

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-2503/2003

New Delhi this the 1st day of June, 2004.

Hon'ble Shri Shanker Raju, Member(J)

Shri N.K. Goel,
Executive Engineer,
DCWE E/M, HQ CWE(Utilities),
MES, Delhi Cantt,
Delhi-10.

.... Applicant

(through Sh. O.P. Kalshian, Advocate)

Versus

1. Union of India through
the Secretary,
Ministry of Defence,
Govt. of India,
South Block,
New Delhi-11.
2. The Engineer-in-Chief,
Army Headquarters,
Kashmir House,
DHQ, P.O.,
New Delhi-11.
3. The Chief Engineer,
Headquarters Eastern Command,
Engineers Branch,
Fort William,
Kolkata-700021.
4. The Chief Engineer,
Headquarters,
Chief Engineer(AF),
Shillong Zone,
Elephant Falls Camp,
Nonglyer:P.O.
Shillong-793009.

.... Respondents

(through Sh. Rajeev Bansal, Advocate)

ORDER (ORAL)

Hon'ble Shri Shanker Raju, Member(J)

Heard the learned counsel of the parties.

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2. Though the learned counsel of the respondents states that in view of a letter written by the respondents seeking time to file an additional reply to bring on record new facts, the tenor of the letter shows that it is a casual request which cannot be countenanced because the matter is listed for regular hearing.

3. Applicant impugns adverse remarks communicated to him in his ACR for the period from 1.4.2000 to 31.3.2001. He also assails an order passed on representation dated 9.5.2002.

4. One of the contentions raised to assail the order is that both initiating as well as reporting officer had given him grading-B keeping in view the over all performance of the applicant as very good. The accepting signing authority did not agree with the remarks of IO and RO and without giving any details and reasonable opportunity graded the applicant as E which is adversely affecting his future prospectus.

5. It is also stated that representation has not been considered. There is no application of mind by the representing officer and the representation has been rejected by the non-speaking order. Learned counsel further stated that there is no provision for a third authority to be associated in the ACR it is only representing as well as reviewing authority. According to the learned counsel of the applicant is not prescribed under the rules.

6. Learned counsel of the respondents vehemently opposed the contentions and stated that on account of an unauthorised absence of the applicant is callous attitude of not applying with the directions of the superior authority, the remarks have been rightly entered in the ACR.

7. In so far as reasonable opportunity before writingg ACR is concerned a Constitution Bench decision in R.L. Butail Vs. Union of India & Ors. (1970(2)SCC 876) is referred to contend that no opportunity of being heard is to be given before any adverse entry is made.

8. As regards reasoned order on representation, a decisin of the Apex Court in U.O.L. Vs. E.G. Nambudiri (AIR 1991 SC 1216) is placed reliance to fortify the plea that there is no requirement on record that reasons in the representation in the order passed by the respondents against adverse remarks.

9. On careful consideration of the rival contentions and having regard to the decision of the Apex Court in State of U.P. Vs. Narendra Nath Sinha (2002(1) ATJ 118 where the Apex Court had held that in case the reviewing officer down grades the grading without any reason and without following the principles of natural justice, the same is not in accordance with law.

10. Following the above ratio, as I find that the IO and RO graded the applicant B the counter signing authority disagreed with the remarks and without stating any reasons and without affording any opportunity to the applicant down graded his grading from B to E cannot be countenanced.

11. As regards decision in R.L. Butail case is concerned the same is applicable where the ACR is written and I have no hesitation to hold that before writing ACR and communication no opportunity of being heard is to be accorded but the facts are distinguishable. the decision in Sinha's case has applicability in the present case. I follow the same.

12. Resultantly, O.A. is allowed. Impugned orders are set aside. Adverse remarks are expunged. However, this does not preclude the respondents from considering the matter afresh in the light of the decision in Sinha's case (supra). No costs.

S. Raju
(Shanker Raju)
Member(J)

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