

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR**

Original Application No. 631 of 2004

Jabalpur, this the 22nd day of August, 2005.

Hon'ble Mr. M.P. Singh, Vice Chairman

Hon'ble Ms. Sadhna Srivastava, Judicial Member

P. Bhargava, IAS

AGE 55 years,

S/o Shri Late Gokul Das Bhargava,

R/o C-2/21, Char Imli,

Bhopal(M.P.)

Applicant

(By Advocate – Shri S.Nagu)

VERSUS

1. Union of India through Secretary,
Department of Personnel &
Training, Ministry of Personnel,
Public Grievances and Training,
North Block, New Delhi.
2. Union of India through Secretary,
Deptt. Of Indian Systems of
Medicine & Homoeopathy, Ministry
Of Health & Family Welfare, IRCS
Buildings,
Red Cross Road, New Delhi -01.
3. State of M.P. through Principal
Secretary, General Administrative
Department, Mantralaya, Vallabh
Bhawan, Bhopal(M.P.)

Respondents

(By Advocate – Shri S.A.Dharmadhikari for respondents No.1 & 2
None is present on behalf respondent no.3)

ORDER

By M.P. Singh, Vice Chairman –

By filing this Original Application, the applicant has sought the
following main relief :-



“8.1to quash the impugned order dated 8.3.2004 (Annexure-A-7).

8.2to quash the impugned adverse remarks communicated by memo dated 10.05.2000(Annexure-A-2).


8.3 to hold that the issuance of the impugned order and the passing of the adverse remark is arbitrary unlawful and unwarranted in the eyes of law.

8.4 to direct respondents to purge the adverse consequences, of the adverse remarks which have visited the applicant and to take appropriate corrective steps.

8.5to direct the respondent to reconsider the case of the applicant for appointment on deputation to Government of India as Additional Secretary by holding a review screening selection process by treating the impugned adverse remarks as non existent and appoint the applicant accordingly with effect from the date when his juniors as mentioned above were appointed as Additional Secretary/equivalent post, to Government of India with all consequential benefits with retrospective effect.”

2. The brief facts of the case are that the applicant is an Indian Administrative Service (for short 'IAS') officer of 1973 batch of Madhya Pradesh cadre. He was sent on deputation to Central Government and has joined as Joint Secretary in the Department of Indian System of Medicines and Homoeopathy, Ministry of Health and Family Welfare, in July,1995. While he was working as Joint Secretary certain adverse remarks for the year 1998-99 were communicated to him vide memo dated 10.5.2000 (Annexure-A-2). Aggrieved by the adverse remarks the applicant preferred a representation, which was rejected on 6.1.2003(Annexure-A-4). Aggrieved by this, the applicant filed an O.A.No.394/2003 and the Tribunal vide order dated 7.1.2004 had quashed the order dated 6.1.2003 and directed the respondents to decide the representation dated 6.6.2000 afresh in the light of the Rules of AIS and the decisions of the Hon'ble Supreme Court referred to in the order dated 7.1.2004, by passing a speaking order. However, the respondents have rejected the same vide impugned order dated 8.3.2004 (Annexure-A-7). Hence, this Original Application.

3. The respondents in their reply have stated that the comments in the matter were received from the Department of Indian System of Medicine and the reporting officer revealed that the applicant did not apprise the then Secretary of the various initiatives undertaken by him. The then Secretary has commented very adversely on the communication aspect and has gone to the extent of saying that the applicant kept her in the dark on many matters. She has further stated that the applicant never discussed or consulted her on any policy matter nor did he share any relevant information voluntarily. The then Secretary has also pointed out in her comments that the officer worked independently of her when as Secretary of the Department she had the responsibility for whatever had happened in the Department. The then Secretary has also commented that her relationship with the applicant was cold and the applicant was discourteous, argumentative and did not tolerate being contradicted. The respondents have further stated that the reasons for not appreciating the work of the applicant by the then Secretary were that the applicant was casual and negative in approach and submitted notes without checking the full facts and took independent decision on policy matters unilaterally without consulting the Secretary. The then Secretary in her remarks in the ACR of the applicant has also indicated that the officer's performance during the year was far from satisfactory and his behaviour smacked of insubordination. The respondents have further submitted that the delay in communicating the adverse remarks to the applicant was due to protracted correspondence between the Department of Indian System of Homeopathy and the Department of Personnel and Training. According to the respondents, the main contention of the applicant is that he was not heard, counseled, and warned on his deficiencies in his conduct or performance before putting down the adverse remarks. In this context, the respondents have submitted that the then Secretary, while recording her remarks in the CR of the applicant has stated that "even after pointing out deficiencies to the



applicants, the files came back without proper rectification. While commenting on the representation of the applicant the then Secretary has also stated as under :

“It is true that I did not give him any written warning. Being a junior IAS Officer, I did not want to spoil his career. I explained his shortcoming when I agreed to give him a chance to improve after I had made out a proposal for his transfer out of the department”.

The then Secretary in her comments has further stated that the applicant's performance was not of the standard expected of a Joint Secretary to Government of India. She has also pointed out that the applicant was given an opportunity to improve after being warned orally about his functioning but there was no improvement.

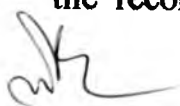
4. The respondents have also further stated that the successor Secretary to the Department of Indian System of Medicines and Homeopathy has also given her comments on the representation of the applicant as under:-

“In absence of any written warnings does not seem to detract from the adverse remarks, because it is clear from examples quoted from files that the officer was pulled up every now and again and the Secretary has referred to number of occasions when she has tried to tell the officer to improve himself. The overall grading given to the officer is Average. In the light of the above and copious examples of less than acceptable behaviour and contribution of Shri Bhargava by the former Secretary, it is difficult on the basis of the representation of Shri Bhargava to modify the adverse remarks”.

In view of the aforesaid facts, the respondents have submitted that the present Original Application is liable to be dismissed.

5. We have heard the learned counsel of both the sides.

6. Vide our order dated 29.3.2005, we have directed the respondents to produce the ACR dossier of the applicant as well as the records relating to processing of adverse remarks and also the



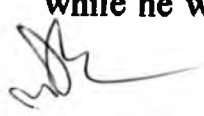
letter relating to premature reversion of the applicant to the State Government. The respondents have produced the same on 6.6.2005.

7. The main contention of the learned counsel for the applicant is that the applicant has not been given any written advice pointing out his deficiencies so that he could improve, and in the absence of such advice, the adverse remarks recorded by the reporting officer requires to be expunged as it adversely affects the career of the senior officer of the IAS. To support his claim, he has relied upon the decisions of the Hon'ble Supreme Court in the cases of U.P.Jal Nigam Vs. Prabhat Chandra Jain, 1996 SCC(L&S)519; State of U.P. Vs. Yamuna Shanker Misra and another, (1997) 4 SCC 7; Swatantar Singh Vs. State of Haryana, (1997)4 SCC 14, and also of this Tribunal in the case of Ajeet Singh Choudhary Vs. Union of India and others, O.A.No.705 of 2003 decided on 25.8.2004.

8. On the other hand, the learned counsel for the respondents has stated that the applicant has been warned orally to improve himself and on file also he was commented upon about his deficiencies and was asked to improve upon but he did not make any effort to improve his performance as well as his behaviour. He has also submitted that the successor Secretary under whom the applicant has not worked has also given her views while considering the representation of the applicant. She has stated that it is revealed from the files that the applicant was pulled up every now and again and was asked to improve but the applicant did not make any effort to improve and, therefore, the adverse remarks communicated to the applicant do not warrant any interference by this Tribunal.

9. We have considered the rival contentions of both the parties.

10. We find that the applicant, who is an IAS officer of 1973 batch of Madhya Pradesh cadre, has been given certain adverse remarks by the reporting officer in his confidential report for the year 1998-99, while he was working as Joint Secretary in the Department of Indian



System of Medicine and Homoeopathy, Ministry of Health and Family Welfare. The applicant had earlier approached this Tribunal for quashing those adverse remarks in O.A.No.394/2003, and the Tribunal vide its order dated 7.1.2004 had disposed of the said OA with a direction to the respondents to consider the representation of the applicant dated 6.6.2000 afresh, in the light of the All India Services Rules and the decisions of the Hon'ble Supreme Court referred to therein, and pass a speaking order. In pursuance of the said direction, the respondents have passed the impugned order dated 8/9.3.2004 (Annexure-A-7).

11. From the pleadings we find that the applicant has taken following main grounds for expunging adverse remarks recorded in his ACR for the year 1998-99:

- (i) that in the entire service record of the applicant, which has consistently been of outstanding nature, the impugned remarks is the sole blemish, which exists more because of personal whims and caprice rather than an outcome of an objective dispassionate assessment of the performance of the applicant.
- (ii) That the applicant believes that the Minister for Health & Family Welfare, who is the reviewing authority, while recording his dissent to the impugned adverse remarks, had observed that the remarks were unfounded, untenable and unwarranted and would affect the future career prospect of the officer which has been unblemished and meritorious.
- (iii) That the applicant has not been given any written advice pointing out his deficiencies so that he could improve, and in absence of such an advice, the adverse remarks recorded by the reporting officer are to be expunged as it adversely affects the career of the senior officer of the


 IAS.

- (iv) One of the ground taken by the applicant, in sub-para 4 of his concluding paragraph of his representation dated 6.6.2000 (Annexure-A-3), is that the reporting officer has written the report after retirement and this is in clear violation of Rule 5(5) of the All India Services (Confidential Rolls) Rules, 1970. Therefore, the adverse remarks may be expunged only on this ground.

12. We have carefully perused the records relating to the processing of adverse remarks recorded in the ACR of the applicant for the year 1998-1999. We have also seen the entire ACR dossier of the applicant.

13. We find that the aforementioned first ground taken by the applicant that his record has consistently been of outstanding nature, is not correct. On perusal of ACR dossier of the applicant, we find that the annual confidential reports of the applicant ever since he joined the IAS are generally 'very good'. We also find that in many cases his ACRs are written at only one level i.e. the reporting officer and certificates to the effect that remarks of the reviewing & accepting authority could not be recorded as they have retired/ demitted office are recorded. In some cases, the reporting officers have graded him as 'outstanding' but the higher authorities have either not agreed to that grading or down graded the grading; or it is written only at the level of reporting officer as the reviewing/accepting authority have demitted their office, by the time the ACR was written by the Reporting Officer.

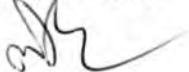
13.1 We also find that the applicant was on deputation as Joint Secretary in the Department of Indian System of Medicine & Homoeopathy, Ministry of Health and Family Welfare, from July, 1995 to July, 1999. During this period, the position with regard to the confidential report of the applicant is as follows:



- (i) From 6th July, 1995 to 31st March, 1996 and from 1st April 1996 to 6th September, 1996 – his ACRs could not be written as the concerned reporting officer, reviewing officer and accepting authority have retired before doing the same, and a certificate to that effect has been recorded in his ACR for the aforesaid period.
- (ii) From 6th September, 1996 to 31st March, 1997- his report has been written by the reporting officer but the remarks of the reviewing officer and the accepting authority could not be obtained as they have demitted the office and a certificate to that effect has been recorded in his ACR for the aforesaid period.
- (iii) From 1st April, 1997 to 31st March, 1998 – no report has been written and a certificate to the following effect has been recorded :

“Certified that the Annual Confidential Report for the period from 1.4.1997 to 31.3.1998 in respect of Shri Pradip Bhargava, IAS(MP:73), Joint Secretary in the Deptt. of Indian Systems of Medicine and Homoeopathy, Ministry of Health & Family Welfare was forwarded to the then PS to MOS (H&FW) by the Secretary (ISM&H) in March, 98 for reviewing/ accepting of the report by the then MOS(H&FW). As subsequent reminders to the then PS to MOS(H&FW) for retrieval of ACRs were of no avail and the successor to the then PS to MOS(H&FW) also intimated of not having the ACR of any of the officer, it was decided at the level of the Secretary (ISM&H) to request both the officers to resubmit the self appraisal to the concerned Reporting Authority.

Sh. Pradip Bhargava was requested again to submit the self appraisal to the concerned Reporting Authority. Shri Bhargava, Joint Secretary has not submitted the self-appraisal again in spite of the request of the Department. It appears that the ACR already submitted/ recorded must have been lost. Now the Reporting Officer has already



retired and the reviewing/ accepting officer has demitted the office. Hence the Annual Confidential Report for the year from 1.4.97 to 31.3.98 in respect of Sh.Pradip Bhargava, IAS (MP:73), Joint Secretary, Deptt.of ISM&H cannot be re-written”.

(iv) 1st April, 98 to 31st March, 1999 – the adverse remarks were recorded against the applicant for which he has filed the present O.A.

(v) 1st April, 1999 to 13th July, 1999 – The ACR for this period could not be written as Reporting/Reviewing Authority retired from service and accepting authority demitted office.

13.2 From the above observations, it is clear that out of the aforesaid four years' period, only one ACR for the year 1998-99, and only a part CR for the period from 6.9.1996 to 31.3.1997 were written by the reporting officer alone.

13.3 Thus, during the whole period of his Central Deputation of four years, apart from the ACR for the period 1998-99 which contains adverse remarks, only a CR for a part period from 6.9.1996 to 31.3.1997 has been written and that too only by the reporting officer alone.

13.4 We find that there have been different reporting, reviewing and accepting authorities at different point of time. It does not stand to logic that at all the times, the reporting officers have delayed the writing of the ACR of the applicant so that in the meantime the reviewing and accepting authorities have demitted their office. In the present case, for the year 1998-99 it is the applicant who himself has delayed the submission of his report. He has taken about three months to submit his self appraisal to the reporting officer. The applicant has



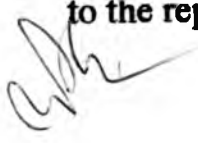
also not put the date in any of his self appraisal submitted to the reporting officer. It is seen from the note sent to the Appointment Committee of the Cabinet (for short 'ACC') that the applicant has submitted his self appraisal on 22nd June, 1999 for confidential report of the year ending March, 1999 i.e. after nearly three months of the close of the financial year.

14. As regards the second and fourth ground raised by the applicant as mentioned in para 11 above, we find that the then Minister of Health & Family has recorded his note as follows:

"I have gone through the adverse entries made in the ACR for the year 1998-99 of Shri Pradeep Bhargava, representation of Shri Pradeep Bhargava against the adverse remarks and the comments of the then Reporting Officer on the submissions made by Shri Bhargava

In the ACR of Shri Pradeep Bhargava for the year 1998-99 I find that the adverse remarks have been recorded by the then Reporting Officer, Smt. Shanta Shastri on 13.8.1999 after she had taken her voluntary retirement and also after two months of the completion of the financial year. As the remarks of the Reviewing/ Accepting Officer also could not be recorded and no prior written warning was given to the Officer regarding his shortcomings I am of the view that the future of an officer should not be allowed to be jeopardized by the remarks recorded by the reporting officer after two months of the completion of the financial year, which is not in accordance with the AIR (ACR) Rules. It may therefore be recommended to the ACC that the adverse entries made by the Reporting Officer in the ACR of Shri Pradeep Bhargava should be expunged"

Para 8.3 of the note recorded in File No.10(22)/2000/EO (PR) states that "Rule 5 of the AIR (CR) Rules, 1970 provides that a confidential report shall be written ordinarily within two months of the close of each financial year. According to this rule, the report of Shri Bhargava for the period 1998-99 was required to be written by the reporting officer latest by 30.5.99. But from the intimation given by Shri Bhargava, it has been observed that he had submitted his self appraisal to the reporting authority on 22.6.1999. It has also been observed from



the scrutiny of the ACR that the reporting officer who retired on 16.8.1999 recorded the remarks on 13.8.1999 i.e. before retirement and within the prescribed time limit. As such the contention of Shri Bhargava that the report has not been written by the reporting authority within the prescribed time-limit and also that the reporting authority has written the report after retirement is not correct”.

14.1 In view of the above factual position, we are of the considered view that the ground nos.(ii) and (iv) as mentioned above are not sustainable and are accordingly rejected.

15. As regards the third ground, we find that the reporting officer in her comments has submitted that the applicant was orally warned. However, the comments of two successor Secretaries to the Department of Indian System of Medicine & Homeopathy, have also been obtained by the Government. The successor Secretary has given her views in the matter as under :

“In absence of any written warnings does not seem to detract from the adverse remarks, because it is clear from examples quoted from files that the officer was pulled up every now and again and the Secretary has referred to number of occasions when she has tried to tell the officer to improve himself. The overall grading given to the officer is Average. In the light of the above and copious examples of less than acceptable behaviour and contribution of Shri Bhargava by the former Secretary, it is difficult on the basis of the representation of Shri Bhargava to modify the adverse remarks”.

Another successor Secretary, whose remarks were also obtained before the proposal was sent to the ACC for consideration, has also agreed with the comments given by the first successor Secretary. Therefore, the ground taken by the applicant that he was not given any warning before recording the adverse remarks is also not tenable and is rejected.



16. The decisions relied upon by the applicant in support of his claim are distinguishable with the facts of his case and, therefore, are not applicable in the present case.

17. We find that the applicant's case for expunction of the adverse remarks has been considered at the level of the highest authority in the Government i.e. the Appointment Committee of the Cabinet. We have carefully perused the observations recorded in the departmental file and we are satisfied that all the points raised by the applicant in his representation, have been taken into account and considered by the ACC in accordance with rules and instructions before rejecting his representation.

18. In the conspectus of the aforesaid detailed analysis of the case of the applicant we find that the present Original Application is bereft of merits and is accordingly dismissed, however, without any order as to costs.


(Ms. Sadhna Srivastava)
Judicial Member


(M.P. Singh)
Vice Chairman

Rkv.

पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....

पतिलिपि अर्बो दित:-

(1) सचिव, उच्च न्यायालय राब एडमिनिस्ट्रेशन, जबलपुर

(2) आवेदक श्री/श्रीमती/कु.....के कारुसल

(3) प्रतापी श्री/श्रीमती/कु.....के कारुसल

(4) न्यायालय, को.प्र.अ., जबलपुर न्यायापीठ

सूचना एवं आवश्यक कार्यवाही हेतु

1-7-05 उप रजिस्ट्रार

S. Koppu DNB
S. D. Sharma DNB
1-7-05 unklmdeo DNB

7/8/05
1-7-05