

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 218/2012.

Dated this the 22nd day of June, 2018.

**CORAM:- HON'BLE SHRI ARVIND J. ROHEE, MEMBER (J)
HON'BLE Mrs. P. GOPINATH, MEMBER (A)**

Dr. Ganesh Prasad Jain,
S/o. Late Shri Hajarilal Jain,
Retired, Aged about 61 years,
Then working as: Chief Medical Officer,
[N.F.G.G.], Govt. of India Press, Gandhinagar,
P.O. Nashik - 422 106.
And permanently residing at:
26/1/1, Anugraha Bungalow,
Jai Bhavani Road, Nashik Road,
Nashik [Maharashtra Stat]- 422 102.

...Applicant

(By Advocate Shri S.R. Atre)

Versus

1. The Secretary, Govt. of India,
Ministry of Health & Family Welfare,
Nirman Bhavan, New Delhi- 110 108.
2. The Deputy Secretary,
Ministry of Health & Family Welfare,
Nirman Bhavan, New Delhi- 110 108.
3. The Director, Central Government Health
Scheme, Ministry of Health & Family Welfare,
Nirman Bhavan, New Delhi- 110 108.

...Respondents

(By Advocate Shri V S Masurkar and Mrs. H P Shah)

Reserved on :- 21.06.2018

Pronounced on:- _____

O R D E R

Per:- Mrs. P. Gopinath, Member (A)

This O.A. has been filed by the applicant under Section 19 of the Administrative

Tribunals Act, 1985 seeking the following reliefs:-

" a) This Hon'ble Tribunal be pleased to call for the record and proceedings of the present case and after examining the legality and propriety thereof, quash and set aside the adverse remarks/below bench-mark remarks entered in the Annual Confidential Report of the Applicant for the period from 1st of April, 2002 to 31st of March, 2003 and further direct the Respondents to appropriately upgrade the same and further grant him all the due benefits which would otherwise flow from such expunction of the adverse remarks, like consideration for promotion to the next higher grade namely Senior Administrative Grade along with all the consequential reliefs like arrears of salary, pay-fixation and also enhanced pensionary benefits.

b) This Hon'ble Tribunal be pleased to hold and declare that the communication dt. 9th of December, 2011 is bad in Law and the adverse/below bench-mark grading in the Applicant's Annual Confidential Report for the period from 1st of April, 2002 to 31st of March, 2003 deserves to be quashed and set aside and the same deserves to be upgraded and the Applicant deserves to be granted all the due benefits which may flow from such upgradation.

c) Pass any such Order and/ or Order as this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the present case.

d) costs of the Application be provided for."

2. Applicant was working as Chief Medical

Officer at Government of India, Press, Nashik from 05.07.2010 till 31.03.2011 when he retired from Government Service. Applicant was adversely reported upon by the General Manager, India Security Press, Shri Ganga Parkash. The Adverse remarks were communicated to the applicant on 28.06.2004 vide Annexure A-3. The applicant submitted a representation(Annexure A-4) aganist these adverse remarks but the same was neither considered nor a reply furnished to the applicant on his representation.

3. Applicant argues that the adverse remarks in his ACR 2002-03 were not only uncalled for but made by a Reporting Officer under whom he did not work. In support of the statement, he submits Annexure AR-1, AR-2 & AR-3 wherein Shri A N Ingle, Deputy General Manager, Bank Note Press, Dewas was given the additional charge of General Manager, India Security Press, Nashik and the said officer was required to report on his performance.

4. The applicant argues that Annexure A-3 adverse remarks communicated, did not indicate as to who was the Reporting Officer who had recorded the remarks. The information that the General

Manager, Shri A N Ingle had reported upon him whereas Shri Ganga Parkash was his Reporting Officer came to his notice when the below-benchmark recording in his ACR for the period 2001-02, 2002-03 and 2006-07 were again communicated to him on 23.11.2010 vide Annexure A-6 series of documents. On a perusal of the said documents, he observed that his Reporting Officer was Shri Ganga Parkash. On the basis of the representation furnished by the applicant subsequent to the 2010 communication of adverse remarks, the applicant's Report in 2001-02 and 2006-07 were upgraded as "Very Good (VG)". However, the Report of 2002-03 was retained as "Average".

5. Applicant's main contentions are he was reported upon by an Officer who was not authorized to be his Reporting Officer. Secondly, his representation against the adverse remarks dt. 12.07.2004 was not replied to by the respondent. In his representation made in 2004, the respondent argues that the applicant had not raised the issue that Shri Ganga Parkash was not his Reporting Officer. The applicant argues that in the document supplied to him communicating the

adverse remarks, the name of the Reporting Officer was not available and hence, he could not make a representation on the Report being made by an ineligible Officer.

6. The cause of action for the applicant does not arise with the 28.06.2004 communication of adverse remarks as he never received a reply to the representation made by him. It can be argued that within six months of not receiving a reply, the applicant could have approached the judicial forum. Applicant did not do so, and it should not be held against him. The cause of action revived on the communication of the adverse remarks vide respondent letter dt. 23.11.2010 when the ACRs for the period 2001-02, 2002-03 & 2006-07 were communicated to him and he submitted a representation and the Report of 2001-02 and 2006-07 were upgraded to "Very Good (VG)" and the Report of 2002-03 was retained as "Average". This decision was communicated to the applicant vide Annexure A-8 dt. 07.07.2011 and the applicant filed this OA on 03.02.2012. Hence, the issue of limitation argues that applicant would not apply in his case. In support of his argument, applicant makes the

following citations: **S.S. Rathore Vs. State of Madhya Pradesh (AIR 1990 SUPREME COURT 10) in CA No. 207/1984, Shri Rajiv Tandon Vs. GoI in CAT, Principal Bench in OA No. 412/2005, Shri B. Kumar Vs. Union Of India & Ors. In CAT, Principal Bench in OA No. 194/1986, Hon'ble Apex Court in Gurdial Singh Fijji Vs. State of Punjab & Ors. in C.A. No. 503/1978.**

The Tribunal had held that when a respondent chooses to entertain a new representation and examine it on merits, limitation cannot be affected adversely and will run from the date of constitution of the new representation. The date of reply furnished to the new representation will be the date of start of limitation. The Hon'ble Apex Court has also held that if an adverse report is communicated and the Government was not able to consider the representation made, the Principle of Natural Justice would entail that such a communication and non-reply by respondent cannot be taken cognizance of. Thus, the limitation in the case of the applicant in this OA cannot run adversely from the date of his first representation which was not replied to but would run from the date of rejection i.e. 07.07.2011. The delay in this

case cannot be counted from the date of first representation i.e. 12.07.2004 by applicant, as the same had not attained finality and it was the responsibility of the respondent to furnish a reply to the applicant. This was also upheld by the Principal Bench in OA No. 412/2005 wherein any such delay which is unreasonable or unexplained should not be allowed to work adversely on the applicant. This argument would work in favour of the applicant in this OA also.

7. Having settled the matter of delay, we will now look at the matter on merit. The respondent in the reply statement admits that the applicant's representation dt. 12.07.2004 against the adverse remarks, was not replied to. The respondent also does not contest that only an extract of the Annual Confidential Report 2002-03 was supplied to the applicant vide their letter dt. 28.06.2004 wherein name of the Reporting Officer was not available, and that the full ACRs were communicated subsequently on 23.11.2010. In the communication dt. 23.11.2010, the applicant observed that the ACR of 2002-03 was not written by the officer who had supervised his work. This argument of the applicant is supported by

Annexure AR-1, AR-2, AR-3 and AR-4 series of document wherein Shri Ganga Parkash was directed vide order dt. 09.04.2002 to take charge as General Manager of ISP, Nashik. This would cover the contested reporting period of applicant. Hence, the additional charge of Shri A N Ingle as General Manager, ISP, Nashik dt. 01.03.2002 stood overruled by the subsequent order of 09.04.2002, posting Shri Ganga Parkash as General Manager, ISP, Nashik. The ACR for the period 2002-03 produced by the applicant in Annexure A-6 series has been written by Shri A N Ingle, General Manager, ISP, Nashik on 09.01.2004. As per Government of India orders, in case a Confidential Report has been written by an ineligible Reporting Officer, the same should be overlooked.

8. The applicant's prayer is for consideration for promotion to the senior administrative grade which was due to him in the year 2008. This argument of the applicant is based on the fact that the junior of applicant was promoted in the year 2008. For the promotion, the ACRs for five years are required to be considered. Ignoring the ACR of 2002-03

which was written by an ineligible Reporting Officer, the applicant's Confidential Report for the period 2001-02, 2003-04, 2004-05, 2005-06 and 2006-07 needs to be considered for promotion in year 2008.

9. The Confidential Report of 2002-03 is expunged on account of report by an ineligible Reporting Officer and the applicant is required to be considered on the basis of Confidential Reports excluding the expunged Confidential Report. The applicant if considered fit for promotion on the basis of the above records after expunging the Confidential Report of the year 2002-03, would be eligible for promotion and all consequential benefits and a revised fixation of pension based on the promotion and consequential benefits so drawn.

10. Ordered accordingly.

(P. Gopinath)
Member (A)

(A. J. Rohee)
Member (J)

Ram.