

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO.359 of 1990

This 26th day of August, 1994

Hon'ble Mr. A.V. Haridasan, Member (J)
Hon'ble Mr. B.K. Singh, Member (A)

Sahansar Pal Singh
Inspector No.D-1/393,
Vth Batallion, DAP,
R/o Qr. No.C-91, Minto Road Complex,
New Delhi.

Applicant

By Advocate: Shri J.P.S Sirohi

VERSUS

1. The Commissioner of Police,
M.S.O. Building,
I.P. Estate,
New Delhi.

2. The Additional Commissioner of Police,
Northern Range,
M.S.O. Building, I.P. Estate,
New Delhi.

3. Shri U.C. Katna,
Deputy Commissioner of Police,
Central District,
Daryaganj,
Delhi.

Respondents

By Advocate: Mrs. Avnish Ahlawat

O R D E R
(Hon'ble Mr. B.K. Singh, Member (A))

This application under Section 19 of AT Act, 1985
has been filed against the following impugned orders:-

(i) Office Order No.33847/CB-VII dated 30.8.89
communicating the adverse remarks for the period from
1.4.88 to 31.3.89;

(ii) Office Order No.291/CB-VII dated 2.1.1990 rejecting
the representation of the applicant for expunging the
adverse remarks;

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(iii) Office order No.2602-12/HAP dated 9.5.1989 communicating award of censure to the applicant; and

(iv) Order No.2202-03/P.Sec.(NR) dated 30.10.1989 rejecting the appeal of the applicant against the award of censure.

2. The applicant is an Inspector (Executive) of Delhi Police. He was communicated adverse entry in his ACR for the period 1.4.88 to 31.3.89 by Dy. Commissioner of Police (Central District) Delhi. This is annexure A-1 of the paper book. In this adverse remarks there is an 'integrity' column where it has been said 'honesty cannot be vouched for'. The remarks recorded as follows:

"Honesty cannot be vouched for. His reputation for fair dealing with the public and accessibility to the public and efficiency of parade were not satisfactory. He was impartial, cordial and loyal to the government in power without regard to political and party feelings. He knows Hindi well. His personality and initiative, power of command and working experience of criminal law and procedure were average. But it has been stated that his moral character was below average and general power of control and organising ability lacks initiative. It has also been mentioned that no evidence of his moral courage or initiative to expose any subordinate come forth."

In general remarks it has been mentioned that -

"The officer was tried in various capacities as R.I., Inspector AATS and later as Inspector Vigilance. He is yet to give evidence of his initiative and qualitative performance. On the contrary he approached Shri Jagannath Pahadia as also Smt. Shanti Pahadia for his posting either in Traffic Unit or as S.H.O. as conveyed vide PHQ No. 1642-426/CB-I dated 2.5.1989. He came to adverse notice for allowing two constables under him to remain away from duties and do private business. The class of report has been categorised as 'C'."

3. The applicant filed representation to respondent No.1, Commissioner of Police for expunction of the adverse remarks (annexure A-2). This representation was rejected vide order dated 18.1.1990 (annexure A-3).

4. The applicant was also awarded punishment of 'censure' vide order dated 9.5.89 by the respondent No.3, Dy. Commissioner of Police, Central District, Delhi, on the ground that while posted as R.I., Central District and in charge of AATS, the applicant allowed Const. Baljit Singh and Const. Om Prakash to do private business. Copy of this impugned order is annexed as annexure A-4 of the paper-book. The applicant filed a representation against this punishment of 'censure' but the same was rejected and the punishment of censure was confirmed. He filed an appeal to the Additional Commissioner of Police for setting aside the punishment of censure and also sought interview for personal hearing, but his appeal was rejected vide annexure A-8. Aggrieved by the rejection of his representation against the adverse remarks, punishment of censure and also ^{rejection} ~~of~~ appeal by the Additional Commissioner the applicant filed this OA under Section 19 of the AT Act, 1985. In the relief cause the applicant has prayed for expunction of adverse remarks communicated vide annexure A-1, to quash the order of the Commissioner of Police rejecting his representation, to quash the punishment of censure passed by respondent No.3 and also quash the rejection of the appeal by the Additional Commissioner of Police.

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5. A notice was issued to the respondents who filed their reply and contested the grant of reliefs prayed for. The personal file dealing with the representations of the applicant against the adverse remarks, award of censure etc. was also summoned by this Tribunal and the same has been produced before us. We heard the learned counsel, Shri J.P.S. Sirohi for the applicant and Mrs. Avnish Ahlawant for the respondents and perused the record of the case and also the departmental file placed before us.

6. The learned counsel for the applicant vehemently argued that the applicant was never informed in writing or orally about deficiency in his work and conduct as is envisaged in the various instructions on writing of confidential reports issued by Delhi Administration in letter No.F.10/2/71-CC dated 19.6.1971 and therefore these adverse remarks cannot be sustained in the ACR. He also quoted further instructions contained in letter No. F.10/5/72-CC dated 24.6.1972 wherein also there is a guidance for reporting/reviewing/accepting authorities as to how the remarks have to be recorded in an objective manner.

This has further been clarified in letter No.F.1/22/76-CC dated 25.11.1976. The learned counsel for the applicant further quoted MHA O.M. No.21011/1/77-EST(A) dated 30.1.1978. He further relied on Delhi Administration d.o. letter No.F.10/12/79-CC dated 17.3.1980 communicated to all the head of departments regarding initiation of remarks, its review and acceptance. The learned counsel for the

applicant argued that none of these instructions have been followed by the reporting officer who initiated the remarks and the reviewing officer also mechanically agreed with the same.

7. The learned counsel for the applicant also cited a ruling given by Hon'ble Punjab and Haryana High Court in CWP No.5975/86 decided on 26.4.1990, V.D. Gaur vs. State of Haryana. In this case, the petitioner ^{who} was a Tehsildar working in Haryana was compulsorily retired on the basis of remarks in his ACRs. His work had been inspected prior to his compulsory retirement in April 1985 by the Commissioner, Ambala Division and in his inspection report there was nothing reflected either on his deficiency or integrity. The petitioner was awarded an appreciation letter by the Deputy Commissioner, Narnaul for completing Shajara of Town Narnaul. During the same period on 1.5.86 the Dy. Commissioner issued a merit certificate to the petitioner for his outstanding performance in the Red Cross, Family & Child Welfare and Small Savings areas. The Hon'ble High Court held that in order to give proper opportunity of representation against the adverse report, it is necessary that the report should be written in accordance with the government instructions and particularly in case of reports against integrity. The remarks touching integrity have to be fortified by reasons and material on the basis of which they have been recorded and should be disclosed to the employee concerned so that he may have the right to represent. By not writing the reports in accordance with the government instructions and

not disclosing the material on the basis of which adverse report was formed, the Government servant is denied the opportunity of representation against the same and therefore such reports have got no value as the same have been recorded in complete contravention of the mandatory provisions contained/instructions as also against the principles of natural justice. It is very unjust, unfair and arbitrary to condemn the Government servant and doubt his integrity without giving the reasons and the material as required by the instructions, and therefore the Hon'ble High Court of Punjab & Haryana held that the reports for the year 1984-85 in regard to the petitioner are liable to be expunged and thus the order of compulsory retirement was set aside and the petitioner was reinstated in service. It was further held that the petitioner would be deemed to be in service from the date he was compulsorily retired to the date he would complete the age of 58 years of age and he was paid all the arrears or pay and allowances with 12% p.a.

8. The learned counsel for the applicant also filed a copy of the judgment of CAT Principal Bench in OA No.1425/87 decided on 21.10.88, Kiran Singh vs. Commissioner of Police, Delhi. In this case the Tribunal ordered for reconsideration of the representation of the applicant by the Commissioner of Police since the instructions issued from time to time by Delhi Administration were contravened.

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9. We heard the learned counsel, Mrs. Avnish Ahlawat, for the respondents and have carefully gone through the departmental file dealing with the representations and appeal of the applicant.

10. An officer can either be honest or dishonest and where there are suspicions and an officer is not sure about the dishonesty of the employee and also does not have concrete instances to substantiate the same, the circular envisages that the reporting officer will write, "nothing adverse has come to my notice". Where it is genuinely felt that the honesty cannot be vouched for or the honesty is doubtful, in such cases it is necessary to give instances and cogent reasons to substantiate the remarks that the honesty was found doubtful. In the instant case the guidelines do not seem to have been followed. This, therefore, does not fall within the purview of the instructions contained in the circular of the Delhi Administration and also the O.M. issued by the Department of Personnel & AR regarding filling up the column relating to integrity. Even if an officer is found as moderately dishonest, as the honesty becomes doubtful, there is no such instructions whereby a person can be described as 'moderately dishonest'. 'Honesty cannot be vouched for' means that a person's honesty cannot be certified and that

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there are doubts about it. The ACR is for the period 1.4.88 to 21.3.89. The chargesheet was served on 9.4.89. During the relevant period the proceedings in which censure was awarded was still pending. It does not appear to be improper to have commented adversely in the ACR for the period upto 31.3.89. Though the applicant was censured, there is no finding that he was dishonest. His action is not actually seeking the activities of the subordinates. This may amount to carelessness but does not tantamount to dishonesty. There is no allegation that he made any illegal gain. Whether his subordinates did not attend office also during the period or not is again a fact which has to be enquired and determined during the course of enquiry and there was no enquiry for determining this fact. Thus, this remark is fit to be expunged. The adverse remarks about 'dishonesty', about 'moral character' being ^{below} ~~above~~ average and 'lacking in moral courage' are all based only on subjective considerations without there being any concrete instances to substantiate the same and, in view of the ruling of the Haryana High Court and in view of the instructions of the Delhi Administration and also the instructions issued by DoPT&AR from time to time in regard to the writing of the confidential remarks, we are satisfied that these remarks - "Honesty cannot be vouched for", "moral

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character below average" and "lacks moral courage" are all unsubstantiated. In addition to this, calling him impartial and then recording these inherently contradictory and as such these remarks are remarks are liable to be expunged, and we order accordingly.

11. As regards the order of censure, it is classified as a minor punishment in the Delhi Police (Punishment & Appeal) Rules and only a show cause notice has to be served. The applicant was served with a show cause notice by the competent authority proposing to award him censure for not exposing the undesirable activities of the two constables working marked present while under him who were/doing their own business. The show cause was submitted by him and the competent authority and the appellate authority both have passed speaking orders. This award of censure does not call for any judicial intervention and therefore the prayer of the applicant for expunction of the award of censure is rejected.

12. Thus, the application is partly allowed. The remarks - "honesty cannot be vouched for", "moral character below average" and "lacks moral courage" are expunged. These direction should be complied with within a period of three months from the date of receipt of a certified copy of this order. There will be, however, no order as to costs.

The departmental files relating to this case are returned to the respondents.

(B. K. Singh)
Member (A)

(A. V. Haridasan)
Member (J)