

(2008) 10 MAD CK 0153

In the Madras High Court

Case No : Writ Petition No's. 41241 and 41367 of 2005

Union of India (UOI)

APPELLANT

Vs

The Central Administrative Tribunal

RESPONDENT

Date of Decision : 23-10-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 10 MAD CK 0153

Hon'ble Judges : P.K. Misra, J;A. Kulasekaran, J

Bench : Division Bench

Advocate : S.M. Deenadayalan, CGSC, for the Appellant; Akbar Row, for Respondent-2, O.V. Krishnan, ACGSC for Respondent-3 in WP. No. 41241/05 and Velayudham Pichai, SCGSC for Respondent-3 in WP. No. 41367/05, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Misra, J.—Heard the learned Counsels appearing for the parties.

2. The Union of India and two subordinate officials have filed these writ petitions challenging the order passed by the Central Administrative Tribunal (in short "Tribunal"), dated 28.7.2005, in O.A. Nos. 1031 and 1067 of 2004 respectively.

3. The question relates to the adverse entries made during the year 1998-1999. The contention of the applicant before the Tribunal was to the effect without following the required procedure, adverse entries had been made without any basis. The Tribunal by referring to the decision of the Supreme Court reported in Sukhdeo Vs. Commissioner Amravati Division, Amravati and Another, and the decision of the Central Administrative Tribunal, Jaipur Bench, reported in 2002 (3) AISLJ 507 (A.K. Yadav v. Union of India and Ors.), held that the adverse entries had been made by the Controlling Officer or Reviewing Officer without following the required procedure. Such order of the Tribunal is in question, in the present writ petitions.

4. Learned Counsel for the petitioners has submitted that even before the adverse entries are made, a memo had been issued to the delinquent officer and, therefore, it cannot be said that adverse entries are suddenly been made without any prior intimation. It has been further submitted by the counsel for the petitioners that, while considering the question of expunction of adverse remarks, the Tribunal is not expected to sit as an appellate authority over the order made by the departmental authorities.

5. The decision relied on by the Tribunal reported in Sukhdeo's case was followed by the Supreme Court in (1997) 2 AISLJ 121 (State of U.P. v. Yamuna Shankar Misra and Anr.). In the later decision, several other decisions of the Supreme Court have been referred to. Ultimately, in a very recent decision reported in Dev Dutt Vs. Union of India (UOI) and Others, , all such earlier decisions have been analysed afresh and the views expressed in Sukhdeo's case have been reiterated.

6. We have carefully gone through the materials including the adverse entries and the various representations made from time to time, which form part of the typed set. The Tribunal has referred to all those materials and by keeping in view the principle of law enunciated in the earlier decisions of the Supreme Court, in its discretion thought it fit to expunge the adverse remarks, more particularly because of the fact that the procedure had not been properly followed.

7. Learned Counsel for the petitioners has contended that, even assuming that there has been some irregularity in the manner in writing the ACR, the matter should have been remitted to the concerned authority for fresh consideration including the representations made by the applicant / respondent. Even though prima facie such a contention appears to be attractive, we find that in the meantime the officer concerned has been repatriated to his parent department and, moreover, the Controlling Officer or the Reviewing Officer, who has reviewed the ACR, would not be available. In such circumstances, we feel no useful purpose would be achieved by considering this aspect in view of the long passage of time. In such view of the matter, we do not think it is a fit case where we should interfere with the discretionary order passed by the Tribunal, which considered the various facts and circumstances applicable.

8. Learned Counsel for the respondents had pointed out that in the adverse entry, which was communicated, nothing has been indicated about the integrity by the Reporting Officer, but the Reviewing Officer has made certain entry. Learned Counsel for the Respondent has pointed out that the required procedure has not been followed. From the required procedure, which is available at Page No. 97 of the typed set in WP. No. 41241/2005, it is apparent that before making entry relating to integrity, certain procedures are to be followed. We find, in the present case, there is no material to indicate that such procedure had been followed.

9. Since the Tribunal has kept in view all the relevant facts, in exercise of

jurisdiction under Article 226 of the Constitution, the High Court should not interfere with the order passed by the Tribunal.

10. For the aforesaid reasons, we do not find any reason to interfere with the order passed by the Tribunal and the writ petitions are dismissed.