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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1347/1998

New Delhi, this 11th November, 1999

Hon'ble Shri Justice V. Rajagopala Reddy, VC(J)
Hon'ble Shri S.P. Biswas, Member(A)

Rajender Singh (No.D/2058)
3-K, Police Colony
6th Bn. DAP, Model Town, Delhi-110 009 .. Applicant
(By Shri B.B. Raval, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Home Affairs
North Block, New Delhi
2. Commissioner of Police
Delhi Police, Police Hqrs.
New Delhi
3. Addl. Commissioner of Police
Delhi Police, Police Hqrs.
New Delhi
4. Dy. Commissioner of Police (Crime)
Delhi Police, Police Hqrs.
New Delhi .. Respondents

(By Shri Rajinder Pandita, Advocate)

ORDER

Hon'ble Shri S.P. Biswas

The applicant, an Inspector under Delhi Police, is aggrieved by orders dated 6.1.97 and 16.6.98 as at Annexures A and B respectively. By the former, applicant has been conveyed adverse remarks in respect of Confidential Report for the period from 1.4.95 to 31.3.96. By the latter, applicant has been informed that adverse remarks contained in Col.11 has since been graded as "Satisfactory" and those in Col.13 has been expunged but rest of the adverse remarks in the ACR could not be expunged.

2. Applicant would contend that after having joined service of Delhi Police as Sub-Inspector on 3.6.85, he earned laurels on as many as 47 times by dint of hard labour and commitment to duties and responsibilities assigned to him.

3. Applicant seeks to challenge the aforesaid orders on a large number of grounds. Before we bring out the basis of applicant's challenge, it would be appropriate to mention the remarks in the ACR for the period from 1.4.95 to 31.3.96 which have given rise to the controversies as aforementioned in the OA.

"There is no complaint against his honesty. His moral character, devotion to duty, general power of control and organising ability, attitude to modern police methods and contribution towards developing police community relations are satisfactory. His dealing with the public and accessibility to the public, attitude towards weaker section of society and power of command are average. He is impartial. His personality and initiative are good. His attitude to modernisation techniques of investigation, preventive and detective ability and working experience of criminal law and procedure are below average. He is reliable. His overall assessment during the period under review the functioning of the AATS was average. Overall contribution of this section in formulating strategy for prevention and detection of auto thefts in Delhi was below average. His grading is below average.

He can represent against these remarks within 30 days from the date of receipt of this communication to the competent authority i.e. Commissioner of Police, if he so desires."

4. Shri B.B. Raval, learned counsel for the applicant would contend that communication of adverse remarks is time barred as per rules since the same should have been communicated to him by 31.5.96. The delay in communication by about 7 months is time barred and therefore be set aside. The rejection of his representation/appeal by the Commissioner of Police

should have been supported by appropriate reasons. The said remarks do not serve the purpose of conveying the basis as to why certain remarks have been retained while expunging others. Such non-speaking orders do not meet the requirements of the settled law laid down by the apex court in a catena of judgements on such matters.

5. The learned counsel for the applicant would further argue that it is only because of the learned Additional District and Sessions Judge, Delhi conveyed through Dy. CP(Crime) that the applicant deemed to have worked for the entire period under reference for investigation and assistance to the court in "Sura Tragedy Death" cases. So much heavy was his business in the affairs of the court cases that the applicant had to spend 10 to 17 hours on all the working days. The efforts made by him in the relevant period in terms of recovery of stolen vehicles as well number of persons arrested showed better results as per details submitted in his appeal and yet his representation was rejected by cryptic and bald orders. Applicant would further contend that this is the only period he has been given adverse remarks whereas for all previous years and those in the successive years, the ACRs are all "very good" and therefore the adverse remarks in the impugned orders and the rejection are not in conformity with the standard practice that the Reporting Officer must have adhered to while writing his character roll for the year 1995-96.

6. Respondents have opposed the pleas taken by the applicant. It has been submitted that applicant's overall contribution in formulating strategies for prevention and detection of auto thieves in Delhi was

2/

found below average.. The functioning of AATS was not found upto the mark. The applicant, as alleged by the respondents, has shown hardly any positive attitude towards modernisation of the techniques/investigations and adoption of such methods in detecting increasing crimes in this area. His performances in the area of criminal law were found to be below average. The reviewing authority accordingly accepted and endorsed the remarks given by the reporting officer.

7. We have verified the ACRs of the applicant. We find that the applicant had earned fairly "good" reports in preceding as well as subsequent CRs. It is seen that Part III of the report is required to be written only by the reporting authority i.e. DCP in this particular case. We, however, find to our surprise that some of the columns particularly 11 and 12 in this Part III have been corrected by Addl. CP by means of pasting slips. Parts of ACRs are meant for different supervisory officials. A part of the report specified for a particular authority can not be interpolated by some other authority, even by higher ones. Remarks of Addl. CP within the portion exclusively meant for reporting officer, i.e. DCP are impermissible in terms of the instructions of the DoPT on the subject of writing CRs. If he had any disagreement with the views expressed by the Reporting Officer, it was well within his power to pass appropriate remarks in Part IV of the report meant for the Reviewing Officer i.e. Addl. CP. That apart, it is apparent from the CR for 1.4.95 to 31.3.96 that the Addl. CP who had corrected the relevant columns at 11 and 12 of the report, is not the same person who has accepted the report as the reviewing authority in Part IV.

2

8. We also find that the adverse remarks contain contradictions when compared with remarks in other columns of the performance.

9. We shall now bring out the position of law and the instructions issued by DoPT from time to time that would govern such cases. We find that in the case of D.Padmanabhan Vs. Director of Postal Services, Coimbatore & Ors. (1990)12 ATC 302 it has been held that the government servant has a right to be furnished with specific instances of failure based on which adverse remarks have been recorded. In the case of Ashok Kumar Vs. UOI 1989(4) SLJ(CAT) 209 it has been held that if there is a specific allegation of prejudice and personal bias on the part of the reporting/reviewing officer in the representation, it is incumbent on the part of the Government to scrutinise and examine the points raised in the representation in an objective manner and to pass a reasoned order which may create a feeling of justice having been done to the aggrieved government servant. In the case of Brij Mohan Singh Chopra Vs. State of Punjab AIR 1987 SC 948 it has been held that adverse remarks cannot be acted upon unless communicated and representation considered.

10. In the case of M.A.Rajasekhar V. State of Karnataka (1996) 10 SCC 369, the following proposition has been laid down by the Hon'ble Supreme Court.

"The object of making adverse remarks is to assess the competence of an officer on merits and performance of an officer concerned so as to grade him in various categories as outstanding, very good, good, satisfactory and average, etc. The competent authority and the

reviewing authority have to act fairly or objectively in assessing the character, integrity and performance of the incumbent.

11. In SBI V. Kashinath Kher (1996) 8 SCC 762, the following principles are laid down:

"The object of writing the confidential report is two fold, i.e. to give an opportunity to the officer to remove deficiencies, and to inculcate discipline. Secondly, it seeks to serve improvement of quality and excellence and efficiency of public service. The officer should show objectively, impartiality and fair assessment without any prejudices whatsoever with the highest sense of responsibility alone to inculcate devotion to duty, honesty and integrity to improve excellence of the individual officer. Lest the officers get demoralised which would be deleterious to the efficacy and efficiency of public service, they should be written by a superior officer of high rank"

12. In Sukhdevo V. Commissioner, Amaravati Division (1996) 5 SCC 103, the following law is laid down:

"The controlling officer before writing adverse remarks would give prior sufficient opportunity in writing by informing him of the deficiency he noticed for improvement. Inspite of the opportunity given if the officer/employee does not improve then it would be an obvious fact and would form material basis in support of the adverse remarks. It should also be mentioned that he had given prior opportunity in writing for improvement and yet was not availed of so that it would form part of the record. The power exercised by the controlling officer is per se illegal"

13. We find that respondents have faltered in not adhering to law laid down by the apex court in the case-laws cited above. Finally, in the case of Kashinath (supra), their Lordships laid down that character rolls should be written by superior officer and reviewed by still higher officer. Reporting/reviewing of character rolls by officers of the same rank are to be avoided. In the present case, all the 19 columns in Part III were to be written by DCP Mr.Q. Ahmed but columns 11 and 12 within the same part have been corrected by Addl. CP.

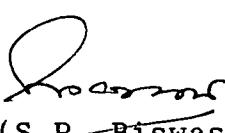
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14. We find that for the relevant year in question, i.e. 1995-96, Part III and IV contain remarks by an officer of the same rank i.e. Addl. CP. In view of the position of law and instructions of DoPT on the subject, we are therefore inclined to allow the OA with the following directions:

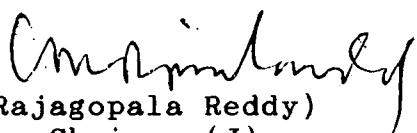
(i) Prayer at 8(i) is allowed. Grading shall be done at the level of Respondent No.3.

(ii) Prayer at relief 8(ii) shall be considered by Respondents No.2 and 3 and consequential reliefs granted, if the applicant is found suitable for promotion otherwise.

(iii) There shall be no order as to costs.


(S.P. Biswas)

Member(A)


(V. Rajagopala Reddy)
Vice-Chairman(J)

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