

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No. 308/2010**

% **Date of Decision: 12.05.2010**

T. M. SAMPATH PETITIONER
Through Petitioner in person

Versus

THE DIRECTOR GENERAL, NATIONAL WATER RESPONDENTS
DEVELOPMENT & ORS.
Through Nemo

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

MOOL CHAND GARG, J.

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C.M. No.652/2010(exemptions)

Exemptions allowed subject to all just exemptions.

Application stands disposed of.

WP(C)No.308/2010

1. The petitioner has assailed the order passed by the Central Administrative Tribunal, Principal Bench (hereinafter referred to as "the Tribunal") dated 24.11.2009 in TA No. 22/2003 as well as the order dated 21.12.2009 passed in RA No. 239/2009.

2. Briefly stating, it was the case of the petitioner before the Tribunal that the adverse remarks in the Annual Confidential Report

(ACR) of the year 2002-2003, which were communicated to the petitioner by Office Memorandum dated 16.07.2003 by the first respondent, be quashed. Before approaching the Tribunal, the petitioner did make representation before the competent authority but the said representation was rejected and communicated to the petitioner vide order dated 11.11.2003. Thereafter, the petitioner addressed a memo dated 07.05.2004 to the President of India against the rejection of his representation filed against the adverse remarks in the ACR of the year 2002-03. This was also rejected by the order dated 16.12.2004. In these circumstances, the petitioner filed a writ petition before this Court, which was later on transferred to the Tribunal, with the following prayers:-

- (a) Issue an appropriate writ, order or direction quashing the order dated 12.11.2003 (Annexure P-14) and order dated 16.12.2004 (Annexure P-17); and
- (b) Issue appropriate writ, order or directions, expunging the adverse entries/grading of the petitioner for the period from 1.4.2002 to 31.3.2003 and 1.4.2003 to 29.9.2003.

3. However, the prayers made by the petitioner have been finally rejected by the Tribunal vide order dated 21.12.2009. It is a matter of record that in the meanwhile this transfer application was also decided by a Single Judge of the Tribunal vide order dated 30.07.2008. However, in a writ petition bearing WP(C) No.186/2009 filed by the first respondent, this Court remanded the case back to the Tribunal for reconsideration by order dated 04.03.2009

4. It will be appropriate to take note of the adverse remarks made in the ACR of the year 2002-2003 as communicated to the petitioner vide memorandum dated 16.07.2007:-

Item No.	Part-III (Assessment by Reporting officer) Confidential Report form	Adverse Entries made in confidential Report
1.	Please comment on Part-II as filled in by the officer etc. (page-5)	The officer has refused to submit his self-appraisal even after a reminder NO.DD(A)/CR/2003/3 dated 23.06.2003 by the Reporting Officer
2.	Quality of output (page-5)	He continued to be defiant to the instructions of Superior Officers which made even present Director General, NWDA to remark that "Shri Sampath's behavior is incorrigible" on Chief Engineer (N)'s letter No. NWDA/CE(N)/Alld./Conf.21/507 dated 26.11.2002 (Annexure-II)
3.	Knowledge of sphere of work (page -5)	He needs much more knowledge of rules and regulations and their application
3.	Attributes (page-5)	He misutilized his capacity by misinterpreting the rules and regulations, which caused delay in taking immediate decisions.
3.	Initiative (page-6)	He has never shown any keenness to take any additional responsibility.
4.	Attitude to work (page-7)	Lacks sense of dedication and responsibility. He has been vitiating the office atmosphere and violating the office procedure which made even Chief Executive (D.G., NWDA), Shri S.K. Das to remark "The Administrative Officer may be directed not to vitiate the office procedure already set." Accordingly, a Warning was

		issued to him vide O.M. No.10/12/2001-Admn. Dated 09.10.2009 (Sl. No.12 of Annexure-I)
5.	Ability of inspire and motivate (page-7)	During the period, his conduct has been quite unsatisfactory as per of Warnings issued to him as per list enclosed at Annexure-I. Besides all these Warnings/reprimands, he has not shown improvement.
6.	Guidance in the performance of task. (page-7)	He does not give guidance to his subordinate.
6.	Maintaining discipline(page-7)	He does not maintain discipline for which he was issued Warnings by Director (Admn.) to maintain cordial and healthy relationship in Public Interest (Sl. No.9 of Annexure-I)
7.	Inter Personal relations and team work (page-8)	He does not keep Cordial relations with his Superiors and subordinates and thus not able to promote team spirit. During the period he has been given seven Warnings/Reprimands/Advices at Sl. No.4,5,7,9 and 11 to 13 as per list enclosed at Annexure-I. On 03.09.2002 and 09.10.2002 (S.No.9 and 12 of Annexure-I), he was issued Warnings to maintain cordial and healthy relationship office atmosphere but he did not improve himself.
10.	Aptitude and potential (page-9)	He is capable office but has misused his capacity in irregular activities for which he has been issued seven Warnings/reprimands at Sl. No.4,5,7,9 and 11 to 13 of Annexure-I mostly with approval of D.G., mainly for making uncalled comments on

		the proposals already approved be D.G., NWDA, working against laid down procedure, to maintain cordial relations, for making false and untenable allegations against superior officers and vitiating the office atmosphere. However, he did not improve. Hence, his performance during this year deteriorated rapidly.
	Part (iv)-item No.3 General Assessment (page-9)	He is a capable officer but during the period under report, he has misused his capability in misinterpreting and misrepresenting the Rules and Regulations. Due to this, his performance has been deteriorated very rapidly during the period under report. He is under heavy indebtedness as per O.M. dated 28.3.2003 issued to him (S.No.16 of Annexure-I) and his habitual indebtedness is also the reason for deterioration of his performance, besides continuous defiant to the instructions of superior officers.

5. The sole argument of the petitioner is about the animus, which the reporting officer, namely, Shri. S.G. Sood, Deputy Director (Administration) in the National Water Development Agency at the relevant time, had towards him which would disqualify him to be the reporting officer insofar as the petitioner's ACRs were concerned. Mala fides have been alleged against Shri S.G. Sood, who has been arrayed as the second Respondent in the Memo of Parties. However, the reports

made by Shri S.G.Sood were also to be reviewed by a senior officer, who was to act as a reviewing officer.

6. The petitioner appeared in person before the Tribunal to support his case. The Tribunal considered the submissions made by the petitioner and had also taken note of certain warnings given to the petitioner prior to 12.06.2002 when the petitioner was cautioned to refrain from making representation. The warnings were even communicated to the petitioner but were never challenged by him. It is not disputed that those warnings were issued to the petitioner with the approval of the Director General of National Water Development Agency who had the occasion to consider the representation of the petitioner with respect to the adverse ACR but did not find favour with the submissions made by the petitioner.

7. Various misdemeanours of the petitioner have been given in paragraphs 13 and 14 of the reply, which are reproduced herein for the sake of reference:-

“The petitioner was suspended by an order of Disciplinary Authority, i.e., by Secretary, Ministry of Water Resources in his capacity as Chairman, Governing Body of NWDA vide order No.28/6/2002-Vig. (Vol.II) dated 30.09.2003 in exercise of the powers conferred by sub rule (1) of Rule 10 of CCS (CCA) Rules, 1965 and in accordance with guiding principles for placing a Govt. Servant under suspension due to contemplation of three disciplinary proceedings against him till further orders. Out of these three contemplated disciplinary cases, charge sheets on all these cases were issued to the petitioner on 14.11.2003, on 08.12.2003 and on 22.04.2004 as per details as under:-

(i) The first charge-sheet was issued to petitioner on 14.11.2003 under Rule 14 (Major penalty) of CCS (CCA) Rule,

1965 for his various acts of unbecoming of Govt. Servant for violation of Rule 3 (1) (i), (ii) & (iii) of CCS (Conduct) Rules, 1964 on serious charges, i.e.,

(a) For making false and baseless allegations leveled by the petitioner against his superior officers and colleagues with mala fide intention in his complaints dated 6.6.2002 and 24.6.2002 and

(b) For making “threatening telephone call” to blackmail Shri S.B. Buri, then Chief Engineer (Hqrs.), (officer incharge of Administrative Wing), NWDA as reported by Shri Suri to Director General, NWDA in his complaint dated 10.06.2002.

(ii) Further, the second chargesheet was issued to him on 8.12.2003 under Rule 16 (minor penalty) of CCS (CCA) Rules, 1965 for various acts of omissions and commissions of the petitioner for violation of Rule 16, 17, 18(3) and Rule 3(1)(iii) of CCS (Conduct) Rules, 1964 in connection with

(a) His failure to avoid “habitual indebtedness,”

(b) Failure to intimate “judicial/criminal proceedings instituted against him for recovery of debt” and

(c) His “failure to repay and intimate huge amounts of Loans/debt” to the Prescribed Authority.

(iii) The third Chargesheet was issued to the Petitioner on 22.04.2004 under Rule 14 of CCS (CCA) rules, 1965 containing the following charges:-

(a) Exhibiting gross negligence in discharge of his official duties in non-completing the C.R. of his subordinates, i.e., Suptd. (Admn.) NWDA in violation of Rule 3(1)(iii) of CCS (Conduct) Rules, 1964, i.e. an act unbecoming of Govt. Servant.

(b) For making derogatory/defamatory remarks against the then two D.G.s, NWDA namely Shri P.C. Lau and Smt. Radha Singh in violation of Rule (3)(i)(iii) of CCS (Conduct) Rules, 1964, i.e., an act unbecoming of Govt. Servant.

(c) For passing “threatening remarks” against his superior officer namely, Dy. Dir. (Admn.) NWDA to prevent his superior

authority from discharging his lawful duties in violation of Rule (3) (i) (iii) of CCS (Conduct) Rules, 1964, i.e., and act unbecoming of Govt. Servant.

8. The Tribunal after taking note of all these facts held that the petitioner was not entitled to any relief as prayed for by him. Some of the observations made by the Tribunal are reproduced hereunder for the sake of reference:-

7. The representation of the applicant was considered by one Shri P.R. Chopra, Chief Engineer, an officer next in seniority to the reviewing authority. It was noted in the Office Memorandum rejecting the representation that the adverse remarks were based on the warnings issued to the applicant with the approval of Director General, NWDA. It was also observed that two successive Directors General of NWDA had expressed in writing, their dissatisfaction with the working of the Applicant. The allegation of inimical behavior of the reporting/reviewing officers and allegations about his transfer to Allahabad being engineered by the second Respondent and institution of false departmental proceedings has been dealt with thus in the office memorandum:

“2. The allegation of personal grudge/harassment made by Shri T.M. Sampath against various officers of NWDA including the reporting/reviewing officers are not tenable as it could be the result of his anguish and vengeance towards the reporting/reviewing officers because they have reported adversely in his CR.

3. Shri. T.M. Sampath in his representation is mentioning about his promotion, transfer out of Delhi, forfeiture of his LTC claim etc. which is out of context and has no relevance with respect to the performance reported upon in the CR by the reporting/reviewing officers.”

In reply to the Memorial to the President, it is observed that seven warnings were issued to the Applicant in the year 2002, which clearly indicates that his performance has come down. The warnings are reproduced below:-

(i) Office Note dated 05.04.2002 on file NO.10/15/2000-Admn. With the approval of D.G.,

NWDA advising Shri Sampath to desist from making “uncalled comments” on the proposals already approved by D.G.,NWDA.

(ii) O.M. No.2/72/91-Admn. Dated 12.06.2002 with the approval of D.G., NWDA advising/directing Shri Sampath to desist from making unnecessary representations for promotion to the post of Deputy Director (Admn.)

(iii) Office Note dated 12.06.2002 issued with the approval of Director (Admn.), NWDA advising/directing Shri Sampath to follow the laid down office procedure in official matters.

(iv) Office note dated 03.09.2002 file NO.4/16/2002-Admn. With the approval of D.G., NWDA advising Shri Sampath to maintain cordial and healthy relationship for efficient and effective functioning in public interest.

(v) O.M. No,28/7/2000-Vig. Dated 01.10.2002 with the approval of D.G., NWDA (i) Warning Shri Sampath for non-intimating the loans availed by him to the prescribed authority and (ii) to refrain from making unnecessary and vague allegation against the staff and officers of NWDA.

(vi) O.M. No.10/12/2001-Admn. Dated 09.10.2002 with the approval of D.G., NWDA warning Shri Sampath to desist from violating the set office procedure and vitiating the office atmosphere, failing which he would be liable for disciplinary action.

(vii) O.M. No.4/6/2000-Admn./Vig. Dated 21.11.2002 with the approval of D.G., NWDA warning Shri Sampath for the last time to desist from making false and untenable allegations in future against his office colleagues and superior officers failing which he would be liable for disciplinary proceedings.”

It is then observed that:

“6. It is observed that all these warnings/reprimands issued to the said Shri Sampath is the result of continuous defiance of the orders of Superior authorities, for violating the laid down and set procedure, for not maintaining cordial and healthy relationship, for making false allegations against superior officers and for his other irregularities etc. He had duly acknowledged all such Warnings/Reprimands but never represented against these warnings. IN fact, these warnings/reprimands were issued to him with the approval of D.G., NWDA to give him reasonable opportunity to improve himself, failing which he would be liable to attract disciplinary action. No disciplinary action has been taken in pursuance of these warnings in order to give him sufficient opportunity to improve. Hence, his contention that sufficient opportunity was not given to him before issue of such warnings/reprimands is completely illogical and untenable.

9. The very fact that the warnings were given to the petitioner was not assailed by him at the appropriate time. More so, the warnings were given to the petitioner with the approval of the Director General of National Water Development Agency and the representations made by him were considered at the highest level. Thus, the allegation leveled by the petitioner that these were manipulated or were on account of strained relations with one Shri S.G. Sood falls to ground. We are in complete agreement with the Tribunal that the mere allegation against Shri S.G. Sood that he had ill will against the petitioner because his appointment as Deputy Director (Administration) was challenged by the petitioner and for that reason he recorded adverse comments on the petitioner's ACR is not acceptable as a proof of mala fide. In view of the

aforesaid, we find no infirmity in the approach of the Tribunal in having dismissed the OA.

10. The review application filed by the petitioner was also dismissed by the Tribunal for cogent reasons. Thus, we do not find any illegality or irregularity in the order of the Tribunal which would entail any interference by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. The writ petition is, therefore, dismissed.

CM No.651/2010 (Stay)

In view of the orders passed above, this application has become infructuous and the same is accordingly disposed of.

MOOL CHAND GARG, J.

MAY 12, 2010

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ANIL KUMAR, J.