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CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH

OA NO. 2310/2003

New Delhi this the 17th day of May, 2006

Hon'ble Mrs. Meera Chhibber, Member (J)

Yogesh Kumar ACIO, Grade 1,
C/0 (MHA) Intelligence Bureau,
Govt. of India, Suraj Nagar North,
Moga, Punjab.

(By Advocate Shri Vivek K. Goyal)

Applicant

VERSUS

1. Union of India through Secretary,
Ministry of Home Affairs,
Govt. of India, New Delhi.
2. Joint Director NE,
Subsidiary Intelligence Bureau,
Ministry of Home Affairs,
Govt. of India, Shillong.
3. Shri D.P. Sinha,
then Deputy Director,
Subsidiary Intelligence Bureau,
Ministry of Home Affairs,
Govt. of India, Shillong
4. P.T. Bose,
Assistant Director (I),
Subsidiary Intelligence Bureau,
Ministry of Home Affairs,
Govt. of India, Shillong

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5. Deputy Central Intelligence Officer (LS),
Subsidiary Intelligence Bureau,
Ministry of Home Affairs,
Govt. of India, Shillong

..Respondents
(By Advocate Shri S.M. Anf)

ORDER (ORAL.)

By this OA, applicant has challenged adverse remarks for the year 2001-2002 and the order dated 30.9.2002 whereby his representation has been rejected. It is stated by applicant that on 21.6.1999 he was transferred to Shillong and posted at Nongstoin out post from July 1999 to 24.11.2000 and w.e.f. 30.11.2000 he was posted in LS branch Subsidiary Intelligence Bureau's headquarters Shillong.

2. Vide Memo dated 7.6.2002 applicant was conveyed adverse remarks and overall grading below average in his ACR for the year 2001-02. It is submitted by applicant that during the period of report Shri S.K.Gupta, DCIO-LS SIB Shillong was his reporting authority, while Shri P.T.Bose, AD(I) was reviewing authority and Shri D.P.Sinha, DD(S) was countersigning authority. Counsel for applicant submitted that as per the Govt. of India's OM while writing report, specific incidents have to be mentioned in the ACR but no illustrations were given while writing adverse



remarks. He has also submitted that reporting officer Shri S.K.Gupta was biased against applicant. No guidance or training was given to applicant, when he joined in LS in November, 2000. No chair and table was given to him, so that he could start his official work. When he asked for it, he was informed by Shri Gupta either to sit in the Triang Guest house or roam in the markets of Shillong city without any official assignment, as a result of which applicant had to spend most of his time in the office canteen which shows how the applicant was humiliated and insulted by the said Shri Gupta. No shortcomings were pointed out to him and the said Shri S.K.Gupta having ill feeling, instigated Shri D.P.Sinha the then Deputy Director (S) as a result of which Shri D.P.Sinha, DD(S) issued a memorandum to applicant threatening him of departmental action under CCS(Conduct) Rules even though he was not the disciplinary authority of the applicant.

3. Being aggrieved applicant gave representation but till date his representation on the said issue has not been decided. The said Shri D.P.Sinha issued another Memo. dated 6.8.2001 on unfounded and baseless allegations. Applicant gave his explanation but no order was passed on the said explanation. Applicant requested on 5.11.2001 to Shri D.P.Sinha, DD(S) for sanctioning newspaper because that is required for detailed information about the region so that he may do his duty of gathering



intelligence efficiently but instead of sanctioning the said Shri D.P.Sinha, DD(S) asked the applicant, first he should show interest in work then all facilities would follow. Against this also, applicant gave representation on 12.11.2001 but the same was not replied to. Finally applicant submitted representation to Director (Intelligence Bureau) on 26.11.2001 but on that also no reply has been filed till date. In other words, applicant has submitted since no facilities were given to him, he could not do his work effectively, as such adverse remarks are not sustainable. The same may accordingly be quashed and set aside.

4. In order to substantiate malafides counsel for the applicant submitted that cash compensation claim in lieu of duties performed by him (along with other staff members) on holidays were forwarded by Shri S.K. Gupta but even that claim was withheld by him in an arbitrary manner in order to cause applicant a substantial financial loss. He has also submitted that Mr. Gupta was not competent to write the ACR of applicant for the year 2000-2001 as he had worked with him for less than 3 months, yet Shri Gupta wrote his ACR by exceeding his powers/jurisdiction with the object to victimize him as he belongs to a low caste. Being aggrieved applicant filed a memorial before the President of India followed by reminder dated 23.4.2003 but till date no decision has been conveyed to applicant on his memorial. He also

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submitted that since no target was assigned to him, adverse remarks are without any basis. The same may accordingly be quashed and set aside.

5. Respondents have opposed this OA. They have submitted that Special Director is competent authority to decide the representation of applicant but since there was no substantial material to expunge the adverse remarks, the competent authority has decided not to interfere in the matter and has observed that adverse remarks would stand. They have explained applicant has been transferred from SIB Shillong to SIB Chandigarh on his own request. He has even been promoted as DCIO on 22.9.2003 in SIB Chandigarh. On merits, they have submitted that applicant has all along been a non performer. Therefore, illustration of specific incidents as regards his performance does not arise. On several occasions he was verbally advised to work and also given in writing to improve his performance. (copy of memo dated 6.8.2001 is annexed). Moreover in his representation dated 23.8.2001 applicant has himself admitted about his non performance, therefore, nothing more need be stated. They have denied that Shri S.K.Gupta was having ill feeling against the applicant. They have explained that in fact applicant had preferred a wrong claim for grant of additional HRA giving a particular address of Ambala City and on enquiry it was found that no member of applicant's family was staying therein. Therefore, finding the applicant's

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claim false Deputy Director took an adverse view and desired an explanation as to why action should not be taken against him for claiming addl. HRA but no charge memo. under CCS(CCA) had been issued by the DD(S) as alleged by the applicant. Applicant was issued Memo dated 6.8.2001 to tell him that he had not submitted a single report from the date of joining at SIB Shillong. Since applicant was having long experience no guidance for performing the duties was required. In any case if he had any difficulty, he could have asked the officer concerned but applicant did not do any work since joining at SIB Shillong and he spent time only in making representation on certain facilities and alleging baseless allegation against senior officers. If senior officer asked him to show some interest in the work it cannot be objected to. Even the memo had no effect on his performance. He did not listen verbal instructions and whenever he was asked to do something, he made representations against senior officers. Since applicant did not do any duty and there was no instance of performance, the question of warning or reprimand or displeasure of department could not have been issued.

6. As far as cash compensation is concerned. They have explained since applicant was not doing any work even on working days, there was no question of grant of cash compensation to him for simply coming to office on holidays specially when he has himself stated that no target was given to

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him. Applicant has not explained why he was coming to office on holidays. The allegation of being biased against Shri S.K.Gupta (who has since expired) is absolutely baseless. They have submitted that late Shri S.K.Gupta had written ACR of applicant, for the period from 1.4.2001 to 31.3.2002 as he was the supervisory officer of applicant. The reviewing officer had agreed with the views expressed by reporting as officer was a total non performer. Applicant's representation dated 18.6.2002 has been turned down vide SIB Shillong on 30.9.2002 but the memorial dated 11.10.2002 is barred by time. They have thus submitted that there is no merit in this OA. The same may accordingly be dismissed.

7. I have heard both the counsel and perused the pleadings.
8. For the period from 2001-2002 applicant has been given following adverse remarks:

1.	Ability for collection of intelligence or for performance of other intelligence tasks/enquiries.	Indifferent to utilise his ability
2.	Achievement in raising sources/contacts	Yet to open his account
3.	Ability to assess and evaluate information	Nothing worth mentioning
4.	Capacity for any other intelligence assignment	Nothing to write
5.	Intelligence and understanding	Yet to prove his understanding
6.	Industry	-do-



7.	Gist of good qualities and shortcomings	Indifference towards work
8.	Overall grading	Below average

9. Respondents have annexed memo dated 25.9.2002 to show that his representation dated 18.6.2002 against adverse remarks for the period 2001-2002 was considered and rejected by the competent authority. Similarly page 23 of the counter affidavit shows, that applicant had himself made a representation for his transfer to Chandigarh and his request was duly recommended for consideration vide letter dated 28.11.2002. They have also annexed Memo dated 6.8.2001 wherein DCIO LS had informed the applicant in writing that DD SIB Shillong has desired applicant to explain, as to why he had not been able to submit a single report from the date of joining at SIB. The very fact that applicant was asked to explain the reasons for his dismal performance and to activate himself in the field henceforth clearly shows that since applicant was not putting any reports he was advised to activate himself in the field, meaning thereby that applicant was advised even in writing for activating himself. In reply dated 23.8.2001 to this memo applicant had himself stated that his performance might not have come up to the desired level as he was new to the area and it took considerable time to familiarise with the developments, local language and Hindi language was not much of use in Nongstoin area. There was no staff



knowing local language, who could have helped him in his performance. For acute shortage of staff and absence of vehicle, he had been covering only bottom developments in west khasi hills district with limited infrastructural support available to him. This clearly show that applicant himself felt that his performance was not upto the mark. He only tried to give excuses for his non performances, therefore, the adverse remarks cannot be said to be arbitrary. They are supported and based on assessment of applicant's working abilities at Shillong. Applicant has tried to shift his responsibility on others by stating no duty was assigned to him by senior officer and at present there is not much scope for I.S work at Shillong simply to state that as he was not knowing local language or there was no staff knowing local language, he cannot absolve himself from his official duties, for which he was posted at Shillong. If he was not provided chair in the office, he could have taken up the matter with the senior officer but this is no reason for not doing his duty. In fact having been in IB, he was required to mix up with the persons and collect the intelligence reports. It seems he spent his time in giving representation after representation which is evident from his own averments without doing any duty worth mentioning. Applicant having worked with the respondents for sufficiently long period ought to have known the duties attached to the post he held. In case, he had any difficulty



or needed some help in understanding the background of that area, he should have taken help from his seniors instead of making representations against them on one ground or the other.

10. Applicant has alleged malafides against officers but he has not been able to show any justification as to why Shri S.K. Gupta would be biased against him. At one place applicant states Shri S.K. Gupta instigated the Deputy Director and at other place he states Shri Gupta had recommended his claim but the Dy. Director withheld it. Applicant must be clear in his own mind as to who was having the bias. At this juncture it would be relevant to refer to the case of K.P. Royappa Vs. State of Tamil Nadu reported in AIR 1974 (61) page 554. In the above case, the Hon'ble Supreme Court held that the burden of establishing malafides is very heavy on the person who alleges it. The allegations of malafides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. Thus malafides cannot be proved merely by making bald statement but one who alleges it must lay a foundation to prove the same by giving instance. In the instant case no foundation at all has been laid down as to why all the officers right from Shri S.K. Gupta DCIO to Shri D.P. Sinha, DD(S) would be biased against him. Interestingly even though in the petition, applicant has alleged malafides



against Shri S.K.Gupta by saying he was having ill feeling against him but the said officer has not even been made as a party by name. On the contrary applicant has impleaded Shri P.T.Bose, Asstt. Director (I) and Shri D.P.Sinha as respondents by name. Nothing has been proved on record to show why Shri D.P.Sinha was biased against him. I am, therefore, satisfied that no case for malafides has been made out by the applicant. On the contrary, from the Memo, it is clear that officers had informed him even in writing about his non performance. They were well within their rights to call applicant's explanations, if he was not performing his duties or if he had submitted false claims. By no stretch of imagination it can be stated to be illegal memos.

11. Respondents have infact produced original files also perusal of same shows that his case was duly considered by the authorities but since the remarks were based on record and looking at the non performance of applicant, the competent authority decided not to interfere in the matter and maintained the adverse remarks.

12. In any case, the work of an employee can best be judged by the officer under whom an individual works, sitting in court here, we cannot decide whether applicant had performed his duties or not. If officers were of the opinion that applicant was not performing his duties and so long the remarks

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are based on the material available on record. I do not think any interference calls for in such matters.

13. In view of above, I find no merit in this OA. The same is accordingly dismissed. No order as to costs.


19/5/06.
(Mrs. Meena Chhibber)
Member (J)

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