

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2644/2003

New Delhi, this the 15th day of September, 2004

Hon'ble Shri S.K. Naik, Member(A)

Kamini Gupta  
SI in Delhi Police  
(PIS No.27870001)  
r/o 426, PTSa, Malviya Nagar  
New Delhi

.. Applicant

(Shri Atul Sharma, Advocate)

versus

1. Joint Commissioner of Police  
(Operations), PHQ, IP Estate, New Delhi
2. Sandeep Goel  
DCP(FRRO)  
R.K.Puram, New Delhi

.. Respondents

(Shri Rishi Prakash, Advocate)

ORDER

By virtue of the present application, the applicant has challenged the order dated 17.7.2002 by which her representation against the adverse remarks, communicated to her from the ACR for the period from 6.6.2000 to 9.10.2000 vide letter dated 28.9.2001, has been rejected and also the order dated 8.8.2002 by which her appeal against the order dated 17.7.2002 has been rejected. She has also sought a direction to the respondents to expunge the adverse remarks recorded in the ACR for the aforesaid period and communicated to her by letter-dated 28.9.2001.

2. According to the learned counsel for the applicant, these remarks were recorded with the malafide intention in pursuance of the perverse findings of the Departmental Enquiry held against the applicant with regard to the alleged incident in the intervening night of 9/10.10.2000 when the applicant was off duty. The counsel contends that the adverse remarks were communicated to the applicant after a lapse of one year and that her representation has been rejected without assigning any reason. That apart, the assessing authority was not acquainted with the work of the applicant for the aforesaid period. Also the applicant was not accorded sufficient opportunity to prove her case by the concerned authorities.

3. The counsel has also objected to the remarks "suspicious" against the column No.3 Moral Character as the assessing authority has not given any reasons for recording such a damaging and sensitive remark. According to him, the assessing

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authority has not applied any norms/conditions while recording this remark and therefore it needs to be expunged.

4. Respondents have contested the application. They have in their reply stated that no doubt the incident during the night intervening 9/10.10.2000 has a bearing on the assessment of the work and conduct of the applicant but have denied that the remarks contained in the ACR are based solely on that incident. Counsel for the respondents has contended that the remarks were based on the overall performance of the applicant observed over a period of time culminating in the aforesaid incident. It cannot therefore be said that it was only based on this solitary incident. The incident however could not be ignored since it was a serious lapse on her part inasmuch as she was found loitering in the departure lounge near the boarding area of Air France at 10.30 PM when she was off duty, along with one SI Om Prakash Jakhar to help one Surjit Singh of Jalandhar for obtaining boarding pass for Abidjan by flight No.AF 147. There has been a departmental enquiry into this incident and the applicant has been provided opportunity to defend herself including filing of an appeal as well as application before the Tribunal. For the purpose of observing the work and conduct the same could not be overlooked and has rightly been taken into consideration as part of assessment report.

5. On the question of delayed communication of the adverse remarks the counsel has stated that after the recording of the remarks by the reporting officer the ACR goes to the reviewing authority for his comments. In the case in hand, while the reporting officer Shri A.K.Sharma, AFRRO recorded his views on 18.4.2001, the adverse remarks were communicated to the applicant on 28.9.2001, after the same were reviewed by the reviewing authority. Applicant had received the communication conveying her the adverse remarks on 9.10.2001. Thus they were not communicated to the applicant after a lapse of one year as alleged and could be treated to have been conveyed within a reasonable period.

6. On the allegation of the applicant that the reporting officer was not acquainted with the work of the applicant and that the reporting officer was working as Additional Commissioner of Police in the Intelligence Bureau and therefore has nothing to do with the work of FRRO of the Delhi Police Unit, learned counsel for the respondents has stated that this contention of applicant's counsel has no basis as Shri A.K.Sharma, who was posted as AFRRO where he had joined on 5.6.2000 and was duly supervising the work of the Unit of FRRO including the unit to which the applicant belonged. Learned counsel therefore contends that the assessment contained in the ACR is based on established facts and objective consideration and

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there is no infirmity in the same. The allegation of malafide or contradiction also do not hold the ground as the applicant has not named any official by name nor any document as to why should there be any bias against her. In fact the confusion in her mind is evident from the fact that in para 4(b) of the OA she has alleged that ACP Shri Om Prakash Yadav has given the adverse remarks while in fact it was Shri A./K.Sharma, AFRRO who was in charge of the Unit has rightly recorded the remarks. The counsel therefore contends that in this background of the matter, the OA is frivolous and needs to be dismissed.

7. I have heard the learned counsel for the parties and considered the pleadings.

8. Since the applicant has alleged that the reporting officer had been working in the Intelligence Bureau and had no locus standi to report on the work and conduct of the applicant, I have called for the ACR and also the paper with regard to the posting of Shri A.K.Sharma. I have perused the documents. I find that Shri Sharma remained posted in the Foreign Regional Registration Office and he had joined there on 5.6.2000. He had remained on various shift duties. Under the circumstances I find that the allegation of the applicant that Shri Sharma has no locus standi as he was working in the Intelligence Bureau has no substance,

9. I also find that the report for the period from 6.6.2000 to 9.10.2000 was written by Shri A.K. Sharma in his capacity as AFRRO and the same was rightly recorded. In so far as the question of delay is concerned, as has been explained by the learned counsel for the respondents and considering that after the recording of the assessment of the reporting officer it has to be reviewed by the reviewing authority and thereafter it takes sometime to communicate the same, I do not find the period unreasonably long and thus the same will not vitiate the procedure.

10. Finally on the allegation that the reporting officer was not acquainted with the work and conduct of the applicant, the same has to be rejected since the reporting officer was the supervisory officer in charge of the shifts in which the applicant worked during the period under assessment and therefore it can not be questioned that he was not conversant or acquainted with the work and conduct of the applicant. In fact it was as a result of his supervisory role that the applicant was noticed loitering in the lounge trying to help a bogus passenger board the Air France flight, which ultimately exposed her conduct. As has been pointed out by the learned counsel for the respondents, the conduct of the applicant had been under observation during the period under report and therefore the plea of the applicant that the reporting officer was not acquainted with her work must be rejected. Learned

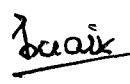
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counsel for the applicant has attempted to derive much out of the remarks against columns 'Attitude towards weaker section of society', 'power of command', 'efficiency on parade' and 'contribution towards developing police community relations' by arguing that the reporting officer himself stated that these qualities were 'not assessed' by him. The counsel implies that the reporting officer deliberately chose to give his report on certain vital columns to damage the career of the applicant. I am afraid, this argument has to be rejected. Since these qualities were not assessed by him, the reporting officer can be held to be only truthful about it and no adverse inference can be drawn against him on this basis. May be the work of the applicant did not involve the activities such as participation in parade and community development etc.

11. It has been held by the apex court in **Bharat Ram Meena Vs. Rajasthan High Court 1997(3) SCC 233** that the High Court should not have, in exercise of its writ jurisdiction, intervened or quashed the adverse remarks recorded in the ACR of the petitioner on the basis of allegations made against him and the appellant is to be judged on the strength of his work and his conduct. In the case in hand, the reporting officer who was well acquainted with the work and performance of the applicant, has recorded his comments against the various columns of the ACR for the aforesaid period based on the facts before him and the reviewing officer has agreed with the same. Also the remarks were communicated to the applicant within a reasonable period and she was given adequate opportunity by the authorities concerned to explain her case and then only respondents took the decision of rejecting her appeal. It is also a settled legal position that reasons for rejecting representation against adverse remarks need not be recorded or communicated (see **UOI Vs. E.G.Nambudri AIR 1991 SC 1216**). When such is the situation, any interference by the Tribunal in the present case would not be justified.

12. Thus having regard to the aforesaid decisions of the apex court coupled with the fact that there is no infirmity in the procedure followed by the respondents in passing the impugned orders, I find no merit in the present OA and the same is accordingly dismissed.

  
(S.K. Naik)  
Member(A)

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