

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH
JABALPUR

O.A.No.340/1999

Hon'ble Sh. M. P. Singh, Vice Chairman
Hon'ble Sh. G. Shanthappa, Member(J)

Jabalpur, this the 17th day of November, 2003

Ashok Kumar Mehta
s/o Shri Chandradeo Ram
Deputy Controller of Explosives
Government of India
r/o C/o Shri Ramjeet Ram
Qtr. No.119-A, R/N-2, D-Sector
Barkhara, B.H.E.L.
Bhopal (MP).

... Applicant

(By Advocate: Sh. S. Paul)


Versus

1. Union of India through
the Development Commissioner
Small Scale Industries
Nirman Bhawan (South Wing)
7th Floor
New Delhi.
2. Director
Regional Training Centre
(Countersigning Authority)
Govt. of India
Kurla, Andheri Road
Mumbai.
3. G.D.Gidwani
(Reviewing Authority)
Deputy Director (Elec.)
Small Industries Service Institute
Govt. of India, Industrial Estate
Polo Ground
Indore - 452003 (MP).
4. G.M.Ambhore
Director
Small Industries Service Institute
Govt. of India, 10, Industrial Estate
Polo Ground
INDORE - 452 003 (MP).
5. P.M. Parlewar
(Reporting Officer)
Asstt. Director (Met)
Field Testing Station (FTS)
Govt. of India, Shed No.47-E
Industrial Area
P.O.Govindpura
Distt. Bhopal - 462 023 .. Respondents

(By Advocate: Sh. S.A.Dharmadhikari)

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By Sh. G. Shanthappa, Member (J):

 Heard the learned counsel for both the parties.

2. The above application is filed seeking the relief to quash^{er} and set-aside the order dated 21.7.1998 (Annexure A/1) and order dated 25.01.1999 (Annexure A/2) and further direction to the respondents not to take into account the adverse C.R. vide order dated 21.7.1998 for any purposes in the applicant's career and treat the same as if it is never issued.

3. The case of the applicant is that in pursuance ^{er}to a selection made by the Union Public Service Commission (UPSC), he was selected as a Small Industry Promotion officer (Chemical), the applicant was appointed on 15.4.1993 and he was posted at Bhopal. The said post of S.I.P.O. is a Group 'B' Non-gazetted post. It is stated that he was working with utmost honesty and to the entire satisfaction of all his superiors and he was never chargesheeted nor any disciplinary proceedings or criminal cases were pending against him. It is further stated that even no warning⁷⁴ letters or memos were issued to him. The said case is filed against the respondents that the respondents have recorded the adverse entries in the Annual Confidential Reports for the year 1997-98 which affects the service career of the applicant. Though the representation dated 17.8.1998 (Annexure A/4) was submitted, the said representation was rejected vide order dated 25.1.1999.

4. The applicant has further submitted that before the ^{gr}reasons recorded in the impugned order dated 21.7.1998, he has not been given an opportunity to defend his case. It is also stated that when the services of the applicant was unblamished, the respondents are not supposed to pass any kind of orders which are adverse to the service of the applicant. Hence, the impugned order passed by the respondents, which is placed at Annexure A/1 is illegal.
5. The applicant further stated that though the representation submitted by him as per Annexure A/4, the same was not considered by the appellate authority, i.e., Respondent No.2 and moreover, he has affirmed the orders of the reviewing authority, i.e., Respondent No.3. The applicant has impleaded the Director and Deputy Directors in their own name alleging that in a personal vengenes against the applicant, the impugned orders are passed.
6. The applicant has relied on the Judgement of this Tribunal in OA No.358/1999, decided on 03.11.2003, which was filed by the applicant earlier, wherein he had challenged the communication of adverse remarks in the years 1993-94 and 1994-95 and this Tribunal allowed the aforesaid OA and the adverse remarks made for the relevant years are expunged. In this context, it is stated that as the present application is filed for ~~the~~ ^{expunging the} adverse ACR pertaining to ~~the~~ ⁹⁸ year 1997-98, and as the same procedure has been followed by the respondents as was followed in the ^{decision in} earlier OA, ~~the~~ ^{the} OA No.358/1999 is also squarely applicable in the present case.

7. Per contra, the respondents have filed the reply stating that the procedure adopted by the respondents is in order and there is no illegality or irregularity while passing the impugned orders. The relevant paras of the reply are extracted below:

"a. No comments to offer as the applicant is challenging the order dated 25.1.1999 which was issued by the Director, SISI, Indore. Rather as per this order, some of the adverse entries which were made by the Reporting Officer 8.e. (Nature and Quality of work:- Agreed Except the first statement made in Col.3(b) Part-II by you i.e. My efforts has resulted in increasing the revenue earning of FTS, Bhopal, particularly of Chemical Lab. Revenue earnings of Chemical Lab this year is Rs.4.2604 lakh, which is a record for FTS, Bhopal, since its inception) by the order of 25th January, 1999 which has been informed to the applicant that the above remarks cannot be considered as adverse.

b. Possesses sufficient knowledge for preparation of the note on technical subjects. Not regular in writing and submission of daily diary.

Against above remarks, the following has been retained. "Not regular in writing and submission of daily diary". Only this remark will stand in the ACR.

c. Since, the work is of metallurgical engineering, - nature his knowledge; is limited to routine work being done. Needs improvement in dealing with diverse technical problems.

Against this remark following remarks has been retained:-

"Needs improvement in dealing with adverse technical problems"

d. This remark stands as it is.

e. This remark stands as it is.

f. This remark stands as it is.

g. Needs improvement in inter-personal relationship in office, punctuality & discipline;

Against this remark, following remarks has been retained:-

"Needs improvement in inter-personal relationships in the office, punctuality and discipline."

So from the above it will be seen that due consideration has been given to his representation of dt. 17.8.1998 exhibit A/4 page 17-21 of the application.

4.2 The applicant since period of his appointment has always been creating problems in the normal functioning of the institute. Initially, he has been repeatedly warned verbally by the Controlling Officer of the Centre i.e. Shri G.D.Gidwani, Dy. Director (Elect.). During visits of Shri Gidwani, Gidwani used to advice him to concentrate more on the work rather creating nuisance in the centre. Regarding his functioning in the centre, the adverse entries have been made in his Annual Confidential Reports for the year 1993-94, 1994-95 and 1995-96. Exhibits 1, 2 and 3. Hon'ble CAT will appreciate that the records of Shri A.K. Mehta have never been in conducive with the working of a Government Officer."

8. Along with the reply, the respondents have produced the personal data and the ACRs for the year 1993-94 (Photocopies), which is not relevant for this case. The relevant ACRs for this case is pertaining to the year 1997-98 which is not produced. The respondents have relied on the documents at Annexure A/6, A/7, A/8 and A/9, to support that the action of the respondents is in accordance with rules and instructions on the subject. Hence, the respondents have requested the Tribunal for dismissal of the OA.

9. We have heard the learned counsel on both the sides. After hearing the counsel on either side and on perusal of the pleadings on record, we have decided the said case only on the ground that whether the impugned orders



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~~ex~~ are sustainable in the eyes of law? whether ~~ex~~ the principles of natural justice and principles of audi alteram partem has been followed before passing the impugned orders at Annexure A/1 and A/2?
~~ex~~

10. On the perusal of the impugned orders at Annexure A/1, which has been issued by Respondent No.3 (Reviewing Authority) the following observations have been made by the reporting officer pertaining to the ACR for the year 1997-98:

- a) Nature & Quality of work - Agreed except the first statement made in Col.3(b) Part-II by you i.e. My efforts has resulted in increasing the revenue earning of FIS, Bhopal, particularly of Chemical Lab. Revenue earnings of Chemical Lab. this year is Rs.4.2604 lakh, which is a record for FIS, Bhopal, since its inception.
- b) Possesses sufficient knowledge for preparation of note on tech. subjects. Not regular in writing and submission of daily diary.
- c) Since the work is of Metallurgical Engg. nature his knowledge is limited to routine work being done. Needs improvement in dealing with diverse technical problems.
- d) Needs improvement in interpersonal relationship with superiors, colleagues and to work as member of team.
- e) Needs improvement in punctuality.
- f) Tries to disobey instructions of officer Incharge.
- g) Possesses sufficient tech. knowledge. Needs improvement in inter-personal relationship in office, punctuality & discipline."

11. Before recording the said adverse remarks in the relevant ACR, both the applicant and the respondents have submitted that no notice was issued to the applicant to show cause as to why the adverse entries should not be recorded in the ACR of the applicant. Though the

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[Signature]


respondents have submitted that the memos² were issued, hence the applicant did not improve his conduct and progress.

12. We have also perused the material submitted by the respondents at Annexures A/6 A/7 and A/8 which do not relates for the year 1997-98 hence we have not been convinced with the submissions of the respondents. The respondents have submitted that the Reporting Officer has applied his mind and he has issued the Memorandum after verifying ^{ea} and supervising the work of the applicant. The learned counsel for the respondents has not given correct answer regarding procedure followed by the reviewing authority while passing the order at Annexure A/1. On a close perusal of the impugned order dated 27.7.1998 which speaks that no notice was issued to the applicant before recording the adverse entries in his ACR, hence the same is liable to be quashed.

13. We also observed that the applicant has submitted his representation to Respondent No.2 i.e., Director, Regional Training Centre against the order of Respondent No.3. The Second Respondent has also not considered the case of the applicant for violating the principles of natural justice even though the appellate authority has modified this order to some extent, however, he has confirmed the order passed by the Reviewing Authority, i.e., Respondent No.3. Hence, we are of the considered view that the order passed by Respondent No.2 dated 25.1.1999 is not sustainable in the eyes of law as he has also not followed the principles of natural justice.

14. In the result, for the foregoing reasons,
the OA is allowed. The impugned orders dated
21.7.1998 and 25.1.1999 are quashed and set-aside.

No costs.


(G. SHANTHAPPA)
Judicial Member


(M.P. SINGH)
Vice Chairman

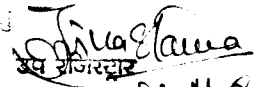
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प्रमाणित किया जाता है
कि

- (1) ...
- (2) ...
- (3) ...
- (4) ...

S. Paul, Asst.

SA Dhanu Chitani Asst.


21.11.03

Issued
21.11.03