

(2009) 04 DEL CK 0619

In the Delhi High Court

Case No : Writ Petition (C) No. 3492 of 2006 and C.M. Application No's. 2946 of 2006 and 11499 of 2007

Govind Jha EE (SG)

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 02-04-2009

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 19(1)
Constitution of India, 1950 — Article 226

Citation : (2009) 04 DEL CK 0619

Hon'ble Judges : Suresh Kait, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Satish Kumar, for the Appellant; Jyoti Singh and Ankur Chhibber, for the Respondent

Judgement

A.K. Sikri, J.—This petition concerns adverse entry in the Annual Confidential Report of the petitioner for the year 2002-03. The petitioner wants that the adverse comments in the said ACR be expunged. He was communicated the adverse entry on 13.1.2004. His representation there against was rejected by the Competent Authority vide orders dated 3.12.2004. His challenge before the Central Administrative Tribunal also failed as OA No.226/2005 preferred by him has been dismissed by the Tribunal vide judgment dated 12.8.2005. Not satisfied with the outcome the petitioner has impugned the judgment of the Tribunal by filing present writ petition invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution.

2. Before we take note of the factual premise, it would be appropriate to reproduce the said ACRs:

1. The assessment contained in your ACR for the year 2002-2003 covering period wef 01 Apr 2002 to 31 Mar 2003 is appended below:

(a) State of health ? Very Good. Integrity ? Nothing adverse has come to my

notice. Do you agree with the resume? ? No. Inter-Personal relations and team work ? He has very average relationship with his Superiors, Colleagues and Subordinates, lacks in capacity to work as a member of the team. He tends to keep the self interest above the organizational interest. Relationship with the Public ? NA. Attitude towards SC/ST/Weaker Section of Society ? Understands the problems of weaker sections of society and makes efforts to deal with them.

(b) Training. Recommended for Trg in Computers.

(c) General Assessment. The officer's contention that he was not given any task during the year is not factual. On his report to HQ CWE (Hills) Pithoragarh, he was assigned responsibility of DCWE E/M. However, he absented himself upto Jun/Jul 2002 forcing CWE to give his share of responsibility to other officers. He was given a very important task of developing into system CWE & GE Office on his rejoining from leave/absence in Jul 2002 vide Part I Order dated 22 Jul 2002 which he shared to little extent. He is habitual of going on leave very often. Upto 31 Mar 2003 the officer has been on leave/absent for about 280 days out of 440 days since his reporting to HQ CWE (Hills) Pithoragarh. The assigned task to develop info system has now been completed to about 60% by other offrs. Though the offr is intelligent, competent and knowledgeable in his profession, he should be more responsible to the requirements of the organization.

Remained absent/on leave for a prolonged period. No worthwhile performance that could be commented upon. An average officer who is having a little aptitude in Information Technology.

(d) Recommendations.

Recommendation for promotion for next grade - Recommended. Recommendation for (a) Confirmation ? Yes. (b) Crossing efficiency bar in present scale of pay ? Yes. (e) Retention in service beyond 50 years of age on completion of 30 years of service ? Yes. Recommendation for appointments. (a) Execution ? Yes (b) Staff ? Yes. (c) Instructional ? Yes. (d) Miscellaneous including special appointment based on aptitude and potential as per para 20 (specify appointment) ? No.

3. The case of the petitioner is that aforesaid adverse remarks are motivated and outburst of the vengeance on the part of his superior officer as he had reported against him and had acted as a whistle blower. The surrounding circumstances and events which, according to the petitioner, led to the aforesaid remarks are as under:

On 26.12.2001 the petitioner, while he was working as Deputy Commander works Engineer (E/M) at Vishakhapatnam, was transferred from GE (Naval Services) to the office of the Commander works Engineer (Hills) at Pithoragarh where he joined duties on 24.1.2002. He was sent on temporary duty to Ranikhet on 19.1.2003 for three days. He fell sick due to bad and unhygienic quality of water supplied at Ranikhet. Because of this reason he was compelled

to proceed on leave for 15 days and sought extension of that leave from time to time and rejoined on 6.6.2002.

4. The petitioner further avers that sometime in July 2002 one Diesel Generator set (DG set) installed at MH Ranikhet got damaged, which was to be repaired. Mr. A.K. Bajaj, SE, addressed letter dated 10.7.2002 to the Chief Engineer, Bareilly Zone, Bareilly informing about the damage caused to the said DG set and stated in the letter that the repair could cost about Rs. 2.5 lakhs. However, when the matter was entrusted to the petitioner to examine the defective DG set and assess the cost of repairs he submitted his detailed report dated 19.7.2002 estimating the cost of repair to be nearly Rs. 20,000/- only. Other members of the committee concurred with him. Accordingly to the petitioner, the said DG set was ultimately got repaired at a cost of only Rs. 13,000/-. Thus, the estimate of Rs. 2.5 lakhs given by Mr. A.K. Bajaj was much exaggerated and proved to be totally off the mark. According to the petitioner, Mr. Bajaj wanted an amount of Rs. 2.5 lakhs sanctioned for repairs of the DG set and therefore, he did not like the report submitted by the petitioner estimating the cost of repair as Rs. 20,000/- only. According to the petitioner, other reason for developing acrimony against the petitioner by Mr. Bajaj was related to purchase of oil-filled incinerators, which were needed at Pithoragarh and Ranikhet. Office had prepared estimates for those incinerators on 19.7.2002 making provision of stipulating the rates of Rs. 22,13,154/- and Rs. 26,11,304.31p. for Pithoragarh and Ranikhet incinerators respectively. The petitioner, however, in his note dated 20.7.2002 remarked that reasonability of the rates of incinerator can only be ascertained from minimum three quotations obtained through trade inquiry. Disregarding the same, Sh. Bajaj accepted sub-standard incinerators with specifications lower than DGS & D but priced 3-4 times more than the DGS&D rates and the normal cost of incinerator was Rs. 4,45,000/- as per DGS&D rates. Major defects in both the incinerators had also been confirmed by the Board of Officers. All this irked Mr. Bajaj who started considering the petitioner as a threat. It was because of these reasons that in the confidential report initiated by Mr. Bajaj, he made the aforesaid remarks.

5. The adverse remarks contained in his Confidential Report, as extracted above, would reveal following malignancy:

- a) His relations with superiors, colleagues and subordinates was average and he lacked in capacity to act as member of the team.
- b) He is habitual of going on leave very often and availed long leave.
- c) He was an average officer who was having a little aptitude in information technology.

6. Learned Counsel for the petitioner contended that the aforesaid remarks were actuated with mala fides of Mr. A.K. Bajaj. Further, it was wrongly recorded that the petitioner was habitual of going on leave. The lone leave was due to illness he acquired because of bad and unhygienic quality of water supplied at Ranikhet,

which was an accepted position as vide his note dated 8.2.2002 chlorination in water was suggested by the office which was on the basis of another note dated 9.1.2002 clearly recording that number of complaints about the poor quality of water were received from various employees. The petitioner had developed water born disease which was clear from the leave applications. Moreover, he had extraordinary leave of 170 days and half-pay leave of 271 days to his credit as per the office record and therefore, it could not be said that the petitioner was habitual in obtaining leave. He also submitted that leave was subsequently regularized which would also clearly depict that the illness of the petitioner was genuine because of which he had to take leave.

7. His submission about the other remarks was that there was no basis for the same and admittedly the petitioner was not even given any notice throughout the year about either the inter-personal relations or his lack of responsiveness to the requirement of the organization.

8. In so far as comments upon his aptitude in information technology are concerned, learned Counsel pointed out that in the ACR itself it was commented that the petitioner required training in computers. Thus, the petitioner had no knowledge of computers and without getting adequate training there could not have been comment upon his aptitude. Mr. Satish Kumar, learned Counsel for the petitioner made a vehement and forceful plea to the effect that these aspects were not appreciated by the Tribunal in their true perspective and the Tribunal did not forensically assessed the grievances of the petitioner.

9. Ms. Jyoti Singh, learned Counsel appearing for respondents No. 1 and 2, on the other hand, submitted that the allegation of bias and mala fide against Mr. Bajaj were not totally unfounded. In respect of leave she pointed out that vide his telegram dated 7.2.2002 the petitioner had requested for extension of leave on medical ground for an indefinite period without inclosing a medical certificate for his unfitness from authorized attendant as per Rule 19(1)(i) of the CCS Leave Rules, 1972. Therefore, he was advised to produce medical certificate vide telegram dated 8.2.2002, which was followed by various reminders. Since he was asking for extension of leave again and again he was also advised to report to CMO for second medical opinion. She also submitted that while requesting for extension of leave upto 15.7.2002 vide his telegram dated 23.2.2002 the petitioner had mentioned that change in address (to Delhi) would be intimated by him. Thus, his intention was to shift to Delhi while he was purportedly sick and at bed rest which raised doubts about his sickness and genuineness of the medical certificate produced by him. That was also a reason for seeking second medical opinion but it did not yield. Therefore, the remarks regarding frequent and long absence were perfectly justified. She also submitted that in so far as the issue of repair of generator set is concerned, the estimate of Rs. 2.5 lakhs was given by Mr. Bajaj only on visual inspection. Otherwise, he had himself ordered court of inquiry by a committee of which petitioner was the presiding officer which gave the report that the repair would cost Rs. 20,000/-. There was,

thus, no reason to feel annoyed because of such a report of the petitioner. Regarding purchase of incinerators for Pithoragarh and Ranikhet, Ms. Jyoti Singh referred to the explanation given in the affidavit dated 3.5.2007 wherein position is explained in the following manner:

2. That it is submitted that a complaint dated 11.10.04 was made to C.V.C. by the Petitioner against officials of CWE Pithoragarh. The complaint was investigated by the CVC. CVC while examining the complaint had called for the comments from the concerned Ministry. Ultimately the CVC concluded that there was supervisory lapse on the part of Sh. A.K. Bajaj in as much as he did not ensure conduct of performance test and visited the site of work. However, since the lapse was supervisory in nature the CVC observed that it ought to be treated as non vigilance case.

3. That after the above report was received by the Department from CVC, the Department has issued "Recordable Warning" to Sh. A.K. Bajaj on 8.1.07. It is however submitted that this lapse was in respect of Contract No. CWE/Hills/PGH/03 of 2002-03 and Contract No. CWE/Hills/PGH/04 of 2002-03, both of which related to provision of Incinerators at Ranikhet and Pithoragarh respectively.

10. She further submitted that the representation of the petitioner was duly considered by the Competent Authority and rejected with the following observations:

(a) During the period under report you frequently proceeded on leave.

(b) You have been assessed based on your performance.

11. We have given our utmost consideration to the respective submissions with reference to the records produced before us. About the leave, though it is mentioned that the petitioner is "habitual of going on leave very often", fact remains that apart from long leave due to the aforesaid illness, there are no other instances given by the respondents on the basis of which it could be observed that he is "habitual of going on leave". In so far as the said long leave is concerned, the respondents could not dispute that leave has since been regularized and therefore, he cannot be treated as "absent". Therefore, we are of the opinion that the remarks "he is habitual of going on leave very often" and in the following line use of the word "absent" is not based on any material and has to be expunged. The other sentence relating to his leave for about 280 days can be maintained after deleting the word "absent" as that would be only a matter of fact. However, while doing so it would also be better to write that this leave was duly sanctioned so that it is not perceived as adverse to the petitioner.

12. In so far as other remarks are concerned, we may reproduce the order of the Tribunal dealing with those remarks and the same arguments of the learned Counsel for the petitioner, which were advanced before the Tribunal as well:

10. ...The contention of the applicant that he was assigned computerization job

without giving a training, to my view does not carry any force. Applicant was not asked to operate computer. He was an officer and was assigned the task of developing info system for which Shri Bajaj himself has recommended him for training a (sic) computers. Applicant even without training being such a senior officer should have taken interest and with all earnest supervise and coordinate the technical personnel assigned for the job. But he did not have training in computers to our view is a layman excuse. It is not for us to assess his performance, it was for the reporting officer. A reading of the report shows that the major part of the remarks of the reporting officer is favourable to the applicant. The only adverse remark are based on the applicant's being on long leave and his not taking interest in the assigned job etc. or lack of interest in developing the info system in the organization which was assigned to him. We do not find that any of the rules were violative. The present posting of the applicant at HQ, New Delhi, seems to be convenient to him. The competence of the applicant has even not been denied by Shri Bajaj, the reporting officer.

13. The Tribunal appears to be correct. No doubt, the petitioner was asked to undergo training in computer. However, there is no adverse comment about his functioning in so far as computers are concerned. In fact, he was not asked to operate computer but was assigned the task of developing info system. The remarks are that he did not show his aptitude in information technology. Lack of interest in information technology is totally different from functioning relating to computers. Therefore, these comments need not be expunged.

14. At this stage we may deal with the argument about the alleged mala fides of Mr. Bajaj, who was his reporting officer and initiated the ACRs.

In so far as the repairs of DG set is concerned, no doubt Mr. Bajaj had only given the estimate on visual inspection and had even appointed court of inquiry with the petitioner as presiding officer. However, what is alarming is that though on the basis of inspection the court of inquiry assessed the repairs cost of Rs. 20,000/- only and actual cost of repair was Rs. 13,000/- only, Shri Bajaj had given the estimate of Rs. 2.5 lakhs. It was substantially higher, i.e., 12 times more than the estimate of court of inquiry. Even with visual inspection could it be of that magnitude is somewhat puzzling. One could have even glossed over this particular incident. More revealing incident relates to the purchase of incinerators. Even as per the affidavit filed by the respondents it is admitted that the petitioner had made a complaint dated 11.10.2004 against the officials of CWE, Pithoragarh. It was made to Central Vigilance Commission (CVC). It is also admitted that the CVC concluded that there was supervisory lapse on the part of Shri Bajaj and on that basis recordable warning has been issued to him on 8.1.2007. Though the petitioner states that Shri Bajaj is let off leniently, that is not the issue before us. What is relevant is that the petitioner had, in fact, made a complaint against Shri Bajaj to the higher authorities and/or CVC. Therefore, there could be a reasonable apprehension in the mind of the petitioner that Shri Bajaj would not act fairly and impartially and would nurture grudge against the

petitioner because of his aforesaid acts. Action taken against Shri Bajaj by the department also vindicates the stand taken by the petitioner and shows that the complaint made by the petitioner was not baseless and had some grain of truth therein. This aspect has not been appreciated properly even by the Competent Authority or the Tribunal.

15. We may mention that though the petitioner had alleged mala fides but had not impleaded Shri Bajaj as party to the OA. He, thus, moved miscellaneous application in this Court for impleadment of Shri Bajaj as respondent No.3 in which notice was issued to respondent No. 3. Respondent No. 3 appeared through counsel and has filed the reply. In view of this, we are of the opinion that the remarks about his relation with superiors, colleagues and subordinates and that he lacked in capacity to act as member of the team are also to be expunged.

16. Resultantly, this writ petition is partly allowed and the remarks mentioned in para-8 above, i.e., "habitual of going on leave very often" and "absent" are to be expunged. Also the remarks about his relations with superiors, colleagues and subordinates shall also be expunged.

Other remarks shall remain, particularly regarding his lack of aptitude in information technology.

17. The writ petition is disposed of in the aforesaid terms without any orders as to costs.