

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 96

1986.

~~RECORDED~~

DATE OF DECISION August 27, 1987.

Shri Devender Kumar Sharma ~~Petitioner~~ Applicant.

Shri G.D. Gupta with Ms. Anita Sachdeva Advocate for the Petitioner(s)

Versus

Delhi Administration & Ors Respondent(s).

Shri J.S. Bali, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether to be circulated to other Benches? *No*

h. kumar

(Kaushal Kumar)
Member

27.8.1987.

K. Madhava Reddy

(K. Madhava Reddy)
Chairman

27.8.1987.

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

REGN. NO. OA 96/1986.

August 27, 1987.

Shri Devender Kumar Sharma ... Applicant.

Vs.

Delhi Administration & Ors. ... Respondents.

CORAM:

Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

Hon'ble Mr. Kaushal Kumar, Member.

For the applicant ... Shri G.D. Gupta, counsel
with Ms. Anita Sachdeva,
counsel.

For the respondents ... Shri J.S. Bali, counsel.

(Judgment of the Bench delivered by
Hon'ble Mr. Justice K. Madhava Reddy,
Chairman).

In this application under Section 19 of the
Administrative Tribunals Act, 1985 (for short "The Act"),
the applicant who was appointed as a Sub-Inspector
in Delhi Police by way of direct recruitment on
18.10.1969 claims that he should have been confirmed
along with his other batch mates and some juniors
to him in that batch on 22.5.1974 and not on 3.7.1975.
It is his case that he came to know the above fact
in April, 1984 and he immediately submitted a representation
to the Commissioner of Police, Delhi on 28.4.1984
(Annexure 'E'). As there was no response, he sent
repeated reminders to dispose of his representation and
confirm him with effect from 22.5.1974. Finally, on
17.4.1985, he was informed that "his representation-cum-

-review petition has been considered by the Commissioner of Police, Delhi and rejected" (Annexure 'A'). He filed this application before the Tribunal on 9.1.1986.

He inter alia pleads that several of his juniors in the same batch and in particular S/Shri Rajinder Singh, Harbans Singh, Bhag Singh, Ishwar Singh and Nathu Singh whose record was worse than the record of the applicant were confirmed w.e.f.

22.5.1974 while he was confirmed from a later date.

While some of his batch mates were confirmed, his case for confirmation was deferred on the ground that his A.C.Rs for the year 1970-71 and 1973-74 were adverse remarks in awaited. Later the A.C.R. for 1973-74, recorded on

26.8.1974 were despatched to him vide No.4267/C dated 16.10.1974 and were received by him on 6.11.1974.

But a day prior to that the Assistant Inspector General of Police, Delhi passed an Order No.22876-85/CB dated 5.11.1974 that on account of unsatisfactory record of service, his case had been deferred.

Thereafter as per the averment in the counter affidavit, in his ACR for 1974-75, some adverse observations were made which were communicated to him on 13.2.1976.

He was once again passed over for confirmation (vide order No.21936-50/CB dated 19.11.1975) and it was decided to review his case after receipt of his ACR for the year 1975-76. His A.C.R. for the period from 23.3.1975 to 4.10.1975 was classified as 'C' with "integrity doubtful". His ACR for the period from

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4.10.75 to 31.3.76 was also adverse. He was awarded "censure" on 7.5.1976. He was again passed over for confirmation with the observation: "to review his case after the receipt of the ACR for the year 1976-77". It was finally decided that the applicant S.I. be confirmed with effect from 3.7.1975. The applicant was confirmed vide Order No.10389-4401/CB dated 21.4.1979. That order published in the Delhi Police Gazette reads as under:-

" Sub: Inspectors (Executive) are hereby confirmed in their appointments with effect from the dates noted against each and allotted Range Nos. as given against their names:-

S.No.	Name and No.	Date of probation for 2 yrs.	Date & period of extension of probation period.
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9. SI Devinder Kumar
D/863.

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Date of confirmation

Range No.
allotted.

3.7.75.

Against one of the 58 posts
made permanent vide No.20051-80/
Est. dated 3.7.72.

D/863 "

The applicant contends that the remarks recorded in his ACR for the year 1973-74 cannot be termed as adverse and even if they are termed as adverse, he cannot be denied the confirmation because they were not communicated to him before denying the confirmation. It is his further contention that the Sub Inspectors mentioned in ground 7(k) of the application

were confirmed with effect from 22.5.1974 while the applicant who should also have been confirmed with effect from that very date was confirmed with effect from 3.7.1975. It is grossly unjust and arbitrary.

The facts stated above are not much in dispute.

Shri J.S. Bali, learned counsel for the respondents raises a preliminary objection to the consideration of this application on merits on the ground that the applicant is guilty of laches in moving the Tribunal. He contends that the order dated 21.4.1979 confirming the applicant with effect from 3.7.1975 was published in the gazette of even date. If at all he was aggrieved by that order, the applicant should have moved the Court forthwith, and in any case, within a reasonable time. He cannot be allowed to invoke the jurisdiction of this Tribunal after a lapse of nearly 6/7 years. This contention, however, ignores the fact that the respondents themselves entertained his representation dated 28.4.1984 against the order of confirmation. Thereafter when he sent repeated reminders, they eventually considered his representation on merits, but rejected his claim and communicated the order of rejection vide letter dated 17.4.1985. That letter of 17.4.1985 would show that his representation was not rejected as barred by time or on the ground of laches. On the other hand, it is clear that his representation



was treated as a review petition which was considered on merits and rejected. It is not denied that there is no specific provision for appeal and no period of limitation as such is prescribed under the Service Rules against this order. Even assuming that there is a period of limitation prescribed, both the Appellate Authority and the Revisional Authority have always discretion to entertain a time-barred appeal or the Revision Petition. If they find that the representation requires to be considered on merits, nothing prevents the respondents from redressing the grievance of the representationist. Once the representation of the applicant was entertained and considered on merits and rejected ~~it~~, that certainly gives the applicant a fresh starting point of limitation. So far as the High Court is concerned, no period of limitation as such is prescribed for entertaining a petition under Article 226 of the Constitution and the applicant could have certainly moved the High Court for relief within a reasonable time. But the Tribunal may entertain an application under Section 19 only against an order made within a period of three years immediately before the constitution of the Tribunal i.e. on 1.11.1985 and if the application is filed within one year from the date on which such final order has been made or within six months of the constitution of the Tribunal whichever is later as laid

down under Section 21 of the Act. This application is filed within the period of limitation prescribed under Section 21 of the Act. Therefore, no question of laches arises. That apart, this Tribunal ^{cannot} dismiss an application under Section 19 of the Act on the ground of laches if it finds that the application itself is filed within the period of limitation prescribed under Section 21 of the Act. Shri J.S. Bali, learned counsel for the respondents contended that even if the application under Section 19 is filed within time, when the Tribunal finds that the representation against the original order was filed after a long delay and the applicant is guilty of laches in making that representation, the Tribunal should dismiss the application. We are unable to accept this contention. When the Tribunal finds that the application under Section 19 is filed within the period of limitation prescribed under Section 21 of the Act, it is bound to consider the claim of the applicant on merits. It cannot hold that the applicant is guilty of laches when the statute gives him the right to apply to the Tribunal for redressal of his grievance within the period of limitation specified in Section 21 of the Act. The question of laches on the part of the applicant would arise only in a case where no period of limitation is prescribed and the Tribunal has discretion either to grant or to refuse the relief. But where the statute prescribes a period of limitation, the

Tribunal cannot deny the relief on any ground of laches. The preliminary objection to the maintenance of limitation is, therefore, rejected.

So far as the merits of the applicant's claim are concerned, firstly it has to be seen whether the adverse remarks recorded on 26.8.1974 in the A.C.R. for the year 1973-74 could constitute a valid ground for refusing confirmation. That remarks reads as under (Annexure 'H'):

"In the confidential report of SI Devinder Kumar No.D/863 for the period from 1.4.73 to 31.3.74 it is mentioned that there is no complaint against honesty, his moral courage and readiness to expose the malpractices of subordinates, general power of control, personality and initiative, power of command, interest in modern methods of investigation and modern police methods generally, preventive and detective ability is fair, reputation for fair dealing, he is impartial and loyal. His attitude towards subordinates and relations with fellow officers are sympathetic. He is an officer of mediocre intellect and ability. Needs to take more interest in his work."

2. The above report may be conveyed to the SI under proper receipt and the same be sent to this office for onward transmission to CA/CPO."

According to the learned counsel for the applicant the remarks in the ACR for the year 1973-74 of the applicant that "he is an officer of mediocre intellect and ability". Needs to take more interest in his work" do not constitute adverse remarks at all.

The earlier remarks recorded in his ACR are in his favour." It is mentioned that there is no complaint against honesty, his moral courage and readiness to expose the malpractices of subordinates, general power of control, personality and initiative, power of command, interest in modern methods of investigation and modern police methods generally, preventive and detective ability is fair, ~~and~~ reputation for fair dealing and he is impartial and loyal" is acknowledged in his ACR for the year 1973-74. However, the respondents themselves treated these as adverse remarks and communicated them to the applicant and afforded him an opportunity to make a representation. In our view, ~~of~~ the remarks that "the officer needs to take more interest in his work" cannot be deemed adverse; at the most they could only be interpreted as an advice to him to take more interest.

However, in the view we are taking, we deem it unnecessary to express any opinion on this aspect of the contention. The fact remains that the order refusing confirmation was made on 5.11.1974 while these adverse remarks were communicated to the applicant on 6.11.1974.

Shri J.S. Bali, learned counsel for the respondents, however, contended that these remarks were recorded earlier; merely because they were served a day later to the decision as to confirmation, they cannot be

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ignored and refusal of confirmation on the basis of those adverse remarks cannot be termed as illegal or unjustified.

From the record it is evident that they were served through Station House Officer, Original Road on 6.11.1974.

The applicant has a right of representation against the adverse remarks communicated to him. It cannot be said that they were communicated on the day they were despatched.

It must be established by the respondents that they were also served on the applicant who was given the right to make a representation. We, therefore, hold that the adverse remarks were not communicated to the applicant earlier to 6.11.1974 and the respondents took a decision not to confirm him on 5.11.1974; they were not communicated to the applicant before refusing confirmation.

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The question, therefore, arises for consideration is whether the uncommunicated adverse remarks could form the basis for refusing confirmation. The whole purpose of communicating adverse remarks is to point out the deficiency in the work of the employee and to give him an opportunity to improve in the light of the remarks recorded and also to make a representation for the deletion of the adverse remarks. The A.C.R. is an assessment of the work, performance and capability of the officer concerned. Confirmation, crossing of efficiency bar, promotion, grant of pensionary benefits and even compulsory retirement orders are based on the ACR. The entries in the ACR thus can make or mar the future of an officer. They constitute a very valuable and important material

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on a consideration of which orders as to confirmation, crossing of efficiency bar, promotion, grant of pensionary benefits etc. have to be made. The importance of maintenance of these ACRs is recognised in various Office memoranda issued from time to time. In Office Memorandum No.51/5/72-Estt.(A) dated 20.5.1972 of the Government of India, Cabinet Secretariat, Department of Personnel, New Delhi, instructions are issued for the preparation of the A.C.Rs and the communication of adverse remarks entered therein. The importance of annual confidential reports is recognised in para 2.1 of the said Office Memorandum which reads as under:

"2.1 Since Government have accepted the principle that confirmation, crossing of efficiency bar, promotion, grant of pensionary benefits, etc., should be based on the assessment of the confidential dossiers, this matter is of the greatest importance for the efficiency and the morale of the services. It is in the interest of Government no less than that of the employees that the value of a proper system of confidential reports is recognised by all concerned".

In paragraphs 8.1 and 8.2 regarding communication of adverse remarks/^{it} is laid down as under:

"8.1. It is necessary that every employee should know what his defects are and how he could remove them. Past experience suggests that it would make for better efficiency and contentment of the public services if every reporting officer realizes that it is his duty not only to make an objective assessment of his subordinate's work and qualities but also to give him at all times the necessary advice, guidance

and assistance to correct his faults and deficiencies. If this part of the reporting officer's duty is properly performed, there should be no difficulty about recording adverse entries which would only refer to defects which had persisted despite the reporting officer's efforts to have them corrected.

8.2 All adverse entries in the confidential reports of the officers should be communicated by the Reviewing Officer after they have been seen by the countersigning authority, if any. This should be done as far as possible within one month of the completion of the report. The communication should be in writing and a record to that effect should be kept in the confidential roll of the officer. Where there is no reviewing officer, the adverse entry will be communicated by the reporting officer likewise".

The Office Memorandum further enjoins in paras 9.1 and 9.2 that the adverse remarks should be expeditiously communicated and representation should be made within six weeks of the date of communication of such remarks and both paras read as under:

"9.1 The adverse remarks should be communicated expeditiously in all cases.

9.2 Representations against adverse entries (including reference to 'warnings' or 'communications of the displeasure of the Government or 'reprimands' which are recorded in the confidential report of the Government servant) should be made within six weeks of the date of communication of such remarks. While communicating the adverse remarks to the Government servant concerned, the time limit as stated above, should be brought to his notice".

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No period of limitation as such is prescribed for disposing of the representation. There is only general direction that it should be disposed of expeditiously. It was this Office Memorandum that was holding the field. when the adverse entry was recorded in the ACR of the applicant for the year 1973-74. However, that was not communicated before the decision not to confirm the applicant was taken on 5.11.1974. This Office Memorandum gives a clear indication that the A.C.Rs would become final only after a representation is considered and disposed of. In para 9.5, it is stated that all representations against adverse remarks should be examined by an authority superior to the reviewing officer, in consultation, if necessary, with the reporting and the reviewing officer. If the competent authority finds that the remarks are justified or are wholly unjustified, it may tone down the remarks in disposing of the representation. He is required to make the necessary entry separately with proper attestation at the appropriate place of the report. The competent authority may also hold that adverse remarks were inspired by malice or are entirely incorrect or unfounded and, therefore, deserve expunction. If he comes across a case of this type, he is entitled to score off the remarks and obliterate the same by pasting a paper on those remarks and making an entry to that effect under his signature.

The applicant is thus given a right to make a



representation and the competent authority is required to consider the representation on merits and empowered to score off the remarks and give a clean chit to the officer. The ACRs cannot, therefore, be said to be final no sooner ^{than} they are recorded. Nor can they be treated as final merely because they are communicated. They would become final only if a representation is not made within six weeks of the date of communication of such remarks. But if a representation is made and the same is not disposed of, then obviously any such entry in the ACR not being final cannot be acted upon. Though it is not stated so specifically in the Office Memorandum dated 20.5.1972, that is the necessary legal consequence, is clear from the several decisions of this Court. That is also recognised in a subsequent Office Memorandum No.21011/1/77-Estt. dated 30.1.1978 issued by the Government of India which inter alia directs as under:

Subject:- Confidential Report- Preparation and maintenance of.

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The undersigned is directed to refer to this Deptt's O.M.No.51/5/72-Estt-A dated the 20th May 1972 and OM No.51/3/72-Estt-A dated the 2nd May, 1975 on the subject noted above and to say that the existing system of writing confidential reports has been reviewed and the following decisions have been taken:-

- i) The Annual Reports should be recorded within one month of the expiry of the report period and delay in this regard on the part of the reporting officer should be adversely commented upon if the officer



to be reported upon delays submission of self-appraisal, this should be adversely commented upon by the reporting officer.

ii) Where the reporting officer retires or otherwise demits office, he may be allowed to give the report on his subordinates within a month of his retirement or demission of office.

iii) All adverse remarks in the Confidential Report of Govt. servant, both on performance as well as on basic qualities and potential should be communicated alongwith a mention of good points within one month of their being recorded. The communication should be in writing and a record to that effect should be kept in the CR Dossier of the Government Servant concerned.

iv) Only one representation against adverse remarks (including reference to 'warning' or communication of the displeasure of the Govt. or reprimand' which are recorded in the Confidential Report of the Govt. servant should be allowed within one month of their communication. While communicating the adverse remarks to the Govt. servant concerned, this time limit should be brought to his Notice.

v) All representations against adverse remarks should be decided expeditiously by the competent authority and in any case, within three months from the date of submission of the representation. Adverse remarks should not be deemed as operative, if any representation filed within the prescribed limit is pending. If no representation is made within the prescribed time, or once this has been finally disposed of, there would be no further bar to take notice of the adverse entries.

vi) No memorial or appeal against the rejection of the representation should be allowed six months after such reaction.

2. Ministry of Finance etc. are requested to bring these decisions to the

notice of the all concerned for favour of strict compliance and the provisions of O.M.No.51/5/72-Estt(A) dt. 20th May,1972 may be amended accordingly.

3. With a view to introducing a performance oriented appraisal system, the existing C.R. Forms are also being revised for being brought into use for recording the reports for the year ending 31st March,1978 or 31st Dec' 1978 as the case may be, and they would be circulated shortly.

Sd/- R.C. GUPTA
DEPUTY SECRETARY TO THE GOVT.
OF INDIA. "

is
It would be seen that while no period/prescribed
the
in O.M. of 20th May,1972 within which an ACR should
be recorded for a particular year, this O.M. enjoins
that this should be recorded within a period of one
month of the expiry of the report period to which it
relates. It also requires the authorities to communicate
the adverse remarks within a period of one month from
the date they are recorded and it prescribes a period
of one month for making a representation against the
remarks so communicated. It further enjoins upon the
competent authority to dispose of a representation within
a period of three months. It also declares that no
memorial or appeal against the rejection of the
representation should be allowed six months after such
rejection. In the result, it would be clear that adverse
remarks would become final if no representation is filed
within a month of their communication and within a period
of six months after they are recorded. That the representat-
ion is required to be disposed of within a period of three

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months of its filing, and if a further appeal or memorial against the rejection is filed, that memorial or appeal could be entertained if it is filed within a period of six months. Pendency of any representation or appeal would mean that the A.C.R. recorded is not final and cannot be acted upon. Office Memorandum of 30.1.1978 though not in force on the date when the applicant's confirmation was refused only declares the legal position. As discussed above, that the ACRs cannot be acted upon unless they are communicated and a representation against it is disposed of and that that was the intention of the Government is clearly borne out by the subsequent O.M. dated 30.1.1978 also.

This is in conformity with the decisions of the Supreme Court and of the several High Courts in this regard.

In GURDIAL SINGH FIJI Vs. STATE OF PUNJAB AND ORS(1) the appellant was denied promotion on account of certain adverse entries. Against those entries, he made representations to the Government but they were not considered or disposed of before denying promotion. The Supreme Court considering the effect of non-consideration of the representation observed:

"The principle is well settled that in accordance with the rules of natural justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve

his work and conduct or to explain the circumstances leading to the report. (Emphasis supplied) Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on consideration of the explanation offered by the person concerned, whether the adverse report is justified. Unfortunately, for some reason or another, not arising out of any fault on the part of the appellant, though the adverse report was communicated to him, the Government has not been able to consider his explanation and decide whether the report was justified".

In AMAR KANT CHAUDHARY Vs. STATE OF BIHAR & ORS (2) referring to the dicta laid down in GURDIAL SINGH FIJI Vs. STATE OF PUNJAB AND ORS (1) with approval observed that:

"the case of the appellant for promotion to the Indian Police Service Cadre has not been considered by the Committee in a just and fair way and his case has been disposed of contrary to the principles laid down in Gurdial Singh Fiji's case (1)".

From the directions given therein, it is clear that uncommunicated entries in the ACRs could not be acted upon. Referring with approval to the view taken in the above referred two cases, the Supreme Court in a recent case Civil Appeal No. 7427 of 1983 in BRIJ MOHAN SINGH CHOPRA Vs. STATE OF PUNJAB judgment dated 11.3.1987 dealing with the case of compulsory retirement held:

"It would be unjust and unfair and

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(2) 1984 (2) SCR 299 = AIR 1984 SC 531.

(1) 1979 (3) SCR 518.

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contrary to principles of natural justice to retire prematurely Govt. employee on the basis of adverse entries which are either not communicated to him or if communicated, representations made against those entries are not considered and disposed of ". (emphasis supplied).

Referring to the earlier decision, the Court declared:

"Unless the representation against the adverse entry is considered and disposed of it is not just and fair to act upon those adverse entries. These decisions lay down the principle that unless an adverse report is communicated and representation, if any, made by the employee is considered, it cannot be acted upon to deny promotion".

The Court further held:

"that the same consideration must apply to a case where the adverse entries are taken into account in retiring an employee prematurely from service".

Shri J.S. Bali, learned counsel for the respondents contended that most of these cases relate to the case of compulsory retirement. But it would be observed that the principle that uncommunicated adverse remarks should not be acted upon was clearly enunciated in Gurdial Singh Fiji's case, which was a case of promotion and not compulsory retirement. It was this principle which was applied to cases of compulsory retirement. The learned counsel for the respondents also relied upon the judgment of

the Supreme Court in UNION OF INDIA Vs. M.E. REDDY & ANOTHER (3) to contend that taking into consideration uncommunicated entries in A.C.R. would not always vitiate the action taken. Taking into account the doubtful integrity of the officer concerned, the Supreme Court made the following observations:

"even according to the decision rendered by this Court in the aforesaid case (R.L. Butail Vs. Union of India, (1971) 2 SCR 55) the fact that an officer is of doubtful integrity stands on a separate footing and if he is compulsorily retired that neither involves any stigma nor any error in the order".

That decision cannot help the Respondents' present contention and cannot be applied to the case of the applicant whose integrity even according to the respondents is above board. Further the Supreme Court itself in BRIJ BEHARI LAL AGARWAL Vs. HIGH COURT OF M.P. AND OTHERS (4) had occasion to consider this judgment and explain the purport of the remarks as under:

"The circumstances in which it is necessary to communicate adverse entries made in confidential reports to the Government servant concerned have been considered by this Court in R.L. Butail Vs. Union of India (1971) 2 SCR 55 in Gurdial Singh Fijji Vs. State of Punjab, AIR 1979 SC 1622 and more recently in Union of India Vs. M.E. Reddy, AIR 1980 SC 563.....The order-sheet contains an order in which while disposing of a criminal appeal a Division Bench of the High Court has recorded serious criticism of the manner in which the appellant had

(3) AIR 1980 SC 563.
(4) AIR 1981 SC 594.



disposed of the sessions case. It does not appear that a copy of the remarks made in the order-sheet, although placed on the personal confidential file of the appellant, was ever communicated to him".

Paragraph 5.2 of the Office Memorandum dated 20.5.1972 also places the cases of doubtful integrity on a different footing. The observations in UNION OF INDIA Vs. M.E. REDDY & ANOTHER's case (3) cannot be of general application and cannot whittle down the proposition enunciated by the Supreme Court that uncommunicated adverse remarks made in the ACRs cannot be acted upon for refusing confirmation, crossing of efficiency bar, promotion, grant of pensionary benefits and compulsory retirement.

We are, therefore, clearly of the view that uncommunicated "adverse remarks" cannot be acted upon in considering the question of confirmation of ^{an} officer. In the instant case, admittedly the adverse remarks were not communicated when the decision not to confirm the applicant was taken on 5.11.1974.

The further question that arises for consideration is whether the action of respondents refusing confirmation of the applicant when his juniors were confirmed with effect from 22.5.1974 can be upheld. That action cannot be sustained for more than one reason. Admittedly,

(3) AIR 1980 SC 563.



all the juniors of the applicant's batch have been confirmed on 22.5.1974. Further, among them, the record of some was much worse. Persons, whose names are mentioned in ground (K) of the application were confirmed from the due date i.e. 22.5.1974 but the applicant was confirmed with effect from 3.7.1975. No plausible reason whatsoever has been stated as to how and why that date was chosen and why he was not confirmed with effect from 22.5.1974 when his juniors were confirmed.

We may also note that when Shri Narendra Kumar and Shri Krishan Kumar, Sub-Inspectors of the same batch were not confirmed with effect from 22.5.1974, they moved this Tribunal in OA No.302/1986 and OA No.392/86 respectively. Those Original Applications were allowed on 7.1.1987 by a common judgment. In the course of the judgment, we considered the contention of the applicants therein that those very Sub-Inspectors whose names are mentioned in ground (K) of this application, did not have a satisfactory record and yet they were confirmed. In regard to those Sub-Inspectors this Bench observed as under:

"A few more instances were also mentioned in paragraph 'G' of the Application (OA No.302/86). Of these one is S.I.

Jaipal Singh, who was junior to Narendra Kumar, was also awarded major punishment of forfeiture of his service in 1972 but he was confirmed with effect from 22.5.74. So also S.I. Rajender Singh, S.I. Harbans Singh and S.I. Bhag Singh though not confirmed on the due dates on account of their indifferent service

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records were later confirmed with effect from 22.5.74. One S.I. Hukam Singh who was enlisted in the year 1969 was not found fit till 1983 due to 'C' reports and other punishments. However in 1984 he too was confirmed with effect from 22.5.1974. These averments are not denied by the Respondents in their reply. No explanation whatsoever is offered for adopting a different criteria in regard to the confirmation of the applicants and other Sub Inspectors selected in the same year when sufficient number of posts were available against which confirmation could be ordered. In any case when juniors to the applicants were sought to be confirmed with effect from 22.5.1974, the applicants also ought to have been confirmed from that date. In fact, while the S.P. Central Distt. had recommended the case of Narendra Kumar for confirmation it would appear only because his conduct was under enquiry he was not confirmed. He, therefore, ought to have been confirmed with effect from 22.5.1974 after he was cleared. We find no justification for not confirming him with effect from 22.5.74 when his juniors were confirmed."

The same reasoning holds good with much greater force in the case of present applicant, against whom the so-called "adverse remarks" for the year 1973-74 are merely:

"He is an officer of mediocre intellect and ability. Needs to take more interest in his work".

If the officers mentioned in ground (K) of the Application could be confirmed with effect from 22.5.1974, it would ^{be} grossly unjust not to confirm the applicant,



who has a much better record with effect from that date, that is the date when his other batch mates who were juniors to him were confirmed.

Shri J.S. Bali, learned counsel for the respondents further contended that subsequent to 5.11.1974 upto 1979, annual record of the applicant shows that it deteriorated, that his integrity also was doubted and he was awarded a censure. But these A.CRs. were not relevant and in fact were not in existence and could not be taken into account when the applicant's case for confirmation was to be considered on 5.11.1974. Confirmation has to be done with reference to ACRs anterior to that date and available on the date when the officer qualified for confirmation. Subsequent records cannot be made the ground for refusing confirmation on the date when it was due.

We are clearly of the opinion that the applicant was entitled to be confirmed with effect from 22.5.1974 when his juniors were confirmed and we direct accordingly. The order dated 17.4.1985 (Annexure 'A') rejecting the applicant's representation -cum-review petition is accordingly quashed. The applicant would also be entitled to all consequential benefits of salary and promotion. There will be no order as to costs.

K. Madhava Reddy
(Kaushal Kumar)
Member
27.8.1987.

K. Madhava Reddy
(K. Madhava Reddy)
Chairman
27.8.1987.