

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

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Original Application No. 490/02

(Bijapur), this the 6th day of July, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Member (J)

A.P.Tiwari s/o late Ganga Prasad Tiwari,
U.D.C. (P.C. No. 40)
Works Office,
Gun Carriage Factory, Jabalpur.
R/o Q.No. 377/2, Tupe-II,
Panahara Line, G.C.F. Estate,
Jabalpur.

••Applicant

(By Advocate: Shri S.P. Tripathi)

-versus-

1. Union of India through
Secretary,
Ministry of Defence,
New Delhi.
2. Chairman/D.G.O.F.,
Ordnance Factory Board,
Kolkata.
3. General Manager,
Gun Carriage Factory,
Jabalpur.

•••Respondents

(By Advocate: Shri S.P. Singh)

O R D E R

By Madan Mohan, Judicial Member -

By filing this original application, the applicant has sought the following main reliefs:-

- i) The order Annexure A-1 and A-3 and A-6 be set aside and deficiencies and adverse remarks shown in Annexure A-1 and A-3 be removed from the record of applicant.
- ii) The applicant be freed from stigma and all consequential reliefs i.e. promotion etc. be given to applicant.

2. The brief facts of the case are that the applicant is posted as U.D.C. in Gun Carriage Factory, Jabalpur. Respondent no. 3 served memo dated 29.3.1990 (A/1) on the applicant about adverse entries in his ACR for the period ending 31.12.1989. Since the adverse entries and remarks

as shown in Annexure A-1 are false and baseless, the applicant challenged the said entries and filed appeal dated 4.5.1990 before the respondent no. 2 (A/2). Prior to issuance of the order (A/1), the respondent no. 3 had also served Memo dated 17.2.1989 (A/3) on applicant about adverse entries in ACR of the applicant for the period ending 31.12.1988. Since remarks made in the memo (A/3) were also false and baseless the applicant had also challenged the said entries vide appeal dated 21.8.1989 (A/4). The said appeals were not decided by the respondents. The repeated reminders were sent for deciding the aforesaid appeals. When he did not get any response, the applicant filed OA No. 669/91 in which vide order dated 20.6.1996 (A/5) direction was issued to the respondents to decide the appeals of the applicant. In compliance of the directions of the Tribunal, the respondents considered the appeals of the applicant and rejected the same. Hence, this O.A. has been filed seeking the aforesaid reliefs.

3. Heard the learned counsel for both the parties.
4. It is argued on behalf of the applicant that the applicant against the adverse remarks ending 31.12.1989 and 31.12.1988 filed appeals before the respondents but the said appeals were not decided by the respondents. In such situation he had to file an OA No. 669/91 which was decided on 20.6.1996 directing the respondents to decide the appeals of the applicant and only thereafter the respondents vide their order dated 7.11.2001 rejected the appeals. It is further argued that it was the duty of the respondents to issue a Memorandum bring out the shortcomings of the applicant and in case of no improvement, then only the adverse remarks were to be recorded in the ACRs. In this context, the learned counsel argued that no such memorandum was ever issued from the office of the respondents before recording the adverse entries in the respective ACRs. Hence, the said entries of adverse remarks are baseless and contrary to rules and are liable to be expunged. Learned counsel relied upon a decision

of the Tribunal rendered in O.A. No. 358/99 in the case of Ashok Kumar Mehta vs. UOI & ors. to support his contentions.

5. In reply, the learned counsel for the respondents argued that in case of the applicant, three different officers had assessed his performance in the year 1988. While assessing such performance they found 'average' performance in the attributes mentioned in Annexure A-3. When this was communicated to the applicant, it was in the overall interest to improve upon such short comings and warned him to avoid the same mistakes subsequently. But again in the year 1989 the applicant did not improve his performance and had the similar adverse attributes mentioned in Annexure A-1. This assessment was done by an entirely different set of superior officers. This itself amply proves that the applicant had such attributes and abilities which required improvement as observed by two different sets of officers. There has been no procedural lacunae or bias as claimed by the applicant. Hence, no irregularities or illegalities have been committed by the respondents while recording the adverse remarks in his respective ACRs.

6. After hearing the learned counsel for both the parties and careful perusal of the record, we find that in view of the judgement passed by this Tribunal in O.A. No. 358/99 decided on 3.11.2003 in which it is held that it was the duty of the reporting officer to issue a memorandum bringing out the short comings of the applicant and in case of no improvement, then only the adverse remarks were to be recorded in the ACRs. On our query to the learned counsel for the respondents in this regard, he submitted that the applicant was orally warned several times to improve upon his short comings but he did not improve the same. The reply of the respondents' counsel on the face of it seems to be unjustified and is not tenable in the eyes of law and the same is accordingly rejected.

7. In the result, the original Application is allowed.



The adverse remarks for the year ending 31.12.1988 and 31.12.1989 are expunged. The respondents are directed to obliterate these adverse remarks from the concerned ACRs of the applicant within a period of four months from the date of communication of this order. No costs.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman

[NA]

पृष्ठांकन सं. लौ/न्या..... जदलपुर. दि.

प्राधिकारिक दस्तावेज़ -

(1) रामेश, प्रभानन्द नाथ रामेश, जदलपुर

(2) अमेना श्री, श्रीमती (रु.) के काउंसल

(3) दत्तदीन श्री, श्रीमती (रु.) के काउंसल

(4) वंशालय, देवदार, जदलपुर नवालपुर

सूचना एवं आवश्यक कागजाती हेतु

पर्याप्त
उप रजिस्ट्रर 19-7-84

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