

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 442 of 2000

Jabalpur, this the 17th day of September, 2003.

Hon'ble Mr. Anand Kumar Bhatt, Administrative Member

Akhilendu Arjariya
IAS,
S/o Bhagwandas Balendu
aged about 55 years
Additional Commissioner
Chambal Division Area,
Morena

APPLICANT

(By Advocate - Shri S. Paul)

VERSUS

1. Union of India
through Secretary
Ministry of Department
of Personnel and Training.
New Delhi.
2. Union Public Service Commission
through its Chairman
Dhaulpur house,
Shahjahan Road, New Delhi.
3. Govt. of Madhya Pradesh
through its Secretary,
General Administration Department
(GAD) Mantralaya, Vallabh Bhawan,
Bhopal.
4. Smt. M. Garde,
B-5/11
Arera Colony,
Bhopal.

RESPONDENTS

(By Advocate - Shri B. da. Silva for respondents No. 1 to 3)

O R D E R

This original Application is about the adverse remarks in the Annual Confidential Report (in short A.C.R.) for the year 1995-1996 of the applicant.

2. The facts of the case in brief are that for the year ending 31.03.1996 the applicant was communicated adverse C.R. on 29.01.1998 (Annexure A-2). The applicant submitted a detailed representation (Annexure A-3) against the said adverse C.R. on 24.03.1998. This representation was rejected vide Government of Madhya Pradesh, General Administration Department, letter dated

04.01.2000 (Annexure A-1).

3. The main grounds taken by the applicant in the original Application and stated in the oral submission by Shri S. Paul, the learned counsel for the applicant are that there is unreasonable and un-explained delay in communication of the adverse C.R., the remarks are vague and general and does not contain any particulars. It is a case of subjective assessment of the applicant which is not permissible and the representation has been rejected by non-speaking order, which is invalid. It has also been stated by the applicant that A.C.R. of 1994-1995 was similar in nature which was expunged by the State Government. The learned counsel has also stated that the reporting authority superannuated on 31.03.1997 and probably the A.C.R. was written much after the date of retirement, which is not as per rules.

4. In the oral submission Shri Paul stated that as per All India Services (Confidential Rolls) Rules, 1970 (in short C.R. Rules) a maximum of seven months' time is prescribed for communication of the adverse C.R. as per Rule 5, 6-A and 8 of the said rules. The said communication was after about a delay of 22 months which is 15 months beyond the prescribed time limit. He has cited a number of cases in this regard. 1996(10)SCC369 in M.A. Rajasekhar Vs. State of Karnataka and another, it has been held that if the work in all respects has been found satisfactory, adverse remarks without affording any opportunity to correct himself, has been held illegal. Similarly in S.R. Sharma Vs. UOI & ors. reported in 1993(25)-ATC 549, it has been held that natural justice requires that the employee must be informed if adverse remarks are based on specific incident or material about which a mention has been made in report. In 1991 (16) ATC 748-L.Jayaseelan Vs. Union of India and others, it has been held that reviewing officer who had not directly seen the applicant's work was/ *not justified in*

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learned counsel has recording remarks on the basis of the incident. Similarly the learned counsel has cited a number of judgments ^{regarding} ~~from~~ subjective assessment of the applicant e.g. 1994 Supp(3) SCC 424 - S. Ramachandra Raju Vs. State of Orissa, (1997) 4 SCC 7 - State of U.P. Vs. Yamuna Shanker Misra and another and 1991 MPLJ 725 - Mohinder Singh Chhikara Vs. Union of India and others. He has also cited a case of C.K. Gajanan Vs. Union of India and others reported in (1991) 15 ATC 586, where rejection of the representation by a non-speaking order has been held as in-valid. It has been stated that the adverse remarks in the A.C.R. of 1994-1995 are almost similar which have been expunged by the State Government. Shri Paul has also stated that as the reporting authority super-annuated on 31.03.1997 and as per Rule 5.5 of the C.R. Rules, the report has to be written before the reporting authority retires from service, there are adequate reasons to believe that the ACR was written after the reporting authority retired.

5. For the official respondents, Shri B.da.Silva has raised a preliminary objection that as per rules, the applicant should have given a memorial to the President of India, which he has not done before coming to the Tribunal and therefore he has not exhausted the departmental remedy available to him. He has also mentioned a letter No. 8/6/73-AIS(III), dated 15th December, 1973, ^{of Deptt of Personnel,} which enables the officer adversely communicated upon to give a memorial to the President and Rule 10(2) of the C.R. Rules will not bar such memorial to the President.

6. On the point of memorial to the President, the learned counsel for the applicant stated that the memorial to the President is provided in Rule 25 of All India Services (Discipline and Appeal) Rules, 1969 and not under the C.R. Rules. Therefore this is the only optional remedy available to the applicant, not mandatory remedy which has to be exhausted before coming to the Tribunal. He has cited a decision of the Jodhpur Bench of the Tribunal in Jaswant Singh Versus Union of

India and others reported in (1995) 29 ATC 267, wherein it has been held that in case of non-exhaustion of departmental remedies it is for the Tribunal to exercise its discretion and once the application has been admitted, equity requires that it should be disposed of on merits. He has also cited (2003) 2 SCC 107 - Harbanslal Sahnia and another vs. Indian Oil Corp. Ltd. and others, wherein it has been held that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is of discretion and not one of compulsion.

7. I have seen the pleadings on both the sides and heard the learned counsel of both the parties at some length.

8. The remarks given in the ACR of 1994-1995 (Annexure RJ-1) and in the present ACR of 1995-1996 (Annexure A-2) are almost similar and there is some weight in the argument of the learned counsel for the applicant that as the remarks for 1994-1995 were expunged by the State Government (Annexure RJ-2), similar remarks given in the subsequent year should also be expunged. The remarks communicated vide Annexure A-2 are very general and also it is difficult to believe that ^{In the remark that} the applicant was not always impartial in dealing with the subordinate staff and his behaviour is un-predictable, in the absence of any specific instances. On behalf of the applicant it has been stated that where the applicant was posted, the reporting officer stayed there only for 12 days and therefore the reporting officer did not see the work of the applicant closely.

9. Further as per Rule 5, 6-A and 8 of the C.R. Rules, the adverse remarks have to be communicated in six months after the end of the year in question. In this case there has been undue delay in communication of the adverse remarks of the ACR, which is of ^{1b 4} 22 months. It is not clear whether these remarks were written by the reporting officer before her retirement or not,

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as provided in Rule 5.5 of the C.R. Rules. I wanted to see the case file in this regard. However even after the respondents were given sufficient time to produce the same, they were not made available. Under the circumstances I can only say that the suspicion of the applicant in this regard may have some ~~truth~~ ^{An basis.}

10. The respondents have raised the objection that the applicant has not exhausted the departmental remedy by not giving a memorial to the President in this regard. The learned counsel for the applicant ^{has} rebutted this by saying that the provision of memorial is not provided in the C.R. Rules, and even if the departmental remedy is not exhausted the case should be decided by the Tribunal on merits as has been held in the case cited by him. In this connection the provision of Administrative Tribunals Act, 1985 in section 20(3) also goes against the stand taken by the respondents. Section 20(3) of Administrative Tribunals Act is as follows :

"(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial."

Thus this objection does not have merit.

11. *Thus, somehow* sufficient grounds have been made out to interfere with the said remarks and decision of the State Government in this regard. Therefore it is ordered that the adverse remarks communicated vide Government of Madhya Pradesh order dated 29th January, 1998 (Annexure A-2) and the rejection of the representation dated 24.03.1998 vide order dated 4th January, 2000, are quashed. The applicant will be entitled for all the consequential benefits as a result of this expunction.

12. In the result the OA is allowed. No costs.

Anand Kumar Bhatt
(Anand Kumar Bhatt)
Administrative Member