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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

REGD. NO. O.A. 1425/87

Date of Decision: 21.10.88.

Shri Kiran Singh

....

Applicant.

Versus

Commissioner of Police

....

Respondent.

For the applicant ... Shri J.P.S. Sirohi, Advocate.

For the respondent ... Shri G.C. Lalwani, Advocate.

Hon'ble Ajay Johri, Member (A).

This is an application under Section 19 of the Administrative Tribunals Act, 1985. The applicant, Shri Kiran Singh, is working as Assistant Sub-Inspector (ASI) in the Delhi Police. He has, by this application, challenged the letter No. 338-339/Z, dated 2.2.1984 issued by the Deputy Commissioner of Police (DCP) conveying certain adverse entries made in his Confidential Report (CR) as recorded by the Assistant Commissioner of Police (ACP), respondent no.4, and also order dated 21.11.1984 rejecting his appeal against the adverse remarks recorded by ACP and another order dated 24.9.1986 passed by the Commissioner of Police (CP) rejecting his revision application on the same subject.

2. The brief facts of the case are that the applicant had joined as Constable in Delhi Police on 15.10.1959. The applicant rose upto the post of ASI in 1980. According to him he has been discharging his duties with great devotion and has also received a number of commendation certificates with cash rewards in recognition of the good work done by him. In 1981 the applicant was put Incharge of the General Stores and Motor Transport and continued to hold dual charge of the General Store/M.T. upto June, 1983 when another ASI was appointed as Incharge of the stores. He was given adverse

remarks in his report for the period 1.4.1983 to 28.12.1983. The applicant has alleged that these remarks were made arbitrarily and illegally without him having been furnished proper material or facts and they were actuated with malice and was clearly misuse of power. He represented against these remarks but his representation was rejected in November, 1984 by the Additional Commissioner of Police (Addl. CP) and his further appeal was rejected by CP on 24.9.1986. The applicant's case is that entries were made without giving him adequate opportunity to explain his conduct or warning him, as required under the rules and his representations were rejected by non-speaking orders. He has cited the case regarding recovery of certain amounts, action on which was initiated on 12.1.1984 but the fact of which finds place in CR for the period ending December, 1983.

3. The respondents' case is that verbal warnings and guidelines were issued to the applicant in connection with his work. The applicant failed to improve his performance and there was delay in his dealing with various matters. According to the respondents CR has been correctly recorded and the remarks were based on the shady dealings during work on account of which applicant was not considered to be a reliable person. He was awarded penalty of censure by ACP in the year 1982 which was set aside by Addl. CP in September, 1984. According to the respondents there is no deviation of any rules/instructions on the subject of recording CRs and work and performance of the applicant did not show any improvement inspite of the fact that he had adequate staff under him to look after the work and assist him in day to day functioning.

4. I have heard the learned counsel for both the parties. Sri J.P.S. Sirohi, learned counsel for the applicant, contended that the representations made by the applicant against the adverse remarks have not been disposed of by a speaking order and he was also not given any opportunity of being heard even in respect of the allegation that were pending against the applicant. According to the learned counsel no entries could be made in CR unless allegations were finally

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proved. Thus elementary rules of justice have been violated. The learned counsel further contended that as a matter of fact during 1983 the applicant has been given commendation certificates for the good work he had done in the department. In regard to the warning that has been mentioned by the respondents that was issued to him, the learned counsel for the applicant contended that the letter dated 25.1.1983 is only a general instructions issued by the department and not a specific warning to him, while the letter dated 29.8.1983 contains various items of general performances but applicant was not given any opportunity to be heard against any of these allegations and, therefore, they should not have been taken into account. He further emphasised that during the 24 years of service the applicant has earned no adverse CR and his performance has been satisfactory. According to the learned counsel the entries were made because of the malice on the part of ACP, who was the reporting officer. These contentions were rebutted by Shri G.C. Lalwani, learned counsel for the respondents, on the ground that it was for the competent authority to make the general assessment of the performance of the individual and the officer who made the entries in CR was the immediate boss of the applicant and was fully empowered to report on the performance of the officer. He has refuted the contentions that there was malice on the part of the reporting officer and submitted that all the entries have been made in the normal course. He has also referred to the warning issued by D.C.P. to the applicant on 17.8.1983 in regard to the delay in submissions of certain information which was required to be submitted to higher authorities. Nothing else was presented before me. I have gone through the application as well as papers filed by the respondents.

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5. It is a well known fact that CR is intended to be a general assessment of work of an individual and that best judge to report on the performance of an individual is his immediate superior, who writes the report. CRs are often subjective and impressionistic and, therefore, they have to receive sedulous checking before they

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are written to enable the superior authority to use them as a basis for decision making. The learned counsel for the applicant has relied on the case of Dr. H.D. Goyal v. Union of India (ATR 1988 (1) CAT 145) and A.P. Kapoor v. State of Punjab (1973 (1) SLR 189) on the aspect of opportunity of being heard having not been given and on the fact that against ^S pending allegation no CR entries could be made. Since CRs play a very important role in man's career juggling with them when the career is ^{at} stake will be contrary to public interest. They have to be based on proper materials and facts and only such of these ^{at} ~~are~~ which arise during the period of consideration, would be relevant. In the applicant's case CR which is under challenge does contain certain remarks which do not pertain to the period for which the report has been made. While there is no doubt that the immediate superior who writes CR will be the best judge to comment on the performance of an officer being reported upon, it is also equally necessary that reports are based on detailed facts against which opportunity should have been given to the reported officer to improve himself before the entries are made. I do not find that this has been the situation in the case of the applicant.

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6. The representation made by the applicant to Addl.CP was rejected on 21.11.1984. The order forwarding the rejection of appeal reads as follow :-

"ASI Kiran Singh No. 624/SB may please be informed that his representation against the adverse remarks recorded in his ACR from the period from 1.4.83 to 28.12.83 has been considered by the Addl. Commissioner of Police/CID, Delhi and rejected."

Similarly on 14.3.1986 his revision application against the order of Addl.CP rejecting his representation was disposed of by the following orders by CP :-

"ASI Kiran Singh No. 624/SB may please be informed that his appeal dated 9.1.86 against the adverse remarks recorded in his ACR for the period from 1.4.83 to 28.12.83 has been considered by the Commissioner of Police Delhi and rejected."

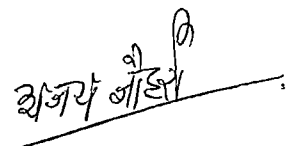
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These two orders evidently do not throw any light on the reasons for rejecting of the representations filed by the applicant. Thus it is evident that not only reasonable opportunity has not been given to the applicant before making of these adverse remarks in 1983 CR during which period he has also been given commendation certificates and awarded for good work done by him, but his representation have also not been disposed of by a speaking order. It was necessary for the appellate authority to indicate the reasons for rejecting the applicant's representation. Thus the applicant's case does need reconsideration by the appellate authority so that the applicant could have known the same and taken steps to improve himself.

7. On the above view I direct that the representation of the applicant should be re-considered by CP, who should take in view the fact whether the applicant has been given reasonable opportunity to explain his conduct or to improve himself before the entries were made and who should also consider the over all performance of the applicant. There is no doubt that a person cannot maintain the same degree of performance through out the career but on the facts it appears to be a single incident of the year 1982 which resulted in the adverse comments being made in CR for 1983. The appellate authority will consider whether some extraneous consideration have been taken into account by the reporting officer in making those entries and ^{whether} they really deserve to be there. The representation may be disposed of after reconsideration within a period of one month from the date of issue of this order.

8. The application is disposed of accordingly with no order as to costs.


MEMBER (A).

Dated: October 21, 1988.