

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10482 OF 2004

WITH

WRIT PETITION NO. 10483 OF 2004

Ramchandra Rai	...Petitioner
Versus	
Union of India and ors.	...Respondents

Mr. Ramesh Ramamurthy for the Petitioner.
Mrs. N.V. Masurkar a/w. Mr. V.S. Masurkar for the Respondents.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE : 16th APRIL 2018.

ORAL JUDGEMENT:

1] Heard learned counsel for the parties.

2] The challenge in these petitions is to the common judgment and order dated 21st October 2002 made by the Central Administrative Tribunal (CAT), Mumbai in O.A. Nos. 146 and 147 of 2002 instituted by the petitioner in relation to the adverse entries made in Annual Confidential Reports

(ACRs) of the petitioner in the year 1993-1994 and 1992-1993 respectively.

3] Mr. Ramamurthy, learned counsel for the petitioner, submits that no cogent reasons have been assigned by the authorities for turning down the petitioner's representations seeking expungement of the adverse remarks. With prejudice, Mr. Ramamurthy submits that some portions of the adverse remarks have been expunged and as a result, there is inconsistency and contradictions in the adverse remarks which remain.

4] For example, Mr. Ramamurthy submits that in the adverse remarks communicated to the petitioner on 7th February 1994, it was stated that resourcefulness and willingness to take additional responsibility were found to be lacking. However, by communication dated 4th July 2001, these adverse remarks, which are to a great extent, only consequential, could not have been retained. Mr. Ramamurthy submits that such retention induces contradictions and therefore, all the adverse remarks ought to be expunged.

5] Mr. Ramamurthy points out that similar contradictions exist insofar as adverse remarks communicated to the petitioner on 23rd February 1994 are concerned. For all these reasons, Mr. Ramamurthy submits that the impugned judgments and orders made by the CAT are liable to be set aside and the adverse remarks issued to the petitioner, expunged in their entirety.

6] Ms Masurkar, learned counsel for the respondents, submits that detailed and reasoned orders have been made on the representations filed by the petitioner against the adverse remarks communicated to him. She submits that the scope of judicial review in such matters is extremely limited and there is absolutely no jurisdictional error in the view taken by the CAT. For these reasons, she submits that these two petitions are liable to be dismissed.

7] The rival contentions now fall for our determination.

8] By communication dated 7th February 1994, the following adverse remarks for year 1992-1993 were communicated to the petitioner.

“Part III -A.1. *The officer has not mentioned targets against items in Part II para 5. There has been shortfall in procurement of land for exchanges reduction in 3 months old outstanding revenue and non-completion of external plants for two major exchanges, i.e. Mirzapur and Jaunpur which were targetted to be completed by March, 1993. These could have been achieved.*

Part III – B.3. *Resourcefulness and willingness to take additional responsibility were found to be lacking.*

Part III – B.6. *The relationship with the staff is not found satisfactory, as there has been demonstrations, by Unions. He has not been able to develop team spirit and optimise the output.*

Part III – B.7. *There has been several complaints of telephone faults, excess metering & public grievances in which lack of interest, initiative & drive were found.”*

9] As against the same, the petitioner instituted representations/appeals which came to be finally disposed of vide Office Memorandum dated 4th July 2001. From the perusal of O.M. dated 4th July 2001, it is quite clear that the competent authority has made a detailed order after due application of mind. All the contentions raised by the petitioner have been duly addressed and there is really no illegality or unreasonableness involved in the matter.

10] In fact, by O.M. dated 4th July 2001, the competent authority has accepted some of the contentions of the petitioner and made the following order:

“6. On the basis of the above analysis the following has been decided by the competent authority viz. the President:

a) The existing adverse remarks in Part III B.3 be completely obliterated and they be replaced by the following entry:

“Average capacity to handle unforeseen situations”.

b) The existing adverse remarks in Part III A-1 and Part III B.7 are upheld and would remain unaltered.

c) The existing adverse remarks in Part III B.6 be partially modified as given under:-

Part III B.6 Inter-personal relations and term work

The second sentence would remain unaltered. However the first sentence is to be modified. After this action, the entry in the relevant column shall be read as:

“the relationship with staff was found average. He has not been able to develop team spirit and optimize the output.”

Shri R.C. Rai, DGM, MTNL is hereby informed accordingly. The receipt of this letter should be acknowledged by Shri R.C. Rai.”

11] There is no merit in Mr. Ramamurthy's contention that the adverse remarks now retained suffer from contradictions. Even though, the competent authority had

expunged the remark as regards lack of resourcefulness and willingness to take additional responsibility and substituted the same with the remark that the petitioner possess average capacity to handle unforeseen situations, that by itself, does not render the retained adverse remarks contradictory or inconsistent. From the perusal of the record, it cannot be said that there is any mutual inconsistency or contradiction involved, so as to warrant any interference. The fact that some of the adverse remarks have been expunged or some of the adverse remarks are toned down is indicative of application of mind.

12] By communication dated 23rd December 1994, the petitioner was communicated the following adverse remarks for the year 1993-1994:

"Part III

A.1.

I agree to the extent that the works have been carried out during his tenure as TDE, 1.4K, C.DOT was commissioned after sending him for training by specific orders and charge was given to another D.E. The monitoring of all works were done directly by GM. with the SDOs for achieving the various targets.

A.2

Average. There was constant tussle

between him and A/T staff in regard to standard of work.

- B.1 The dedication and motivation level is average. Even D.O. letters are not replied inspite of several verbal and written reminders.*
- B.2 Average. Decision taken by him quite often creates problem instead of improving the situation.*
- B.6 Generally his relationship with his colleagues and subordinates is not smooth. Relationship with his superiors is all right. He may be able to work in a team but cannot optimise the output of the team.*

Part IV.
Item No.3

It is very difficult to deal with such officer. He listens to instructions and requests but generally takes no action. No proper ofifce procedure and discipline exists in his office."

13] The petitioner's representation was disposed of by the competent authority vide O.M. dated 4th July 2001. Again, from the perusal of the said O.M., it is revealed that cogent reasons have been stated and all the contentions raised by the petitioner have been suitably addressed. There is no case made out to interfere in the exercise of power of judicial review.

14] In fact, in the O.M. dated 4th July 2001, this is what the competent authority has finally held:

“5. On the basis of above analysis the following has been decided by the competent authority viz. the President:

- i) The adverse remarks entered in Part III A.2 and Part III B.2 be expunged.*
- ii) The adverse remarks entered in Part III B.61 and Part IV.3 would remain unaltered.*
- iii) The adverse remarks entered in the other parts of ACR be partially modified as given under :*

a) Part III A.1 Nature and Quality of Work.

The second sentence in the existing remarks i.e. “the monitoring of all works was done directly by the GM with the SDOs for achieving targets” be completely obliterated. After this action the entry in the relevant column shall be read as “I agree to the extent that the work had been carried out during his tenure as TDE. 1.4 KC DOT was commissioned after sending him for training for specified orders and charge was given to another DE.

b) Part III B.1 Attributes: Attitude to work

The second sentence appearing in the existing adverse remarks i.e. “even DO letters are not replied” be completely obliterated. After this action the entry in the relevant column shall be read as “the dedication and motivation level is average.”

Shri R.C. Rai, DGM, MTNL is hereby informed accordingly. The receipt of this letter should be acknowledged by him.”

15] Again, the contention as regards contradictions cannot be accepted. The competent authority has in fact, accepted some of the petitioner's contentions, expunged some of the adverse remarks and toned down others. All this is indicative of application of mind.

16] In the present case, there are no allegations of *mala fides*. The scope of judicial review by tribunals and courts in matters of adverse remarks is quite limited. Unless there is a strong case for applying *Wednesbury doctrine*,* the courts and tribunals do not normally, interfere with departmental assessment recorded in ACRs. But in rare cases, if the assessment is proved to be *mala fide* or is found based on inadmissible or irrelevant or insignificant and trivial material and if an attitude of ignoring or not giving weight to the positive aspects of one's career is strongly displayed, or if the inferences drawn are such that no reasonable person can reach such conclusions, or if there is illegality attached to the decision, then the powers of judicial review may not be foreclosed. Undue interference by the courts or tribunals will result in

* Associated Provincial Picture Houses Ltd. Vs. Wednesbury Corporation – (1947) 2 ALL ER 680 1

paralysing the functioning of departments or departmentals procedures.

17] Since, none of the grounds sufficient for exercise of powers of judicial review have been made out in the present case, both these petitions are liable to be dismissed and are hereby dismissed.

18] Rule, in both these petitions, is discharged. There shall however, be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)