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HIGH COURT OF DELHI : NEW DELHI

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Judgment reserved on: 28.11.2007

Judgment delivered on: 11.07.2008

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W.P. (C) No.12852/2006

Union of India

...Petitioner

Through: Ms. Anita Panday, Advocate

versus

Ajay Tiwari

...Respondents

Through: Mr. M.M. Sudan, Advocate

CORAM:

HON'BLE MR. JUSTICE A.K.SIKRI

HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

VIPIN SANGHI, J.

1. This writ petition under Article 226 and 227 of the Constitution of India has been filed by Union of India through Secretary, Ministry of Information & Broadcasting, New Delhi challenging the order of the Central Administrative Tribunal, Principal Bench, New Delhi (Tribunal) dated 17.02.2006 passed in OA No.1651/2005 whereby the Tribunal expunged the adverse remark made in the ACR (Annual Confidential Report) of the respondent, Sh. Ajay Tiwari for the period of 01.04.2000 to 13.10.2000, and quashed the memorandum dated 3.5.2002 and the order dated 12.10.2004,

while preserving the right of the petitioner to initiate disciplinary proceedings against the respondent for bringing political/ VIP pressure in the matter of his posting from time to time.

2. The respondent was appointed as Assistant Engineer (Civil) Construction Wing, All India Radio in the year 1984 by direct recruitment. He was promoted as Executive Engineer in June, 1995. In the year 2000-2001 he was posted as Surveyor of Works, Civil Construction Wing, All India Radio.

3. An office memorandum No. 28012/8/2001/Vig dated 3.5.2002 was issued by Director General AIR, Vigilance Section communicating the adverse remark recorded in the ACR of the respondent for the period w.e.f 1.4.2000 to 13.10.2000. The relevant extract of the said memorandum which was impugned before the Tribunal reads as under:

“The ACR in respect of Sh. Ajay Tiwari, SW(C), CCW, New Delhi, for the period w.e.f. 01.04.2000 to 13.10.2000 contains the following remarks: -

3.	The Reviewing Officer must give his overall assessment	He is a good office but he is in a habit of bringing political/VIP pressure for posting/transfer. He brought such pressures ten times during his continuous stay in Delhi for the last 18 years.
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5.	The Reviewing Officer must give his overall assessment including the nature of the relationship maintained by the officer with staff in other discipline also.	He is a good officer maintains good relations but the habit mentioned at para 3 above disqualifies him from becoming Sr. Govt. Official.
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2. Shri Ajay Tiwari, SW(C), CCW, AIR, New Delhi is advised to improve his conduct in the light of the above remarks.
3. If Shri Ajay Tiwari, SW(C), CCW, AIR, New Delhi, desires to make the representation for expunction of the above remarks, he may send his representation within one month from the date of receipt of this Office Memorandum. The representation should be addressed to the Appellate Authority i.e. Director General, All India Radio."

4. On 23.05.2002 the respondent represented against the O.M. Dated 03.05.2002 by demanding the photocopies of the VIP references brought during the period 1.04.2000 to 13.10.2000. Since there was no response, he sent reminders dated 3.06.2002, 14.06.2002, 9.7.2002 and 25.09.2003. However, there was no response forthcoming from the petitioner, so he finally gave his representation dated 10.07.2004.

5. Vide order dated 12.10.2004, the Director General AIR rejected the representation of the respondent and maintained the adverse remark for the period of 01.04.2000 to 13.10.2000. This order, which was also impugned by the respondent before the Tribunal reads as under:

“Following remarks were entered in the Annual Confidential, Report of Shri Ajay Tiwari, presently working as Executive Engineer CCW AIR Jammu, for the period 1.4.2000 to 13.10.2000, when Shri Ajay Tiwari was working as SW(C) in SSW-I Unit CCW All India Radio, New Delhi.

3.	The Reviewing Officer must give his overall assessment	He is a good officer but he is in a habit of bringing political pressure for posting/transfer. He brought such pressures ten times during his continuous stay in Delhi for last 18 years.
5.	The Reviewing Officer must give his overall assessment including the nature of the relationship maintained by the officer with staff in other disciplines also.	He is a good officer maintains good relations but the habit mentioned at para-3 disqualifies him from becoming Sr. Government official.

The above remarks were communicate to Shri Ajay Tiwari vide DG ARI letter no.A-28012/8/2001-Vig. Dated 3.5.2002. Shri Ajay Tiwari was to represent within one month, for expunction of the above remarks from the date of the receipt of the memo mentioned above, but no representation was received from hi.

Though no VIP reference, pertaining to transfer of Shri Ajay Tiwari, was received during the period 1.4.2000 to 13.10.2000, the position is not altered as he has brought political pressure from following VIPs against his transfer out of Delhi.

1. Shri P.M. Sayeed, form MSIB.
2. Shri Santosh Mohan Dev, former Minister of Steel
3. Former Minister of External Affairs
4. Major General (Retd.) Shri C.B. Gupta
5. Shri Bhubnesh Chaturvedi, former MOS in PMO's office
6. Shri Madhu Dandavate former Dy. Chairman,

Planning Commission

7. Shri Harkishan Singh Surjeet CPI(M)

8. Smt. Malti Sharma, former MP Lok Sabha

Attention is also drawn to Rule No.20 and Government of India's decision 1-A there under of CCS Conduct Rules (1964), which prohibits a Government Servant to bring any political pressure, directly or indirectly, upon any superior authority to further his interests in respect of matters pertaining to his service under Government.

Since Shri Ajay Tiwari, presently working as Executive Engineer CCW, AIR Jammu, has failed to represent against the adverse remarks in his CR within the stipulated time of one month and in view of CCS Conduct Rules mentioned above, it has not been found possible to expunge the adverse remarks from his Annual Confidential Report for the period 1.4.2000 to 13.10.2000. He is advised to be more careful in future.

This is issued without any prejudice to any other action which the department may deem fit to take in future."

6. As the respondent was aggrieved by the aforesaid memorandum dated 03.05.2002 and the order dated 12.10.2004, he preferred OA No.1651/05 before the Tribunal claiming the relief of quashment of the said O.M. and order. The same has been allowed by the Tribunal by the impugned order, while granting liberty to initiate disciplinary proceedings against the respondent. The reasons given by the Tribunal for arriving at its impugned decision are that during the period 01.04.2000 to 13.12.2000, to which the impugned CR pertained, there was admittedly no particular instance of any political pressure being brought upon the superiors. The CR is written annually, or even

more frequently and the purpose of writing the CR is to keep the employee informed about his conduct, so that he could learn from his mistakes and improve. The adverse remark to the effect that on account of his being in the habit of bringing political pressure to bear on his superiors for his posting/transfer the respondent is disqualified from promotions, had no relevance to the conduct of the respondent during the said period i.e. 01.04.2000 to 13.10.2000 and it did not correctly reflect the working and conduct of the respondent during the reporting period. The impugned CR was contradictory, inasmuch as, the reviewing authority's impugned remark was contradicted with the entry made in the 1st column of the CR, wherein the reviewing authority had himself stated that the officer is fit for promotion in his turn.

7. The petitioner has produced its original records files and we have perused them as well. The contention of the petitioner is that the respondent is in the habit of consistently applying political pressure whenever he is transferred. During his services of about 18 years the respondent was transferred on three occasions between the period of 1992-1995, but due to undue political influence brought upon his superiors by the respondent, he managed to get his transfer cancelled on one pretext or the other. The respondent was transferred from New Delhi to Gauhati vide order 21.1.1992, from New Delhi to Nagpur vide order dated 21.12.1993 and from New Delhi to Mumbai vide order

dated 12.5.1995 but due to the interference from his father, Shri V.B. Tiwari, who applied political influence through various sources, the aforesaid orders were cancelled. Copies of the various letters and communications have been annexed to the petition to show the exertion of political pressure by the respondent. The respondent was warned against bringing political pressure to defer his transfer to Mumbai in violation of Rule 20 of CCS (Conduct) Rules, which prohibits a Government employee for bringing political pressure vide office memorandum dated 14.03.1996. Vide Memorandum dated 27.1.1997 respondent was directed to report for duty as Surveyor of Works (Civil) at Mumbai latest by 28.2.1997, or face disciplinary action. The respondent complied with this order and stayed in Mumbai only for a few days and on the pretext of attending some vigilance case he came to Delhi on leave, and did not return to Mumbai. Respondent was subsequently transferred to Gauhati as SW(C) vide order dated 21.01.2000. However, the respondent did not join the post at Guwahati. From the office records produced before the Court it appears that an order was issued on 19.09.2000 requesting the respective SE(C) to relieve him and report compliance. Later the DG, AIR vide order dated 20.11.2000 kept the order dated 21.01.2000 abeyance till 31.03.2001. Once again the respondent was transferred as EE(C) to Gauhati vide order dated 11.05.2001. However, thereafter a decision was taken to cancel his transfer to Guwahati in April 2002,

and review the decision after 3 months. But the review was not done, and from the record it appears that the relevant file was misplaced in transit and was recovered much later.

8. The petitioner argues that the Confidential Report (CR) of the respondent was validly written and it reflected the work and conduct of the respondent. The Government expects its employees to maintain good conduct, integrity and improve their performance. The applicant has deliberately violated the guidelines from time to time, thus attracting an adverse remarks in his confidential report. The CR for the period 1.4.2000 to 13.10.2000 was the outcome of his exerting pressure to avoid transfer at various stages. The counsel further submits that the adverse remarks pertaining to the specific reporting period is the assessment of the respondent's work and conduct for that period and it is sequel to his continued behaviour in attempting to bring political or outside influence to bear upon the superior authority to further his interest in respect of matters relating to his transfer and posting. While reporting/reviewing the performance of an officer the superior officers have to give the overall assessment of the employee which is not limited to the specific period, especially when the officer is in the habit of influencing or tends to influence his superiors for cancellation of transfer at each and every occasions in his career of 18 years.

9. Learned counsel for the petitioner further argued that

Tribunal has failed to appreciate the fact that prior to communicating the adverse remark to the respondent he was given proper opportunity to give his explanation vide memo no.A-19011/5/93/-CWq/271 dated 13.2.1996 regarding violation of Rule 20 of CCS(Conduct) Rule 1964. The respondent was warned vide memorandum No.A19011/5/93-CW-1)347-49 dated 14.3.1996 against bringing political pressure to defer his transfer to Bombay and violating rule 20 of CCS (Conduct) Rules 1965. This fact was totally ignored by the Tribunal that in spite of this recordable warning, respondent did not give up his objectionable habit and continued brining political pressures upon the superiors.

10. On the other hand, learned counsel for the respondent has supported the decision of the Tribunal by submitting that pertaining to the reporting period i.e. 01.04.2000 to 13.10.2000, admittedly, the petitioners have not produced any document to show that any undue influence or political pressure has been brought on his superiors by the respondent for any purpose whatsoever. He argues that the past conduct of the respondent could not have coloured the confidential report of the respondent for the period in question.

11. Having heard learned counsel for the parties and perused the record including the files produced by the petitioner, we are inclined to partly allow this petition. It is said that old habits die hard. The respondent undeniably has, over the years, been exerting political pressure through his father or otherwise to avoid getting

transferred out of Delhi on one pretext or the other. This position is writ large from the record and, as a matter of fact is not even denied by the respondent. His case is that during the reporting period i.e. 01.04.2000 to 13.10.2000 there is not a single incidence pointed out by the petitioner to show that he had exerted any political pressure on his superiors in relation to his transfer.

12. The Tribunal has accepted this submission of the respondent and on that basis has allowed the original application and quashed the adverse remark made against the respondent for the aforesaid reporting period.

13. We have difficulty in accepting the aforesaid submission of the respondent in the facts as available on record. The tendency of the respondent to exert political pressure to save his posting at Delhi, as aforesaid, is writ large and undeniable. Pertinently, the respondent was transferred to Guwahati on 21.01.2000. However, he did not join the said posting. Interestingly, no action was taken against the respondent despite his defiant attitude in not joining his new posting at Guwahati. He continued to report at Delhi. On 19.09.2000 orders were issued requesting the respective SE(C) to relieve the respondent to enable him to join his posting at Guwahati to report compliance. Despite this order the respondent continued to remain in Delhi. Curiously the DG, AIR vide order dated 20.11.2000 kept the transfer order dated 20.01.2000 in abeyance till 31.03.2001. Therefore, rather

than subjecting the respondent to disciplinary action for his disobedience of the transfer order, he was given an even longer a rope by the DG, AIR on 20.11.2000. What is the inference to be drawn by this peculiar conduct of not only the respondent, but even his superiors, whose duty it was to ensure compliance of their transfer orders in respect of the respondent and maintain discipline in their office?

14. The act of bringing political influence or pressure upon the superiors is not an isolated act which can be said to be limited only to the specific date on which the influence or political pressure is brought on the superiors. Once political influence or pressure is exerted on the superiors, depending on its potency and on various other factors, the same is bound to continue to influence the superiors for some time in the future as well. That is the whole purpose of exerting such influence or political pressure. The effect of such influences/political pressures on the superior officers often is to compel them to act or refrain from acting in a particular way in the discharge of their duties and functions, which would give an undue advantage and benefit to the person at whose instance the influence/political pressure is exerted. Often civil servants find it difficult to withstand such influences/political pressures, since they are likely to earn the displeasure of their political bosses. Where the influence/political pressure has been exerted not overtly, but covertly, its presence can

be gauged from the series and pattern of acts and omissions of the person who has brought the influence/political pressure as well as the superiors and also from the benefit/advantage that the employee who has exerted the influence/political pressure continues to unduly derive on account of such influence/political pressure. It is like a magnetic field, which cannot be seen but its presence deduced from the effects that it produces.

15. As aforesaid, the respondent had been transferred to Guwahati vide order dated 21.01.2000. He did not report for joining his posting at Guwahati within a reasonable time. His superiors also took no action against him within a reasonable time. This clearly shows that the influence/political pressure earlier exerted by the respondent was continuing to have its effect even after the issuance of the order dated 21.01.2000, or that the respondent brought further influence/political pressure on his superiors after the issuance of the said transfer order in a covert manner. This position continued throughout the period between January 2001 and right up to April 2002 when the decision was taken to cancel his transfer to Guwahati and to review the said decision after three months. This obviously covered the reporting period i.e. 01.04.2000 to 13.04.2000 as well. During this entire period the superiors of the respondent were reeling the under the influence/ political pressure exerted by the respondent. Obviously the respondent took no steps to ease the said influence/political

pressure, since he continued to derive benefit therefrom by retaining his posting at Delhi and debilitating his superiors from taking any disciplinary action that might have been taken against him for his not reporting at Guwahati to join his new posting. It is obvious that the respondent enjoyed political patronage of the political big wigs who brought about their influence on the respondent's superiors. There is no other way to explain the conduct of both the petitioners and the respondent in adopting such casual and over generous attitude towards the respondent. Rather than reining in the respondent, and disciplining him by initiating disciplinary action against him, the transfer orders were themselves put in abeyance and cancelled. The facts of this case speak for themselves and it is clear that even during the reporting period the superiors of the respondent continued to reel under influence/political pressure, which is why the the respondent could openly and flagrantly defy the transfer orders dated 21.01.2000, before the reporting period, throughout the reporting period, and even thereafter.

16. In these circumstances, in our view, it would be correct to say that the respondent exerted influence/political pressure even during the reporting period, and merely because there is no document on record to demonstrate the exertion of influence/political pressure by the respondent on his superior during the reporting period, it would not mean that such influence/political pressure was not continued to be

employed and exerted by the respondent during the said period. In this regard, we may also refer to office noting dated 08.04.2002 made on the file, which records that *"Sh. Ajay Tiwari EE(C) was transferred to Guwahati in January 2000 but did not join the post till date. **He has managed to defer his posting through his resources.** Since the officer had not joined at Guwahati for over two years we may have to do rethinking for filing the post at Guwahati E in C may kindly see for illegible....."*. This note was made on the file on 22.04.2002 and is reasonably close in point of time to the reporting period i.e. 01.04.2000 to 13.10.2000. The same can, therefore, also be looked at as a piece of evidence to show the exertion of influence/ political pressure by the respondent upon his superiors during the reporting period.

17. It is, therefore, only reasonable to say that the recording made in his Confidential Report for the reporting period in question to the effect he had brought about an influence/political pressure is correct. We are, therefore, of the view that the Tribunal was not correct in its approach while concluding that merely because there is no specific instance of influence/political pressure being brought upon the superiors of the respondent during the reporting period, it could not be said that he had brought about influence/political pressure upon his superiors at all.

18. However, in our view, the matter does not end there. The

entry made in Column 5 in the impugned CR to the effect that “**the habit mentioned at para-3 disqualifies him from becoming Sr. Government official**”, in our view, is neither justified, nor was it competent for the reviewing officer to make such a remark. The purpose of writing the Confidential Report is to correctly and accurately report with regard to the conduct and performance of the concerned employee/officer. The purpose is not to judge the suitability of the officer for his further promotion. That is the duty and responsibility of the Departmental Promotion Committee or such other competent authority, who may be empowered to consider the aspect of promotion/appointment of an officer to a higher position. Therefore, in our view, there was no competence in the reviewing officer to say that the respondent was disqualified from becoming a senior government official on account of his habit of bringing about political pressure for his posting/transfer. Whether this aspect should, or should not disqualify him in future from becoming a senior government official would be considered at the appropriate stage by the competent authority dealing with that aspect, and it was not for the reviewing officer to make such a comment. Therefore, in our view the remark to the effect that the respondent is disqualified from becoming a senior government official is illegal and liable to be quashed.

19. Reliance placed by the respondent on the decision of Supreme Court in **M.A. Rajashekhar v. State of Karnataka & Ors.**

(1996) 10 SCC 369 is misplaced since in that case there was no specific instance pointed out by the authorities for justifying the recording of the remark "*does not act dispassionately when faced with dilemma*". However, in the present case, the presence of political pressure/influence during the reporting period is evident from the conduct of the respondent and his superiors as also from the fact that the respondent has been the beneficiary of the influence/political pressure exerted upon his superiors during the relevant period.

20. For the aforesaid reasons, we allow this petition and quash the impugned order of the Tribunal. However, in view of our aforesaid discussion, we delete the following remark from Column 5 of the Confidential Report in question: -

"but the habit at para 3 above disqualifies him from becoming senior government official."

21. We also preserve the liberty granted to the petitioner by the Tribunal to initiate disciplinary proceedings against the respondent. However, this shall not be construed as an expression of any opinion on the validity or legality of any such enquiry, if initiated, on any ground whatsoever. Parties are left to bear their respective costs.

VIPIN SANGHI
JUDGE

A.K. SIKRI
JUDGE

July 11, 2008
aj/rsk