

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

Original Application No. 974 of 2005

Date of Decision 3rd .10. 2006.

Smt.Kanchan Jain **-Applicant**

Shri Ajay Mishra **- Advocate for the applicant**

V E R S U S

State of MP & ors **- Respondents**

Shri Om Namdeo & Shri R.S.Siddiqui -Advocates for respondents
1 & 3 respectively)

Coram:

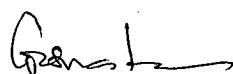
Hon'ble Dr.G.C.Srivastava, Vice Chairman(A)

Hon'ble Shri A.K.Gaur, Judicial Member

1. Whether Reporters of local papers may be allowed to see
the order? **- Yes / No**

2. To be referred to the Reporter or Not? **Yes / No**

3. Whether it needs to be sent to the Principal Bench for
circulation to other Benches of the Tribunal ? **Yes / No**


Dr. G.C.Srivastava)
Vice Chairman

(1)

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

Original Application No. 974 of 2005

Jabalpur, this the 3rd day of October, 2006.

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

Smt. Kanchan Jain W/o Shri AK Jain, Aged about 47 years, Occupation: Member of Indian Administrative Service, Presently posted as Managing Director, M.P. Mahila Vitta Eevam Vikas Nigam, R/o DN 2/15 Char Imli, Bhopal

-Applicant

(By Advocate – Shri Ajay Mishra)

V E R S U S

- 1.State of Madhya Pradesh, Through Chief Secretary, Government of Madhya Pradesh, Mantralaya, Vallabh Bhawan, Bhopal.
2. Smt. Rekha Bhargava, Joint Secretary, Government of India, Ministry of Defence, North Block, New Delhi.
3. Union of India Through Secretary, Dept. of Personnel, Training, Pension & Grievances, Ministry of Personnel, North Block, New Delhi.

-Respondents

(By Advocate – Shri Om Namdeo for respondent no.1
Shri S.K.Mishra on behalf of Shri R.S.Siddiqui for respondent no.3, None for respondent no.2)

O R D E R

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

This Original Application has been filed challenging the legality, propriety and legal susceptibility of the adverse remarks

recorded by the reporting officer and accepted by the reviewing authority in respect of the applicant for the year 2003-2004. The applicant, therefore, through this OA, has prayed for the following relief:-

“7(i)....to quash and set aside the impugned adverse remarks in the ACR of the applicant for the year 2003-04 and be further pleased to direct the respondents to award appropriate fresh grading to the applicant keeping in view the actual facts and circumstances on the basis of independent, fair and impartial assessment made afresh”.

2. The applicant is an IAS officer and was posted as Managing Director, M. P. Mahila Vitta Evam Vikas Nigam, at the relevant time. Respondent no.2 Smt.Rekha Bhargava, (who, at that time, was the Principal Secretary, Department of Woman and Child Development) was the reporting officer and the Chief Secretary was the reviewing authority. The applicant was informed by the General Administration Department (for short ‘GAD’) of the State Government on 8th October,2004 (annexure A-16) that for the year 2003-2004 her work had been adjudged as ‘average’ and the following adverse remarks have been recorded:

“Part-III(A)

Quality of output:-

“Average quality of work. Has to constantly goaded to achieve something” (sic).

ATTRIBUTES

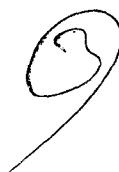
Leadership qualities:

Average, because there were dissenting(sic) voiles(sic) in the organization she headed. No new ideas were observed. The organization did not grow at all.

Management qualities:

Not willing, sails along & a poor motivator.

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Decision making ability:

But disobeys Govt. orders e.g. in one specific personal case, she disobeyed Govt. & Court orders by asking irrelevant questions. File is available in the Govt.

Inter-personnel relations and team work:

Not of a high order. Two factions were working in the organization at cross purposes.

General Assessment:

Not differential (sic) to her superiors".

3. The applicant submitted a representation against the adverse remarks on 19th November, 2004 (annexure A-17). This was considered by the competent authority and the applicant was informed on 30th June/4th July 2005 (annexure R-1) that following adverse remarks were expunged but other remarks were being retained:

"Because there were dissenting voices in the organization she headed. No new ideas were observed. The organization did not grow at all".

"Not deferential to her superiors".

Not satisfied by this decision of the competent authority, the applicant has approached this Tribunal for relief. It has been alleged in the OA that the adverse remarks were recorded by Smt. Rekha Bhargava, who is respondent no. 2, by name, on account of personal prejudice and animosity and while recording the ACR, rules and guidelines relating to ACR, have not been followed. The applicant has cited certain incidents to show that respondent no. 2 Smt. Rekha Bhargava was not happy with the applicant and, in fact, she developed extreme personal bias and hostility against the applicant. Apprehending that respondent no. 2 may go to any extent to cause harm and injury to the applicant in her future career and may use her superior position to do the same,



the applicant met the Chief Secretary and apprised him of the facts. The applicant has stated that the reporting officer was required to set targets for the year and also hold mid-year review to judge the performance before recording the ACR, but neither any targets were set nor mid-year review was undertaken by the respondent no.2 and the adverse remarks recorded by her were not based on objective assessment of the applicant's performance. The applicant has claimed that her achievements during the year 2003-2004 have been extremely satisfactory and by no standards her performance could be graded as 'average'. It has also been submitted by the applicant that her ACR was reviewed by Shri B.K.Saha as Chief Secretary, who had not watched her work for three months. The applicant has accordingly prayed for quashing and setting aside the impugned adverse remarks and issue of a direction to the respondents to award appropriate fresh grading to the applicant.

4. Out of the three respondents, counter reply was filed only by respondent no.1 (wrongly referred to as respondent no.2 in the text of the application) i.e. State of Madhya Pradesh. No reply was filed by respondent no.3 i.e. Union of India, as no relief has been claimed from Union of India. Smt.Rekha Bhargava, who was impleaded as respondent no.2 (wrongly referred to as respondent no.3 in the text of the application) did not file any counter reply although serious personal allegations have been levelled in the OA against her. The respondent no.2, vide her DO letter dated 5.5.2005 (annexure R-2) addressed to the Principal Secretary, GAD gave her comments on the representation made by the applicant against adverse remarks. Although in this letter, respondent no.2 has denied the allegation of personal bias, in absence of any affidavit

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on her part, we are not in a position to give any credence to this denial. The assertion made by respondent no.1 that the reporting officer has based her remarks on actual facts, observations and objective assessment, after going through the self appraisal submitted by the applicant, carries little conviction in absence of any affidavit or counter-reply from respondent no.2, who has been impleaded by name.

5. We have heard the arguments advanced by the counsel for the applicant and respondent no.1 and have also gone through the pleadings and material on record.

6. So far as the procedure for recording ACR is concerned, it is regulated by the All India Services (Confidential Roll) Rules, 1970 (for short 'AIS(CR)Rules') and instructions issued there under. Undisputedly, respondent no.2 i.e. Smt. Rekha Bhargava was the reporting officer for the applicant and the Chief Secretary was the reviewing authority during the relevant year 2003-2004. The applicant brought to our notice that Shri A.V.Singh, the then Chief Secretary demitted office on 4.1.2004 and she was asked by the GAD on 23.1.2004 (annexure-A-13) to submit her self-appraisal for the year 2003-2004 (up to 4.1.2004) within two days. The applicant submitted her self-appraisal to respondent no.2 on 29.1.2004 (annexure A-14) but this was returned to her by the office of respondent no.2 on 19.2.2004 (annexure A-15) requesting her to send her self appraisal for the year 2003-2004 after March, 2004. The allegation of the applicant is that respondent no.2 did so deliberately, with the evil intention of depriving the applicant of the benefit/protection of the remarks of the reviewing authority, as she knew that Shri A.V.Singh as the reviewing

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authority could not record his remarks beyond one month of demitting his office. The applicant alleges that respondent no.2 deliberately disobeyed government instructions with evil designs and ulterior motives.

7. In this connection, our attention was drawn to the clarification issued by the Department of Personnel, Govt. of India through letter no.11059/20/99-AIS-III dated 28.12.1999 communicating the decision that "whenever a reporting/reviewing/accepting authority retires/demits office before the completion of the financial year, the self-appraisals/remarks in the ACR, as the case may be, on the concerned officers, should be written for the part period and they should be submitted well in time before such authority so that they are written by them before the last date up to which he is competent/authorized to report/review/accept". It is noticed that the letter dated 19.2.2004 (annexure A-15) through which self appraisal of the applicant was returned to her did not mention any reason except that it was being done as per orders of respondent no.2. It is also pertinent to note that Shri A.V.Singh demitted his office as Chief Secretary on 4.1.2004 and he was succeeded by Shri B.K.Saha, who, as per the counter reply submitted by respondent no.1, reviewed the ACR of the applicant. This review has been done in violation of Rule 6(3) of the AIS (CR) Rules,1970, which lays down very clearly that "[I]t shall not be competent for the reviewing authority, or the accepting authority, as the case may be, to review any such confidential report unless it has seen the performance of the member of the Service for at least three months during the period for which the report has been written". From these facts, it is clear that the review of the ACR of the applicant for the year 2003-2004 by Shri

Saha as Chief Secretary is illegal. These facts also give credence to the allegation, made by the applicant, that this has been done deliberately, by the respondent no.2, to deprive the applicant of the benefit of the remarks of Shri A.V.Singh, who had seen the work of the applicant for more than 9 months, during the year as Chief Secretary.

8. The applicant has narrated a number of ~~incidents~~ ^{incidents} in her OA, in support of her contention that the respondent no.2 was ill-disposed towards her. As already mentioned earlier, in absence of any counter reply from the respondent no.2, these allegations can be taken as uncontroverted. The allegation regarding personal bias and hostility towards the applicant on the part of respondent no.2 gains further strength from the fact that the self-appraisal was returned to the applicant on 19.2.2004 after one month period during which Shri A.V.Singh could record his comments as the reviewing authority expired. Undoubtedly, this was in violation of government instructions on the subject.

9. The applicant has drawn our attention to the following adverse remarks, which, as per the applicant, refer to the adhoc promotion of Shri M.K.Chaturvedi as General Manager and posting of Ku.Mamta Pathak in his place:

“But disobeys Govt. orders e.g. in one specific personal case, she disobeyed Govt. & Court orders by asking irrelevant questions. File is available in the Govt”.

The above remarks had been recorded by the respondent no.2 in her ACR for the year 2003-2004 under the heading ‘Decision making ability’. It has been stated by the applicant in her OA that she had not disobeyed the government orders as she allowed

Ku.Mamta Pathak to join as General Manager in compliance with government orders, and cancelled the promotion order of Shri M.K.Chaturvedi, but subsequently, she had to allow Shri Chaturvedi also to function as such because of the court's order in the suit filed by Shri Chaturvedi. This assertion has not been denied by the respondents. Moreover, had she disobeyed court's orders, she would have been hauled up for contempt of court. These facts do confirm the allegation of the applicant that respondent no.2 was extremely unhappy with her on account of this case and this incident did affect her assessment of the performance of the applicant during the year 2003-2004.

10. The applicant has submitted various documents including a copy of her self-appraisal to show that her performance could not have been graded as 'average'. In support of her contention, she has specifically mentioned the targets and achievements in respect of the following activities during the year 2003-2004:-

| S.No | Description | Targets | Achievements | |
|------|--|---------|--------------|--------|
| 1 | Mobilization and nurturing of SHGs | 46470 | 83909 | 180.5% |
| 2. | Skill up gradation (number of woman) | 4000 | 4000 | 100% |
| 4. | Mamatva Mela (no. of participants) | 3000 | 4680 | 156% |
| 5. | Gramya Yojna (no. of beneficiary women) | 4500 | 3770 | 83.7% |
| 6. | STEP for women (no of proposals) | 1 | 2 | 200% |
| | (No. of women beneficiaries) | 500 | 1600 | 320% |
| 7. | Swa Shakti Project (Funds, Rs. in lakhs) | 1093 | 1093 | 100% |

The contention of the applicant is that while recording her remarks regarding **Quality of output** ("Average quality of work. Has to constantly goaded to achieve something") and **Management qualities** ("Not willing, sails along & a poor motivator") respondent no.2 did not pay any attention to the above achievements which had been claimed by the applicant in her self appraisal. The learned counsel for the applicant further argued that the reporting authority is required to comment on the self-appraisal and specifically state whether it agrees with the officer's self-appraisal relating to targets, achievements and short falls and if respondent no.2 felt that the applicant's quality of output was 'average' and she was a poor motivator, specific instances relating to performance should have been brought out. We find that there is nothing on record to show that any review of the applicant's work was undertaken by respondent no.2 to justify her remarks. This leads to the inevitable conclusion that respondent no.2 made these remarks not on the basis of objective assessment of the applicant's work but, because of extraneous reasons.

11. It has specifically been mentioned in the instructions attached to ACR form that "3.[T]he columns should be filled with due care and attention and after devoting adequate time. Any attempt to fill the report in a casual or superficial manner will be easily discernible to the higher authorities". The manner in which the aforesaid remarks have been recorded by the reporting officer, it can easily be inferred that this has been done in a superficial manner only with a view to harm the career of the applicant. The instructions attached to the ACR form further provide that the ACR is not meant to be a fault finding process but a developmental one so that an officer realizes his/her true potential. This

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requirement of the ACR has also not been fulfilled by the respondent no.2 as a reporting officer.

12. The learned counsel for the applicant has cited the following cases in support of his contention that adverse remarks written on subjective considerations deserve to be quashed:

- (i) **S.R.Julka Vs. Union of India and others, 1988(6) ATC 18**
- (ii) **Ashok Kumar Vs. Union of India and others, 1989 (4) SLJ(CAT) 209.**

13. From the above discussion, it is clear that the respondent no.2 has recorded the adverse remarks not on the basis of an objective assessment of the performance of the applicant, but on subjective considerations and because of her personal prejudice against the applicant. In addition, the recording of the ACR by respondent no.2 and its review by Shri B.K.Saha suffer from legal infirmities having been done without following the mandatory requirements of the AIS(CR)Rules,1970 and instructions issued therein. In view of this, we have no hesitation in quashing and setting aside the adverse remarks and the comments of the reviewing authority.

14. The prayer of the applicant for re-assessment of her performance, however, cannot be acceded to, as the rules do not provide for any such re-assessment. The only two alternatives available to the Government while considering the representations against adverse remarks are - (a) rejecting the representation or toning down remarks, or (b) expunge the remarks. In the instant case, two of the adverse remarks have already been expunged by the government and the remaining ~~three~~ remarks are directed to be expunged, as a result of this OA. Necessary follow up action

*Judgment corrected
as per CTRW/did
S-2-07-47 in
RANo-34/06*

*01/2/2009
Dy. Regy.*

regarding expunging the adverse remarks and obliterating the observation of the reviewing authority by making suitable entries in the ACR of the applicant for the year 2003-2004 may be completed by respondent no.1 within a period of one month from the date of receipt of a copy of this order.

15. In the result, the OA is allowed with the directions as contained in the preceding paragraph. No costs.

(A.K.Gaur)
Judicial Member

(Dr.G.C.Srivastava)
Vice Chairman

rkv

पृष्ठांकन सं ओ/न्या..... जबलपुर, दि.....
पत्रिलिपि अन्यो हितः—
(1) सचिव, उच्च व्यायालय वार एकाम्पिशान, जबलपुर
(2) आवेदक श्री/श्रीमती/कु..... के काउंसल
(3) प्रत्यर्थी श्री/श्रीमती/कु..... के काउंसल
(4) व्यायाल, लेज़ा, जबलपुर एकाम्पिशान
सूचना एवं आवश्यक कार्यालयी हैं
उप रजिस्ट्रार

12/11/2008
J.K. 12/11/2008
em received 12/11/2008
12/11/2008

Approved
31.10.06