

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.920/2003

New Delhi this the 6th January, 2004

Hon'ble Shri Shanker Raju, Member (J)

Shri Lal Chand Vasisht,
S/O Shri Chandgi Ram,
Personal Assistant,
Air Headquarters, New Delhi,
R/O E-109, Sarojini Nagar,
New Delhi-110023

... Applicant

(By Advocates Shri L.C.Goyal with
Ms.Manjeet Madhu Singh)

VERSUS

1. Union of India,
Through: The Joint Secretary
(Trg) and C.A.O., Ministry of
Defence, Govt. of India,
C-II, Hutments Rajaji Marg,
New Delhi 110011
2. The Addl.Director General (P&A),
Directorate General of EME,
Army Headquarters, New Delhi-11
3. The Director, EME (Trg.),
(Reporting Officer),
Directorate General of EME (Trg.),
Master General of Ordinance Branch,
Army Headquarters, DHQ PO,
New Delhi.

... Respondents

(By Advocate Smt.Harvinder Oberoi)

O R D E R (ORAL)

Hon'ble Shri Shanker Raju, Member (J)

Applicant impugns adverse remarks recorded in his ACR for the year 2000-2001 as well as order dated 25.7.2002 and also orders passed on his representation dated 29.11.2001.

2. Applicant while posted as Personal Assistant in view of his self appraisal and as the procedure of only one officer in writing ACR is

maintained, i.e., reporting officer was conveyed adverse remarks which, inter alia, included grading him as "below average".

3. On representation, the representing authority though upgraded the ACR to average but maintained the adverse remarks which have not been expunged. The memorial preferred against the order on representation was rejected, giving rise to the present OA.

4. Learned counsel for applicant though at the outset states that as Shri R.S. Batra Additional Director General, EME(P&A) who has decided his representation in review has not seen working of applicant for at least 90 days, the order passed is liable to be set aside. It is further stated that while down grading the steps taken to improve upon the performance of applicant have not been followed.

5. On the other hand, respondents' counsel vehemently opposed the contention and produced the original record. It is stated that a show cause notice was issued to applicant to improve upon his performance by the Reporting Officer which is due compliance of the procedure and as there is no reviewing authority, the order passed, upgrading the ACR is by the representing authority.

6. I have carefully considered the rival contentions of the parties and perused the material on record.

7. The grounds raised to assail the ACR on account of its review by an authority under whom applicant has not worked for 90 days is unfounded as the Additional Director General has not acted as a reviewing authority but acted on the representation of applicant against adverse remarks. As there is no procedure for reviewing the ACR and only reporting officer gives grading, the grounds cannot be countenanced.

8. In so far as the ground that once the ACR has been upgraded, the adverse remarks cannot be retained, I find that while the representing authority dealing with the ACR should apply its mind and record reasons, which is not necessarily to be recorded in the order but must appear in the file. From the perusal of the order passed by the representing authority on 29.11.2001, the same is contradictory to the effect that simultaneously with upgrading the ACR as average, the adverse remarks have been retained. An average grading would not constitute adverse ACR. Retaining the adverse remarks is an order in contradiction. On perusal of the file, I do not find any reason recorded by the representing authority.

9. In the result for the foregoing reasons, OA is partly allowed. Impugned orders dated 29.11.2001 and 25.7.2002 are quashed and set aside. Respondent, i.e., the representing authority shall pass a fresh order in the light of upgrading of the ACR of applicant to "Average", within a period of two months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)