence of impleading such a person as a respondent by name so as to enable him to answer the charge against him, the charge of mala fides cannot be sustained [see : **State of Punjab Vs. Chaman Lal Goyal**, 1995 SCC (L&S) 541]. In view of this, we are not in a position to accept the contention of the applicant that the adverse remarks have been entered by respondent no.3 on account of his personal prejudice or bias against the applicant. Further, the remarks are of such nature, correctness of which can easily be verified and that is what appears to have been done by respondent no.2 when he decided the representation of the applicant after examining "the entire matter carefully connecting all available and relevant records". The remarks are such which can be rectified by the applicant by improving his performance and the respondents have rightly observed that these have been communicated with a view to afford him an opportunity to remove his shortcomings. In view of these facts, we are satisfied that the impugned remarks have been recorded in the ACR after an objective assessment of the applicant's performance and have been ordered to be retained therein through a well-reasoned order passed by respondent no.3 after examining the representation of the applicant on merit. Consequently, we do not find this to be a fit case for our intervention and the OA is liable to be dismissed.

10. In the result, the OA is dismissed, however, without any order as to costs.


(A.K.Gaur)
Judicial Member


(Dr. G.C. Srivastava)
Vice Chairman

प्राप्तिकरण सं. ओ/ब्ला..... जबलपुर, दि.....
 प्राप्तिकरण दिनांक:—
 (1) श्रीमति, डॉ. अ. क. गौर, जिम्मेदार, जबलपुर
 (2) अधिकारी, डॉ. अ. क. गौर, जबलपुर
 (3) एस. एस. डॉ. ग. स. श्रीवास्तवा, डॉ. काउंसल
 (4) विधायक, डॉ. ग. स. श्रीवास्तवा, डॉ. काउंसल
 सूचना देव आवश्यक कर्तव्यात्मक
 27/12/2016

*B.P. Rao Adv. Durg
 M. N. Behari
 Adv. J. S. S.*

*DSWMS
 on 27/12/2016*