

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 394 of 2003

Jabalpur, this the 7th day of January, 2004

Hon'ble Shri G. Shanthappa, Judicial Member

P. Bhargava, I.A.S., age 53
years, S/o. Shri Late Gokul Das
Bhargava, r/o C-2/21 Char Imli,
Bhopal, (M.P.).

... Applicant

(By Advocate - Shri S. Nagu)

V e r s u s

1. Union of India through
Secretary Deptt. of Personnel &
Training, North Block, New
Delhi.
2. Union of India through Secretary
Deptt. of Indian Systems of
Medicine & Homoeopathy, Ministry
of Health & Family Welfare, IRCS
Building, 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 - None)

O R D E R

The present OA is filed seeking the following
reliefs:

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- (i) to quash the impugned memo. dated
6.1.2003 (Annexure A-4) and the impugned
adverse remarks (Annexure A-2).
- (ii) to direct the respondents to expunge
the impugned adverse remark from the ACR of
the applicant for the appraisal year 1998-99.
- (iii) to direct respondents to purge the
adverse effect which the impugned remarks
have caused on the service career of the
applicant, by taking appropriate corrective
steps.
- (iv) to direct that the action of making the
adverse remarks is per se unlawful, arbitrary
and non-est in the eyes of law."



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2. The brief facts of the case are that applicant is a 1973 batch regular recruit and he was allocated to the M.P.Cadre. He has rendered nearly 30 years of ~~XXXXXX~~ service and he was no adverse remarks against him. After completing 25 years of outstanding service, the applicant was posted on deputation for five years to the Government of India in the Indian Council of Medical Research, Department of Indian Systems of Medicines and Homoeopathy, Ministry of Health and Family Welfare as Joint Secretary from July, 1995 onwards.

3. The applicant was the only Joint Secretary in the Department and he was discharged multifaceted functions, i.e., large number of autonomous bodies comprising of Research Councils and Educational National Institute of various systems of medicine. He was also one of the Board of Directors in the PSU, i.e., Indian Medicines Pharmaceutical Corporation Ltd. under the ISMH and he was also worked as Chairman of IMPCL for quite some time. During his tenure under the Govt. of India, he has contributed immensely to the progress and achievements of the department. During the appraisal year 1998-99, the applicant ~~has~~ continued to function as Joint Secretary in the same Department and authorities involved in the process of writing confidential rolls were as follows:-

REPORTING AUTHORITY : Secretary of the Department

REVIEWING AUTHORITY : Minister of Public Health & Family Welfare in charge of Indian Systems of Medicine & Homoeopathy.

4. The applicant has stated that the relationship with the reporting officer was cordial. The reporting officer had failed to appreciate the excellent work

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Sp.

done by the applicant. It is further stated that immediately after the end of the appraisal year 1998-99, on the behest of the then Reporting Officer, i.e., Secretary, he was prematurely repatriated to the State of M.P. much prior to the end of the tenure of five years of his deputation period, against which the applicant submitted his representation on 19.7.1999 vide Annexure A-1 for that the respondents have no response. After more than one year of the appraisal year 1998-99, the applicant has received the impugned memos dated 10.5.2000 on 22.5.2000 in which the adverse remarks for the year 1998-99 were communicated to the applicant vide Annexure A-2. Aggrieved by the adverse remarks, the applicant has submitted his representation dated 6.6.2000 (Annexure A-3). The said representation has been rejected vide an illegal order dated 6.1.2003 (Annexure A-4). The applicant has approached this Tribunal for quashing the said orders and ~~stated~~ ^{to} grant other reliefs as prayed in the OA.

5. The learned counsel for the applicant ^{as per} has stated that ^{lf} Rule 8 of the All India Services (Confidential Rolls) Rules, 1970, the respondents have not considered the case of the applicant, hence, the impugned orders are liable to be quashed. The case of the applicant is that the respondents are supposed to pass the orders on the representation within three months from the date of the representation but they have taken more than three months. Hence, the impugned order at Annexure A-4 is liable to be quashed. Further the case of the applicant that no show-cause notice was given to him to improve the performance in the next appraisal year, i.e., 1999-2000 and it is also stated that past and subsequent

performances were not considered. The learned counsel for the applicant has relied on the Judgement of the Hon'ble Supreme Court in U.P. Jal Nigam and Others v. Prabhat Chandra Jain and Others, AIR 1996 SC 1661, State of U.P. v. Yamuna Shanker Misra and Another, (1997) 4 SCC 7 and State of Haryana v. Shri P.C. Wadhwa, IPS, Inspector General of Police and Another, AIR 1987 SC 1201 in support of his contentions.

6. Per contra, the respondents have filed their reply and they have denied the averments made in the OA and they have supported the action taken by the respondents by issuing the impugned orders. It is stated by the respondents that they have passed the impugned orders with the approval of the competent authority, i.e., Minister of Health and Family Welfare. They have also taken the sanction from the Minister of Health and Family Welfare while reviewing the impugned order of confidential reports. There is no error or illegality crept while passing the orders.

7. The specific contention taken by the respondents is that the representation of the applicant was considered in the light of the comments of the reporting officer, the then Minister of Health & Family Welfare and was rejected after due application of mind. It is, therefore, denied that the representation of the applicant was rejected without any application of mind. It is also stated in their reply that while considering the representation against the adverse remarks submitted by the applicant, the comments of the reporting officer in the matter were invited. The reporting officer has denied any bias or personal whim and caprice against the applicant. In reply to the grounds urged by the applicant, it is stated

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that no doubt there was delay in communication of the adverse remarks but the delay was mainly due to protracted correspondence between the Ministry and the Department of Indian System of Medicines and Homeopathy, where the applicant was then working as Joint Secretary. The respondents have stated that in view of the above reasons and as the applicant has not made out any case, the application is liable to be dismissed.

8. Subsequent to filing the reply, the applicant has filed rejoinder to the reply of Respondent No.1. The applicant has stated in the rejoinder that the Reporting Authority once having written her remarks became functus officio, qua the remarks, after she demitted her office and as well as the service. Therefore, the Reporting Authority had no authority of law in making any remarks or comments after 16.8.1999. Thus, any comments made by the then Secretary, i.e., Reporting Officer, after 16.8.1999 and any action of considering and deciding the representation of applicant, is non-est in the eyes of law. Once the Reviewing Authority recommends for expungement, the adverse remarks of the Reviewing Authority ought to have been treated as ipso facto null and void, thereby extinguishing the need for communicating the remarks.

9. The respondent No.2 has filed his reply to the OA, wherein it has been stated that the adverse entry was communicated in May, 2000 against that a representation was made in June, 2000. In the reply given by DOPT, it is stated that the comments of the reporting officer were invited on the representation against the adverse remarks. The allegation that the representation was rejected without any application

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of mind was proved to be correct because the then Minister of the Department had recommended that the adverse remarks in the ACR for the year 1998-99 may be expunged.

10. After hearing the learned counsel for the applicant and after perusal of the pleadings available on record, and after perusal of the Judgement cited above, I decided to dispose of the case finally.

11. The case of the applicant is that the adverse remarks communicated vide Annexure A-2 dated 10.5.2000 are passed without issuing notices to the applicant, which violates the principles of natural justice. The principles of 'audi alteram partem' was also not followed before passing the impugned order dated 10.5.2000 (Annexure A-2). The applicant has submitted his representation challenging the said order vide Annexure A-3 dated 6.6.2000 (Annexure A-3) and the respondents have disposed of the same vide order dated 6.1.2003 (Annexure A-4). I have perused the Annexure A-4 which is not a speaking order, no reasons have been assigned and also not considered the contentions taken by the applicant in his representation dated 6.6.2000. I am of the considered view that respondents have passed the impugned orders without compliance of Rules 8 to 10 of the AIS (Confidential Rolls) Rules, 1970. It is relevant to extract the Rules 8 to 10 of the said rules, accordingly, the same are extracted below:

"Rule 8:

- (i) An adverse entry in the confidential report of a member of an All India Services, whether it relates to a remediable defect or an irreparable defect, should be

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communicated to him in full, but, while doing so, the gist of the good points should also be communicated. An adverse remark about integrity should also be communicated.

- (ii) Where a confidential report on a member of an All India Service shows that he has made efforts to remedy or overcome defects mentioned in a preceding report, the fact should also be communicated to him in a suitable form and a copy of such communication should be added to the confidential roll.
- (iii) The object is to let a member of the Service know that his good qualities as well as his defects had been recognised, and that notice had been taken of the improvement made by him.
- (iv) It is not necessary to disclose the identity of the authority, which has recorded the adverse remark since what the member of the Service should be interested in are the defects/shortcomings which his superior authorities have found in his work and conduct and not the particulars of the superior authority which recorded them in the confidential report. Apart from this, the disclosure of the identity of the superior authority is also likely to lead to unpleasantness and personal animosity. It is, therefore, desirable that while communicating the adverse remarks to the member of the Service concerned, the identity of the superior authority making such remarks should not normally be disclosed.
- (v) If, however, in a particular case, it is considered necessary to disclose the identity of the superior authority, it may be communicated.
- (vi) The adverse remarks should be communicated under the order of, and, wherever possible by an officer superior in status to the one to whom the remarks are being communicated.

Rules 9 and 10 -

- (1) Representation against adverse remarks should be objective, pertaining to the shortcomings noticed. It is found that the remarks were justified and the representation was frivolous, a note should be made in the confidential report of the member of the Service to the effect that he did not take correction in good spirit.
- (ii) If, after consideration of the representation of the member of the Service against the adverse remarks it is felt that the remarks should be toned down, the necessary entry should be made separately within proper attestation at the appropriate place of the report. Correction should not be made in the earlier entries themselves. In the rare event of a conclusion being reached that the adverse remark was inspired by malice or was entirely incorrect or unfounded, and, therefore, deserved

- (iii) Representation against or explanation of adverse entries should not be added to the confidential roll. If the representation was well founded, it would have resulted in the toning down or the expunction of the adverse remarks. If the representation was without substance, it was to be rejected. In either case, no useful purpose is served by adding the representation itself to the confidential roll."

12. Admittedly, the Annexure A-4, which was passed against the representation of the applicant, was passed after three months from the date of the representation, which is illegal and not in accordance with the aforesaid Rules 8 to 10 of the AIS (Confidential Rolls) Rules, 1970. Hence, the said impugned order is liable to be quashed.

13. In the result, for the foregoing discussion, the OA is disposed of with the following directions:

- a) The impugned order dated 6.1.2003 (Annexure A-4) is quashed.
- b) The respondents are directed to consider the representation dated 6.6.2000 (Annexure A-3) in the light of the Rules of AIS and Judgements referred above and pass a speaking order to the applicant within three months from the date of receipt of a copy of this order.

14. The OA is accordingly disposed of as partly allowed in terms of the above directions. No order as to costs.


(G. SHANTHAPPA)
Judicial Member

पृष्ठान्तक सं. लेखिका जन्मस्थान, दि.
 पृष्ठान्तक सं. लेखिका जन्मस्थान, दि.

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