

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
PRINCIPAL BENCH,  
NEW DELHI.

\* \* \*

Date of Decision: 4.9.92

DA 1683/89

ASHOK KUMAR

... APPLICANT.

Versus

DELHI ADMN. & ORS.

... RESPONDENTS.

CORAM:

THE HON'BLE SHRI J.P. SHARMA, MEMBER (J).

For the Applicant ... SHRI SHYAM BABU.

For the Respondents ... SHRI V.K. RAO.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporters or not ?

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J).)

The applicant in this case has assailed the orders dated 20.9.88 rejecting his representation against the adverse remarks for the period from 1.4.87 to 31.3.88, the order dated 9.5.89 communicating the adverse remarks for the period from 23.5.88 to 31.3.89 and the order 22.6.89 rejecting his representation against the aforesaid remarks for the above period from May, 88 to March, 89. The applicant was during the relevant period working as Assistant Sub Inspector (Ministerial) in the Establishment

Branch of South District, Delhi. For the period from 1.4.87 to 31.3.88 the applicant was given adverse remarks mostly giving him the entry of 'Average' regarding keeping files and papers and peging of notes, intelligence, industry, knowledge of procedures and regulations, skill in drafting. He has also been given the remark of not cordial with fellow employees and regarding the discipline in the habit of indulging in indiscipline acts. It is also reported that he is short tempered and an indisciplined officer, misbehaved with the senior officers in the office and deserve close supervision. He was placed also under suspension on 8.2.88 for misbehaviour and indiscipline act. This remark was communicated to the applicant on 24.5.88 which was agreed to also by the Reviewing Officer. For the period from 23.5.88 to 31.3.89 there is an entry for the adverse remarks that he has a tendency to behave in an indisciplined and discourteous manner and his relations with fellow employees are not cordial. He is also in the habit of losing temper and picking up quarrels with his colleagues. It is also mentioned that he has also awarded punishment of stoppage of 4 future increments permanently for not obeying orders of senior officers as also abusing and assaulting his SI colleague. He was also reverted to the rank of HC for abusing and assaulting his co-office hand while posted in Estt. Branch of South District. He was also issued written warning for misbehaviour and indisciplined Act on 19.1.89. He is short tempered and

requires to be kept under strict watch and not fit for promotion.

2. The contention of the applicant is that his representation was rejected by a non-speaking order and that the communication of the adverse remarks was made by authority which was not competent to communicate. It is further contended by the learned counsel that there was no material available at all for the Reporting Officer or the Reviewing Officer to categorise the performance of the applicant as 'Average'. The opinion formed by the Reporting and Reviewing Officer was arbitrarily, without any material <sup>record</sup> on/to this effect. He was not given an oral warning and nor in writing. The exact instances when the applicant misbehaved and what steps the Reporting Officer took to ensure that the same lapse was not repeated has not been specifically communicated to the applicant. The learned counsel for the applicant further stated that Circular dated 21.3.76 (Annexure 'J') has not been followed. The guidelines (Annexure 'I') for writing ACR has also not been followed. It is also contended that arbitrarily the applicant has/placed in category 'C' while category 'C' can be given only when the work is unsatisfactory. There was no material on record to justify this categorisation. It is further contended that the authority appears to have been prejudiced by the alleged incident of 8.2.88 in which it was alleged against the applicant that he

had misbehaved with SI, Shiv Dhan.

3. The learned counsel for the respondents argued that the applicant had a tendency to behave in an indisciplined and discourteous manner. On 8.2.88, while he was posted in Establishment Branch he misbehaved with SI, Shiv Dhan in presence of the Head Clerk and other officers and assaulting him. In inquiry he has been punished. The applicant was also warned by the Addl. Commissioner of Police on 20.1.89 for an arrogant behaviour. His service record shows that previously also he had misbehaved with his senior officer while posted in 7th Bn. DAP. and his two service increments were stopped by the order dated 3.3.89. The remarks for the period from 1.4.87 to 31.3.88 was given by the Competant Authority as per his subjective assessment of the performance of the officer being reported upon. He was given 'C' report in his ACR by the competent authority without any prejudice and as per rules on the subject. The competent authority to dispose of the appeal in the case of Head Constable was the Deputy Commissioner of Police and that has been rightly done. The remarks for the period from May, 1988 to March, 1989 have made on the proper assessment of the applicant on the basis of his performance.

4. The applicant's counsel stated that the departmental inquiry has been challenged in OA 1782/89 which is pending before the Tribunal. So, the incident of 8.2.88 has not

yet finalised and the remarks based on that incident cannot be said to be just and proper.

5. I have given a careful consideration to the various arguments advanced by both the parties and also have seen the departmental file and the ACR of the applicant. A perusal of the ACR recorded in the Personal file of the applicant goes to show that the applicant on earlier occasions also was reported to be indisciplined. Sometimes in 1986 the applicant was promoted as ASI. The Reporting Officer, of course, has taken into consideration the incident of 8.2.88 when the applicant alleged to have misbehaved with Shri Shiv Dhan, SI. Thus, the Reporting Officer for the period from 1.4.87 to 31.3.88 has basically given the remarks on the basis of behaviour of the applicant with his colleagues and co-office hand and also on the basis of not maintaining the proper discipline in the Police Force. Regarding the entry of 'average' the over all assessment was made by the Reporting Officer which was agreed to by the Reviewing Officer and this cannot be said to be in any way not in line with the various guidelines and instructions referred to by the learned counsel for the applicant. The learned counsel for the applicant has placed reliance on the authority of Bhajan Singh Vs. UOI, reported in SLR Punjab & Haryana at page 601. The learned counsel has placed reliance on para 6 of the said report, which is reproduced below:-

"Learned counsel has then contended that the observations made in the confidential report of the petitioner (Annexure 'H') which have been quoted in an earlier part of this judgement, and the warning administered to him therein and on April 17, 1965 (Annexure 'C') are mala fide and should be quashed. Without entering into the allegations of mala fide, I think the Superintendent of Police had no jurisdiction to administer a warning to the petitioner (warning itself being a punishment), on allegations which were still pending enquiry before the departmental authorities. Same applies to the observations in the confidential report relating to the Chuchakwas liquor taking incident. For the foregoing reasons I set aside and quash the order dated April 17, 1965 (Annexure 'C') administering warning to the petitioner and direct that the portion relating to the Chuchakwas incident from the confidential report (Annexure 'H') shall also be deleted."

The learned counsel for the applicant has also referred to the authority of Krishan Lal Sharma Vs. UOI (1987 (4) ATC 709) and highlighted the observations made in para 7, which is reproduced below:-

"The next challenge is to the adverse remarks recorded for the year 1981. These adverse remarks read as follows :

"Average"

"Highly indisciplined"

"Doubtful in honesty"

"Irregular, careless & casual"

"Unfit"

"No"

Against these remarks, the petitioner made a representation and that was rejected. It is the grievance of the petitioner that these remarks were recorded because of his refusal to do menial work required by respondent No.4. In the adverse remarks, it was recorded that he was highly indisciplined. It is not clear as to how he was indisciplined as no particular incident is mentioned or communicated to the petitioner. It is also stated that he is irregular, careless and casual but no particulars, whatsoever, are given. In the absence of these particulars and specially in the background of the facts of this case, these adverse remarks cannot be sustained and are accordingly quashed."

6. I have considered the law cited by the learned counsel for the applicant and also the contention that the communication of the adverse remarks was not made by the proper authority and that the applicant was not communicated, during the period under review, any oral or writing warning. In fact, the Annual Confidential Rolls should be properly and carefully filled up by the Reporting Officer and should also be carefully reviewed by the Reviewing Officer. In the present case, the applicant has not made any allegation of malafide against the Reporting Officer. Merely, the contention of the applicant's counsel that because of the incident of 8.2.88 the mind of the Reporting Officer was prejudiced, cannot be accepted. On the basis of the complaint of Shri Shiv Dhan Singh, SI, the inquiry was instituted and the applicant <sup>was</sup> also been punished. This falls within the period upto March, 1988. The Reporting Officer has reported the incident which he has reason to believe and commented regarding the relation of the officer vis-a-vis his colleagues and also the indiscipline nature and conduct of the applicant. This was the subjective satisfaction of the Reporting Officer which he has projected in writing the remarks against the applicant. Though specific instances are necessary but sometimes if those are not mentioned that will not make the observation made in the report as without basis. The matter was considered in the case of R.L. Butail Vs. BOI (1971(2)SCR 55, on p.62).

7. In fact, the guidelines as far as possible should be observed but merely because of the procedure has not been followed rigidly will not by itself result in quashing of such remarks. Even if the representations are rejected without giving any reasons then that order of rejection cannot be said to be bad as held in the case of R.P. Mohapatra Vs. State of Orissa (1981 (1) SLJ 497).

8. On a perusal of the personal and departmental file of the applicant and having given a careful perusal on the performance of the applicant <sup>only</sup> not on the period under review but on the earlier and subsequent periods, it cannot be said that the Reporting Officer has given the remarks with extraneous considerations. The remarks in the ACR <sup>given by</sup> can be passed by the person who has seen the work of the <sup>immediate superior</sup> applicant though Inspector has not given any report under whom the applicant was working but the higher authority who had the occasion to watch the performance of the applicant as well as behaviour has expressed his views in the matter and that cannot be said to be in any way based on an extraneous consideration.

9. The Police is a disciplined force and both in personal and professional life the members of the force are required to keep the decorum of the post as well as of the Force. The conduct of the applicant in the period under review cannot be said to be totally disciplined.

There has been a complaint against the applicant by the senior officer and that has been inquired into and the applicant has also been punished. Though the matter is pending adjudication in another OA 1782/89 but that by itself will not erase the impression and opinion formed by the Reporting Officer against the applicant.

10. There is some flaw in communication of adverse remarks to the applicant but that by itself will not make the remarks bad or void if they are in the breach of the guidelines, as said above. The same view has been held in the case of M. Ramji Vs. UOI (ATR 1986 (2) CAT 157(Delhi).

11. Though it has not come on record but it is in the personal file of the applicant that the applicant has also since been dismissed from the service by the order dated 10.7.92.

12. In view of the above discussion and on the basis of the material available in the personal file, there is no case to interfere. The application is, therefore, devoid of merit and is dismissed leaving the parties to bear their own costs.

*J. P. Sharma*

( J.P. SHARMA ) 4.9.92  
MEMBER (J)