

(2010) 07 DEL CK 0390

Delhi High Court

Case No: Writ Petition (C) No. 12022 of 2009

Principal Director of Audit and
Another

APPELLANT

Vs

Bharti Parveen and Others

RESPONDENT

Date of Decision: July 27, 2010

Acts Referred:

- Central Civil Services (Classification, Control and Appeal) Rules, 1965 - Rule 14
- Central Civil Services (Conduct) Rules, 1964 - Rule 3(1)
- Penal Code, 1860 (IPC) - Section 354, 506

Hon'ble Judges: Pradeep Nandrajog, J; Mool Chand Garg, J

Bench: Division Bench

Advocate: K.K. Rai and Gaurang Kanth and Biji Rajesh, for the Appellant; S.K. Gupta, for the Respondent

Final Decision: Allowed

Judgement

Pradeep Nandrajog, J.

In March 2004 the respondent was working as Section Officer in the Review Section of Indian Audit and Accounts Department. Smt. Kamla, Audit Officer, was her Reporting Officer for the period 1.4.2004 to 22.8.2004 and Sh. Kuldeep Singh, Senior Audit Officer, was the reporting officer for the period from 23.8.2004 to 27.12.2004. Shri S.K. Gopalakrishnan, Deputy Director was the Reviewing Officer for said periods.

2. It appears that the respondent No. 1 was having problems with just about everybody in the office and for which a charge sheet was issued to her under Rule 14 of CCS (CCA) Rules 1965 imputing her of the misconduct or misbehaviour. 3 articles of charge were alleged as under:

Article-1

That the said Ms. Bharti Parveen holding the post of Section Officer (Audit) in the office of the Principal Director of Audit (Air Force and Navy), New Delhi used intemperate language and also made allegations against her superior officer. This is unbecoming of a government servant and violates Rule 3(1)(iii) of the CCS (Conduct) Rule 1964.

Article-II

That the said Ms. Bharti Parveen holding the post of Section Officer (Audit) in the office of the Principal Director of Audit (Air Force and Navy), New Delhi made false and serious allegations against her superior officer. This is unbecoming of a government servant and which thereby violates Rule 3(1)(iii) of the CCS (Conduct) Rule 1964.

Article-III

That the said Ms. Bharti Parveen holding the post of Section Officer (Audit) in the office of the Principal Director of Audit (Air Force and Navy), New Delhi was assigned an important task relating to PAC matter which was time bound. Ms. Bharti Parveen did not complete the work allotted to her diligently, displaying lack of devotion to duty which violates Rule 3(1)(ii) of the CCS (Conduct) Rule 1964.

3. When the enquiry was pending, on 23.12.2004 the respondent No. 1 submitted a representation to the Controller and Auditor General of India in which she made an allegation against Sh. K. Gopalakrishnan stating that he was sexually harassing her. Her complaint was looked into and was found meritless. It was rejected.

4. She lodged a private complaint in the Court of a Learned Metropolitan Magistrate who took cognizance thereof and framed a charge against Sh. K. Gopalakrishnan for having committed an offence punishable u/s 354/506 IPC.

5. The ACR of the respondent was recorded for the period 1.4.2004 till 31.12.2004. As there were two Reporting Officers the ACR was written in parts by Smt. Kamla and Sh. Kuldeep Singh and the same was reviewed by Sh. K. Gopalakrishnan. Adverse remarks were entered by the two officers to which the Reviewing Officer accorded concurrence.

6. Aggrieved by the said adverse remarks entered in the ACR, the respondent No. 1 filed a representation to the Director which was rejected.

7. Aggrieved by the rejection of her representation to expunge the adverse remarks, the respondent No. 1 filed OA No. 2607/2005 before the Central Administrative Tribunal seeking directions against the petitioner to set aside and discard the ACRs and remove the same from the dossier of the respondent No. 1 for all the purposes.

8. Allowing the said application, vide its order dated 30.5.2005 the Tribunal set aside the adverse remarks recorded by the reviewing authority and remitted the matter back to be placed before the next higher authority for the purposes of deciding the

representation of the respondent No. 1. In so doing the Tribunal held that Shri K. Gopalakrishnan could not act as the Reviewing Officer since he was a person against whom respondent No. 1 was in litigation.

9. The petitioners complied with the directions of the Tribunal and put forth the ACR of the respondent before the next higher authority, Mr. Deepak Anurag, the Principal Director (Air Force and Navy) for decision. The representation of the respondent No. 1 pertaining to the adverse comments recorded in the ACR performa were placed before him. Vide order dated 03.08.2007, after granting personal hearing to respondent No. 1, and considering the relevant official records, Mr. Deepak Anurag rejected the representation of respondent No. 1 and maintained the ACR grading and retained the adverse remarks on the ACR form.

10. The respondent filed another petition before the Tribunal registered as OA No. 1720/2008 urging that during the period in question she was neither Counseled nor her attention was drawn to any deficiency in work or her behaviour and thus with reference to the decision reported as [State of U.P. Vs. Yamuna Shanker Misra and another](#), the adverse remarks had to be expunged and ACR gradings corrected.

11. It may be noted that the adverse comments noted were pertaining to the quality of her work and performance and the lack of her ability to inspire and motivate the support staff. Her capacity as a resource person was adversely commented upon. Her capacity to maintain good relationship with the colleagues was also adversely commented upon. It was opined that she has no team spirit and cannot appreciate the point of view projected by the others. Grading awarded was average.

12. Vide impugned order dated 22.04.2009 the Tribunal has expunged the adverse remarks as also the grading. The reason given by the Tribunal is that the Reporting Officer never took respondent No. 1 into confidence and thus deprived her an opportunity to improve her work.

13. It is unfortunate that the Tribunal has chosen to ignore the record produced before it. We note that in para 11 of the impugned order the Tribunal has recorded that notings from the official file were placed before it.

14. What do we find from the said nothing

15. Record shows that during the period in question 3 memos were issued to respondent No. 1 on 17.08.2004, 24.08.2004 and 04.11.2004. In the said memos her attention was drawn to the Sub-standard draft she has submitted upon the subject matter of the draft and she was required to explain her working; with respect to a draft which she had reviewed, the second work was found to be as deficient as the first and she was required to improve herself; she was required to explain why she did not turn up at the time she was required to do so and why did she not submit the report in time. The record further shows 8 notings on the file on different dates, recording that her working was deficient and that the explanation furnished by her

was not satisfactory.

16. Suffice would it be to state that the law on the subject, as stands enunciated in the various decisions of the Supreme Court being; State Bank of India etc., Vs. Kashinath Kher and others, etc., Sukhdeo Vs. Commissioner Amravati Division, Amravati and Another, : U.P. Jal Nigam and others Vs. Prabhat Chandra Jain and others, ; T. Ramegowda Vs. R. Krishnamurthy and others, ; Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, ; Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc., ; and State of U.P. v. Shanker Misra (supra), is that the object of writing confidential reports and making entries in the character roles is to give an opportunity to a public servant to improve excellence and efficiency of public service. The officer entrusted with the duty to write confidential reports, has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately while giving, as accurately as possible, the statement of facts on an overall assessment of the performance of the subordinate officer. Where an adverse remarks in the ACR are recorded, before forming such an opinion to be adverse the Reporting Officers writing confidential should share the information which is not a part of the record with the officers concerned, have the information confronted by the officer and then make it part of the record. This sharing of information amounts to an opportunity given to the erring officer to correct the errors of the judgment, conduct, behaviour, integrity or corrupt proclivity. If, despite being given such an opportunity, the officer fails to perform the duty, correct his conduct or improve himself, necessarily the same may be recorded in the confidential reports and a copy thereof supplied to the affected officer so that he will have an opportunity to know the remarks made against him.

17. Needless to state the aforesaid principle incorporates the right of the officer concerned to have a constant appraisal, by the word of mouth or writing, from his superior qua his working so that he gets an opportunity to improve his conduct.

18. We note that this right of the respondent has been accorded its due place evidenced by the fact that on as many as 8 times she was verbally cautioned with respect to what was found lacking in her working and on 3 occasions a memo requiring written explanation to be furnished was issued. All the 11 incidents pertained to her lack of devotion to duty and not being able to work as a team member.

19. We are thus of the opinion that the decision of the Tribunal has to be set aside, needless to state neither the Tribunal nor this Court can exercise power to review the factual matrix of what has been found to be deficient in the working of respondent No. 1.

20. Before concluding we may note that no mala fides have been alleged against the two Reporting Officers.

21. The writ petition is allowed. Impugned order dated 22.04.2009 passed by the Tribunal is set aside. OA No. 1720/2008 filed by respondent No. 1 is dismissed. The grade awarded to the respondent in the ACR for the year 2004-05 and the adverse entries therein are restored.

22. No costs.