CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.453/2001 with OA No.1919/2001

New Delhi, this 4th day of December, 2002

Hon'ble Shri M.P. Singh, Member(A)

OA 453/2001
Ved Pal Singh Rana
Qr.No.9, SI Type, PS Mandir Marg
New Delhi .. Applicant

(Shri Shyam Babu, Advocate)

versus

Govt. of NCT of Delhii, through

1. Chief Secretary
   5, Shamnath Marg, Delhi
2. Commissioner of Police
   Police Hqrs. IP Estate, New Delhi
3. Spl. Commissioner of Police (Intelligence)
   Police Hqrs., IP Estate, New Delhi
4. S.Ramakrishnan
   Spl. Commissioner of Police(Intelligence)
   IP Estate, New Delhi
5. S. Prakash, IPS
   through Respondent No.1 .. Respondents

(Shri Ajesh Luthra, Advocate)

OA 1919/2001
Ved Pal Singh Rana
Qr.No.9, SI Type, PS Mandir Marg
New Delhi .. Applicant

(Shri Shyam Babu, Advocate)

versus

Govt. of NCT of Delhii, through

1. Chief Secretary
   5, Shamnath Marg, Delhi
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   Police Hqrs. IP Estate, New Delhi
3. S.Ramakrishnan
   Spl. Commissioner of Police(Intelligence)
   IP Estate, New Delhi

(Shri Ajesh Luthra, Advocate)

ORDER(oral)

Both the OAs are filed by the same applicant, working as Inspector in Delhi Police. Therefore with the consent of the partiies I proceed to dispose of the same by a common order.

2. In OA 453/2001, applicant seeks expunction of the adverse remarks communicated to him from his ACR for the period 1.4.97 to 7.11.97 vide order dated 21.7.1999, as according to him, Shri S.Ramakrishnan, Respondent No.4 (R-4) and Shri S.Prakash, Respondent No.5 (R-5) became hostile towards him and manipulated these adverse remarks in collusion with each other. His contention is that Addl. DCP/DCP or officer of equal rank is the reporting officer and Addl. CP concerned is the reviewing authority in his case. The applicant proceeded on earned leave for 30 days on 9.7.97. Therefter, he proceeded on 28 days medical leave from 8.10.97 to 5.11.97 when he was transferred from Special Branch to DCP/Crime & Railway by order dated 5.11.97. However, R-4 got the transfer order cancelled and reposted the applicant in Special Bench vide order dated 21.11.97. Aggrieved by this, applicant filed OA 2808/97 which was disposed of in the following terms, vide order dated 2.1.1998:

> "As applicant himself wants to continue to work in Crime and Railway Branch, and Respondents had also posted him there in view of his clean records of service as he would be useful there in connection with investigation of important cases (para 3 of respondents' reply) this OA is disposed of by calling upon respondents to consider withdrawing their impugned order dated 21.11.97 so that applicant continues to work in Crime & Railways Branch"

3. According to applicant, R-4 sought permission of R-1 to file an appeal against Tribunal's order dated 2.1.98, but R-1 in turn wrote a letter to DCP, Police Hqrs. in June, 1998 that Law Department of R-1 had opined that transfer of applicant was malafide and it was not a fit case for filing an appeal. Annoyed by this, R-4 took the

role of Reporting Officer, against all rules and regulations, and wrote the ACR of the applicant for the aforesaid period giving adverse remarks and these were communicated to the applicant vide letter dated 3.3.99. Thereafter, applicant made a complaint on 5.6.99 to the Chief Metropolitan Magistrate against R-4, R-5 and one Shri Dinesh Kumar, Metropolitan Magistrate, Delhi by order dated 8.6.99 directed the SHO, IP Estate to register a case against the above officers and make investigation and thereafter submit the report u/s 173 of Cr. PC. In pursuance thereof, FIR No.263/99 was registered on 22.6.99 against the aforesaid three officers.

4. Applicant has further contended that without withdrawing or cancelling the earlier ACR dated 3.3.99, R-4 and R-5 manipulated a fresh ACR by ante-dating it and communicated fresh adverse remarks for the period from 1.4.97 to 7.11.97, that too vide order dated 21.7.1999. When he came to know of the forgery/fabrication in his service record by R-4 and R-5, applicant submitted a representation on 10.8.99 to R-2 requesting for a legal action. R-4, vide his letter dated 16.8.1999 informed DCP/Crime & Rly. that the ACR of the applicant for the period from 1.4.97 to 7.11.97 was recorded by Shri S.Prakash, AIGP/CISF on 25.5.99 and it was duly reviewed by him. Applicant again made a representation on 25.8.1999 against the order dated 21.7.1999 which has not been disposed of so far. Aggrieved by this, he has filed the present OA seeking the aforesaid relief.

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5. Respondents have contested the OA and have stated in their short reply that the Commissioner of Police had called for the comments from Shri S.Prakash who had been the reporting officer in his capacity as DCP/SB and R-4, Special CP/Intelligence who had reviewed the ACR in question. The applicant was also heard in person on 25.5.2000 and the case was further examined in consultation with rules/instructions on the subject. After careful examination of the pleas raised by the applicant, the Commissioner of Police has ordered to expunge the adverse remarks recorded in applicant's ACR for the period from 1.4.97 to 7.11.97 vide order dated 16.7.2001. In view of this position the OA be dismissed.

6. By filing OA 1919/2001, the applicant has challenged the aforesaid order dated 16.7.2001. Since this OA is an offshoot of OA 453/2001 I do not deem it necessary to discuss the details again enumerated above. The grievance of the applicant in the present OA is that though the adverse remarks for the aforesaid period have been expunged and communicated to him vide order dated 22.5.2001, the Commissioner of Police became functus officio and has no jurisdiction or authority to act further. The operative part of the impugned order dated 16.7.2001 is extracted below:

> "It is, therefore, ordered that Shri S.K. Chowdhury, the then Addl. CP/SB and presently Joint CP/Ops. may record the ACR of the representationist for the period between 2.4.97 to 8.7.97 and send it for review to Shri S.Ramakrishnan, the then Sr. Addl.CP/Int., presently Special CP/Intelligence who will record his views for the period from 2.4.97 to 7.11.97 as a Reviewing Officer. In case any adverse remarks is given by any of these officers, the same will be communicated to the representationist

immediately thereafter and his representation, if any, received will be considered on merits by the undersigned."

7. Applicant has further contended that when the CP has already expunged the adverse remarks finding no material on record, he ought not to have given any further directions with regard to the re-writing of the ACR, particularly nominating R-4 who is personally biased and hostile towards the applicant. The adverse remarks were communicated to him after a lapse of two years, which would have served no useful purpose. In the reply filed on behalf of R-4 to applicant's earlier OA 2808/97, respondents had taken a specific stand that applicant had clean record of service till 2nd January, 1998. Thus it is clear that these adverse remarks were manufactured by Shri S.Prakash and R-4 in collusion with each other in order to spoil the meritorious record of the applicant. By the CP's order, Shri S.K.Chowdhary has been directed to rewrite applicant's CR for the period 2.4.97 to 8.7.97 whereas R-4 has been authorised to review the ACR for the entire period from 2.4.97 to 7.11.97, which is wholly arbitrary and unjustified, as R-4 had no opportunity at all to assess the work of the applicant for that period. In fact R-4 has disqualified himself to be the reviewing authority of the applicant due to his personal bias, malafide and hostile attitude towards the applicant in view of the fact that the applicant has made criminal complaints against him and two others.

8. While contesting OA 1919/2001, the respondents in their reply have justified the issue of impugned order dated 16.7.2001. It is stated by them that as per DoPT

guidelines contained in OM dated 23.9.85, in case where no reporting officer is in a position to initiate the report due to lack of experience of three months, or more, the reviewing officer may himself initiate the report as a reporting officer and that such a report will have to be reviewed by the officer above the reviewing officer. This has been explained in the detailed order of Commissioner of Police passed on 16.7.2001. Respondents have denied that Commissioner of Police has become functus officio and has no jurisdiction after the issue of communication dated 22.5.2001 and that Shri Ramakrishnan was personally biased and hostile against the applicant. The ACR in question was recorded by Shri Parkash, the then DCP/Spl. Branch on 25.5.99 and was reviewed by R-4 on 28.5.99, who communicated the adverse remarks to the applicant on 22.7.99. Hence there was no delay of two years as contended by the applicant. Reply filed on behalf of respondents to OA 2808/97 was based on entries found recorded in the service record of the applicant upto 15.2.97 and this reply was not shown to S.Prakash or R-4, as they had no role in the transfer/posting of the applicant, which was dealt with by the Police Hqrs. CP has rightly ordered the ACR for the period 2.4.97 to 8.7.97 to be written by S.K.Chowdhary, the then Addl. CP/SB as the officer had supervised the work of the applicant during this period (the applicant proceeded on 30 days earned leave w.e.f. 9.7.97 and Shri S.K.Chowdhary was transferred from Special Branch w.e.f. 17.7.97). R-4 had supervised the work of applicant for the entire period. In accordance with DoPT OM dated 23.9.85, R-4 is empowered to review the ACR. It is admitted by the respondents that the ACR

of the applicant was initially recorded by R-4, the Spl. CP/Int. who was the overall incharge of Special Branch, in terms of DoPT OM dated 23.9.85. Later on, however, on a reference from the Addl. CP/Estt. the ACR was got recorded from S.Prakash, the then DCP/Spl. Branch and reviewed by Sp.CP/Int. In terms of DG,P&T's letter dated 21.1.1983 read with DoPT OM dated 23.9.85, the order of CP nominating R-4 as reviewing officer is very much legal and he is not disqualified to review. In view of these submissions, OA 1919/2001 also has no merit and be dismissed.

9. I have heard the learned counsel for the parties at length and perused the records and also considered the pleadings. I have also carefully gone through the departmental file furnished by the respondents regarding adverse remarks recorded in the ACR of the applicant.

10. A perusal of the aforesaid file reveals the following; Addl. CP/Estt. vide his note dated 9.5.2001 has recorded as under:

> "From the notings above, it is clear that no Reporting Officer has supervised the work of Inspr. Ved Pal Singh Rana for more than 90 days during the period from 1.4.97 to 7.11.97. Therefore the following note on his personal file as suggested by CA at para 102/N may be placed:
>
> "No ACR for the period from 1.4.97 to 7.11.97 - as no Reporting Officer has supervised his work for a period of atleast 90 days".
>
> We may also inform Inspr. Ved Pal Singh Rana that "his representation against the adverse remarks recorded in the ACR for the period from 1.4.97 to 7.11.97 has been considered by CP/Delhi. As all remarks recorded by the officer who did not supervise his work for a period of atleast 90 days have been recorded against the existing rules, his plea in this respect has been accepted".

The ACR for the period from 1.4.97 to 7.11.97 containing the adverse remarks be cancelled and removed from his service record and the note mentioned at 'A' of para 113/N above to be kept in its place.

Sd/- Addl. CP/Estt.
9/5/2001

Spl. CP/Admn.

I have nothing to add to my note dated 3.11.2000 at paras 68-78/Notes. CP may kindly decide the matter in view of remarks of LA at pre-page. CP may kindly decide the matter in view of remarks LA at pre-page.

Sd/-
(Spl.CP/A)

CP

Notings from para 113 to 115/n are accepted and approved. Action be taken accordingly.

Sd/-
17/5

Spl.CP/A

11. Further perusal of the file also reveals as under: In his self contained note dated 12.7.2001, the Spl.CP/A has opined that "However considering that the ACR in question should have been reviewed by the Addl. CP/SB Shri S.K.Chowdhary who was there for over 90 days for the period from 2.4.97 to 8.7.97, there is no explanation why the ACR was not reviewed by Shri S.K.Chaudhary and was reviewed by Shri Ramakrishnan who was the next higher authority after Addl. CP/SB". He has further opined that "if the action as above is approved, we may issue order accordingly and Addl. CP/Estt. may inform the Govt. Counsel in continuation of earlier reference.". This note has the approval of CP.

12. It would be quite interesting to find that in response to communication received from Police Hqrs., Respondent No.4 in the form of legal opinion has himself

recorded vide his note dated 7.6.2001, relevant portions of which are extracted below for the purpose of adjudication of the present OAs.

> "Thus for the period from 2.4.97 to 8.7.97, Shri S.K. Chowdhury the ten Addl.CP/SB was competent to record the ACR. In that event, being the officer above the Reviewing Officer, Shri S.Ramakrishnan, who supervised the work of Inspector Rana for the entire period i.e. from 1'.4.97 to 7.11.97, is competent to review the ACR from 2.4.97 to 8.7.97 and record ACR for the period of 9.7.97 to 7.11.97.
>
> xxxxxx
>
> d) Similarly, since no DCP or Addl.CP had supervised the work of the Inspector for the period from 9.7.97 to 7.11.97, the ACR for this period also has to be written by the reviewing authority i.e. Spl.CP/Int. Since the period from 9.7.97 to 7.11.97 is less than 90 days and Shri T.R.Kakkar, CP, Delhi at the relevant time has already retired, there would be no review for this period of the ACR.
>
> Thus the order of the PHQ that no ACR for the period 1.4.97 to 7.11.97 will be written as no reporting officer has supervised his work for a period of atleast 90 days is faulty and requires to be amended and fresh orders issued as follows:-
>
> "The ACR for the period 2.4.97 to 8.7.97 would be written by Shri S.K.Chowdhury, the then Addl. CP/SB. This ACR would be kept in the custody of Shri S.Ramakrishnan, the then Sr.Addl.CP/Int. who supervised the work of the Inspector till his transfer from the Special Branch on 7.11.97. Shri S.Ramakrishnan will append his remarks for the entire period i.e. 1.4.97 to 7.11.97. Since the period from 9.7.97 to 7.11.97 is less than 90 days and Shri T.R.Kakkar, CP, Delhi at the relevant time has already retired, there would be no review for this period of the ACR."
>
> It is requested that the matter may be re-examined and a decision in the light of the aforesaid rules/instructions taken very early."

13. The above notings of R-4 go to show his bias and malafide intention towards the applicant and that the impugned order has been issued at the behest of Shri Ramakrishnan as rightly contended by the applicant.

14. Now coming to the impugned order, the CP has himself has recorded in para 3.that "Both Shri S.Prakash, the then DCP/SB and Shri S.Ramakrishnan, Special CP/Int. have commented that the misdeeds of the representationist were pointed out to him on various occasions. However, they have not enclosed any copy of warning, if any, issued in this regard and may be the representationist had been warned only verbally". From the above note, it is clear that the Commissioner of Police has taken a decision to expunge the adverse remarks recorded in the ACR of the applicant for the period in question. Therefore, there was no need to direct Shri Chowdhary to rewrite the ACR of the applicant and getting it reviewed by R-4.

15. The learned counsel for the applicant has further drawn my attention to para 25 of Swamy's Manual on CR (DGP&T letter dated 9.6.1984) which is extracted below:

> "It may be appreciated that an incomplete report cannot be relied upon for a fair and objective assessment of the officer concerned for his confirmation, promotion, etc. It is essential that the annual confidential reports are complete in all respects. In the circumstances, where on consideration of a representation against adverse remarks, the competent authority comes to the conclusion that the remarks deserve to be expunged, it should see whether total expunction of the remarks will leave the relevant column(s)) blank; and if it finds the position to be so, it should order modification of the relevant remarks in a suitable manner so that thee column(s) in question does/do not remain blank."

He has further drawn my attention to para 22A of Extract of Manual of Office Procedure (9th Edition) of October, 1982, the relevant portion of which is extracted below:

"Where a final decision already communicated to a party is found later on to have been given on a mistaken ground or wrong facts or wrong interpretation of rules due to misunderstanding, such withdrawal may have also legal implications. In all such cases, in addition to consulting Ministry of Law, wherever necessary, such a withdrawal should be permitted only after he approval of an officer higher than the one who took the original decision, has been obtained and reasons for the reversal or modification of the earlier decision have been duly recorded on the file". .

16. Admittedly in this case, the Commissioner of Police has not followed the proper procedure and has not obtained the order of next higher authority to withdraw/reverse his earlier decision whereby he had expunged the adverse remarks recorded in the ACR of the applicant for the period from 1.4.97 to 7.11.97. On the other hand, he has reversed his earlier decision at the behest of his subordinate namely, Shri S.Ramakrishnan (Respondent No.4) who was biased and had a malice against the applicant and had gone out of the way to send a communication to Commissioner of Police finding fault with his decision dated 17.5.2001 and suggesting to him to reverse his decision in a particular manner in order to ruin the career of a very junior functionary who was not directly working under him. It is not expected that Shri S.Ramakrishnan holding such a senior position in Delhi Police was not aware of the rule position that he could not write the CR of the applicant as a Reporting Officer/Reviewing Offiicer but it appears that he was bent upon to record adverse remarks against the applicant even if it was not permissible under rules.

17. Thus, considering all the aspects involved in this case, I am of the firm opinion that the impugned order dated in so far as it has directed Shri S.K.Chowdhary to

record the ACR of applicant and Shri Ramakrishnan to review the same is not tenable in the eyes of law and deserves to be dismissed. Resultantly, the impugned order dated 16.7.2001 is quashed and set aside. The CR of the applicant for the period in question should be suitably modified in terms of the instructions on the subject by recording a certificate to that effect that "No ACR for the period from 1.4.97 to 7.11.97 as no Reporting Officer has supervised his work for a period of atleast 90 days" as already decided by the then Commissioner of Police on 17.5.2001.

18. Both OAs, viz. OA 453/2001 and OA 1919/2001, are disposed of in the aforesaid terms. The interim order passed on 1.8.2001 in OA 1919/2001 stands merged in the present order. No costs.

19. Copy of this order be placed in both OA files.

(M.P. Singh)
Member(A)

/gtv/