

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 519 of 2000

Jabalpur, this the 12th day of March, 2004

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

Jagdish Zumukhla Warkade
I.O.F.S., aged about 38
years, S/o Shri Zumukhla
Warkade, working as Works
Manager, Ordnance Factory,
Katni, Resident of 11,
Westland, Ordnance Factory Estate
Katni, District Katni(M.P.)
483 503

APPLICANT

(Applicant in person)

VERSUS

1. Union of India
Through Secretary,
Defence Production,
Ministry of Defence,
New Delhi.
2. Chairman(also D.G.O.F.),
Ordnance Factory Board,
10-A, S.K. Bose Road,
Calcutta(W.B.)
3. General Manager,
Ordnance Factory, Katni,
Dist. Katni(M.P.) 483 503
4. B.S. Chouhan
Joint General Manager,
Ordnance Factory Ambarnath,
Maharashtra.

RESPONDENTS

(By Advocate - Shri B.da.Silva Sr.Adv. alongwith Shri
S.Akhtar for official respondents.
None for private respondent)

O R D E R

By M.P. Singh, Vice Chairman -

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

"7.2 to issue a writ in the nature of Certiorari quashing
the promotion list contained in Annexure A-3.

7.3 to direct the respondents to grant
retrospective promotion to the applicant w.e.f.
23.4.1999 with all consequential benefits of
seniority, pay scale, allowances and posting.

7.6 to quash the adverse remarks of 1994-95
(Annexure-A-11) and also the memo of Annexure-A-13
rejecting the representation."

M.P.S.

2. The brief facts of the case are that the applicant is working as Works Manager with the respondents. He has been communicated certain adverse ^{remarks} recorded by the reporting officer for the period from 1.4.1994 to 31.3.1995. As a result of which, the applicant preferred representation to the respondents stating that the adverse remarks recorded in his ACR for the period from 1.4.1994 to 31.3.1995 have been communicated without giving him an opportunity or without bringing the shortcomings to his notice before recording the adverse remarks. ^{The applicant in person has stated that he} ~~He was never counselled~~ either orally or in writing before recording these adverse remarks. According to him, the instructions contained in the letter dated 31.01.2000 (Annexure A-20) issued by the Director General of Ordnance Factory addressed to the General Manager, have not been complied by the reporting officer while recording his ACR. Therefore, adverse remarks contained in the ACR are required to be expunged by the respondents. The respondents vide their letter dated 8.7.1996 (Annexure A-13) considered the representation of the applicant submitted by him and rejected the same. Aggrieved by this, the applicant has filed this O.A.

3. Learned counsel for the respondents on the other hand states that the applicant has been given oral counselling repeatedly by the reporting officer before recording the adverse remarks. Moreover, the letter dated 31.1.2000 issued by the Director General of Ordnance Factories to the General Manager relates to the subsequent period of recording the adverse remarks. Further this letter is an internal correspondence, which is addressed only to the General Manager, Ordnance Factory.

5. We have carefully considered the rival contentions of the parties and we find that certain adverse remarks in the confidential report of the applicant for the period from 1.4.1994 to 31.3.1995 have been recorded in his confidential report. As per instructions given from time to time, the reporting officer is required to give counselling to bring to the notice of an employee about the shortcomings observed by him during the period of reporting. The shortcomings observed by the reporting officer should be communicated to the employee in writing. In case, the employee does not show any improvement and does not make any effort to overcome the shortcomings the same should be recorded in his confidential report.

6. In this case we find that there is no documentary evidence to show that the applicant was given counselling by the reporting officer to bring the shortcomings to his notice. Therefore, the procedure laid down by the Government has not been followed by the reporting officer and the applicant has not been given any opportunity. Hence, the principles of natural justice have been violated by the respondents.

7. ^{with} ~~the learned counsel for~~ The applicant has cited the judgment of Hon'ble Supreme Court rendered in the case of State of U.P. Vs. Yamuna Shanker Mishra, reported in (1997) 4 SCC 7, the relevant portion of which is extracted below :-

"7.....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 officer to correct the errors of the judgment, conduct, behaviour, integrity or conduct/corrupt proclivity...."

DR

8. In the facts and circumstances of the case, we quash and set aside the order dated 8.7.1996 (Annexure A-13). The applicant is directed to make a fresh detailed representation to the respondents with regard to adverse remarks entered in his ACRs for the year 1994-95 within one month from the date of receipt of the order, and if he complies with the said direction, the respondents are directed to consider his representation, in view of the above observations, and also in the light of instructions issued by the Government in this regard from time to time and to take a decision within a period of three months from the date of receipt of such representation by passing a speaking, detailed and reasoned order.

9. With the above directions, the Original Application is disposed of. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

rkv.

applicant
T.S. Danlra

16/3/96

gssed
M. S. O.
16/3/96