

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

OA No.326/03

Indore this the 10th day of January, 2005

C O R A M

Hon'ble Mr.M.P.Singh, Vice Chairman
Hon'ble Mr.Madan Mohan, Judicial Member

Dr.A.S.Balgir, I.O.F.S.
Joint General Manager
Ordnance Factory, Katni
R/o Bulgalow No.30
West Land, Ordnance Factory
Katni - 483 503.

Applicant

(By advocate : Shri S. Paul)

Versus

1. Union of India through
its Secretary
Ministry of Defence
Department of Defence Production
and Supplies
South Block
New Delhi.
2. The Union Public Service Commission
through its Secretary, Dholpur House
Shah Jahan Road
New Delhi.
3. The Director General
Ordnance Factory Board
10-A, Shahid Kuhdiram Bose Marg
Kolkata.
4. Shri V.S.Gupta (Retd.GM)
R/o Flat No.8, IInd Floor
Gangotri Apartments
Gol Bazar, Wright Town
Jabalpur.
5. Shri C.Chattopadhyaya
Additional General Manager
Ordnance Equipment Factory
Janpur (UP)
6. The General Manager
Ordnance Factory, Katni
Katni.

Respondents

(By advocate : Respondents Nos. 1, 2, 3 & 6 by Shri Harshit Patel
on behalf of Shri S.C. Sharma, departmental rep.
Sh. M.S. Kumar, DGM/Admin.GCF, JBP. is also present
and none for the private respondents)

O R D E R

By Madan Mohan, Judicial Member

By filing this OA, the applicant has sought the
following reliefs:

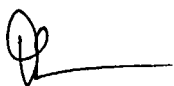
- (i) Set aside the ACR dated 13.5.99 (Annexure A5),
dated 27.10.99 (Annexure A6) and also the rejection
order dated 31.7.99 and 17.1.2000 (Annexure A7 &

Annexure A8.

(ii) Direct the respondents to review DPC/ACR to consider the case of the applicant for promotion over and above his juniors who were promoted vide order dated 20.8.02 (Annexure A15, 29.8.02 (Annexure A16. If necessary set aside the order dated 20.8.02 and 29.8.02 (Annexure A15 & A16).

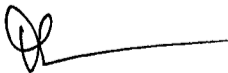
(iii) Direct the respondents to promote the applicant with all consequential benefits including seniority, arrears of wages and other attendant benefits.

2. The brief facts of the case are that the applicant is working on the post of Joint General Manager in Ordnance Factory, Katni. According to the applicant, his performance during his career was excellent. He produced record production of steel in the year 1974 which is still considered a bench mark of maximum steel production in the country. The applicant surpassed all previous targets and brought down the rejection percentage of defence stores. The applicant was shocked to receive adverse ACRs in the year 1997-98 and 1998-99. He preferred detailed representations against the said ACRs on 13.5.99 (Annexure A5) and dated 27.10.99 (Annexure A6). But these were rejected vide letter dated 31.7.99 (Annexure A7) and 17.1.2000 (Annexure A8), without application of mind. The applicant was having a legitimate expectation that his grievance would be redressed departmentally. The applicant therefore sought a personal hearing with the Chairman, OFB, which was granted. He also preferred a representation to the Chairman, UPSC. He was intimated that there is no provision for any such personal interview with the Chairman, UPSC. The applicant is senior to respondent No.5. The applicant was shocked when vide order dated 20.8.2002 (Annexure A15 and 29.8.2002 (Annexure A16) his juniors were promoted. Juniors to the applicant were



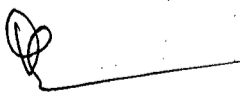
also promoted vide orders dated 31.10.2002 (Annexure A17), 27.11.02 (Annexure A18), 31.12.2002 (Annexure A19) and dated 27.1.2003 (Annexure A20). The applicant preferred a detailed representation on 13.12.02 (Annexure A-21). A perusal of impugned adverse ACRs would show that the shortcoming indicated in the ACRs are vague/ambiguous in nature. The aforesaid ACRs of the applicant are spoiled on extraneous consideration with malice and biased manner to deprive him from his legitimate right of consideration for promotion. Hence this OA is filed.

3. Heard learned counsel for the parties. It is argued on behalf of the applicant that the performance of the applicant has been excellent and extra ordinary. The shortcomings indicated in the adverse ACRs are vague and ambiguous in nature. No reasons, foundation or instances are quoted on the basis of which such a conclusion is arrived at by the official respondents and it was the duty of the reporting officer to make an objective assessment of work and to give necessary guidance and assistance to correct fault and deficiencies as the applicant should have known what his defects are so that he could try to remove them. No attention was paid to the manner and method of communication and the memo was couched in such a language as if to produce a sense of resentment depicting malafide intention or else the format or the language couched should be such that it does not produce resentment but it is given as a chance



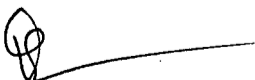
to try and improve himself in those defects. As per the instructions given from time to time, the reporting officer should have brought to the notice of the concerned employee about the shortcomings in writing, while no such communication is made by the reporting officer before writing the ACRs of the applicant for the period in question. Learned counsel of the applicant has drawn our attention towards a letter written by the applicant dated 27.10.99 (Annexure A6) in which it is mentioned that in the year 1998-99, 34 courses were conducted, 503 participants attended the course while the applicant was in charge, while this number is very less in previous years when other officers were in charge. The respondents have not controverted this fact and inspite of this fact, it is mentioned in the ACR for the year 1998-99 that "your taking of more initiative could have resulted in higher participation of trainees." This is apparently against the ^{report} report of the respondents. Our attention is drawn towards the ruling of the Hon'ble Supreme Court in the case of State of UP Vs. Yamuna Shankar Mishra (1997) 4 SCC 7.

4. In reply, learned counsel for the respondents argued that apart from the aforesaid impugned ACRs for the period 1997-98 and 1998-99, the applicant was previously intimated to remove defects and shortcomings and it was not necessary also because the applicant himself knew about his shortcomings and there was no malafide intention or biased view against the applicant while communicating the said ACRs. The applicant had preferred representations against the



aforesaid ACRs, which were duly considered by the competent authorities and passed detailed, speaking and reasoned orders according to law. The respondents have not committed any irregularity or illegality in their action.


5. After hearing the learned counsel for the parties and careful perusal of the records, we find that as per the instructions given from time to time, the reporting officer is required to bring to the notice of the employee about his shortcomings during the period of reporting and the shortcomings observed by the reporting officer should be communicated to the employee in writing. While the respondents have admitted this fact that except communication of both the ACRs, no other information was given to the applicant prior to the issuance of the ACRs. In this case, the respondents have not been able to convince the Tribunal as to why such course was not adopted while recording the adverse remarks for the period 1997-98 and 1998-99. The Hon'ble Supreme Court in the case of State of UP Vs. Yamuna Shankar Mishra (1997) 4 SCC 7 has held that "before forming an opinion to be adverse, the reporting officers writing confidentials should share the information which is not a part of the record with the officer concerned, have the information confronted by the officer and then make it part of the record. This amounts to an opportunity given to the erring/corrupt officers to correct the errors of the judgement, conduct, behaviour, integrity or conduct/corrupt proclivity." The letter written by the applicant dated 27.10.99 shows that in the year 1998-99, maximum courses were conducted i.e. 34 and




maximum participants attended while the applicant was in charge while in the preceding years, these numbers were quite less, even then the respondents have mentioned this adverse remark in the ACR for 1998-99 (Annexure A4) that "your taking of more initiative could have resulted in higher participation of trainees". The argument advanced by the counsel for the applicant in this regard is supported by this document, which is not controverted by the respondents and the aforesaid remark is also against the applicant which also supports the contention of the applicant that the respondents have communicated both these ACRs out of malafide intention. We also find that both the ACRs were communicated to the applicant after a considerable delay of more than one year while it should have been communicated within one month.

6. Considering all the facts and circumstances of the case and also the principle laid down by the Hon'ble Supreme Court in (1997) 4 SCC 7 in the case of State of UP Vs. Yamuna Shankar Mishra, the orders passed on the representations of the applicant, i.e. orders dated 31.7.99 and 17.1.2000 (Annexure A7 and Annexure A8) are quashed and set aside. The adverse remarks for the year 1997-98 and 1998-99 are expunged and these adverse remarks be obliterated from the aforesaid ACRs within a period of one month from the date of receipt of a copy of this order. Respondents are further directed to convene a review DPC to consider the case of the applicant for promotion with reference to his juniors and if he is found otherwise fit, he may be granted all consequential benefits.

7. The OA is allowed as above. No costs.


(Madan Mohan)
Judicial Member

aa/sa


(M.P. Singh)
Vice Chairman