

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No.335/92

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Thursday this the 29 th day of July, 1999

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HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. S.P. BISWAS, ADMINISTRATIVE MEMBER

Shri R.B.Sharma, son of Shri Sadhu Ram
Commandant SRPF, Group II
Tamtekdi, Pune (Maharashtra). ... Applicant

(By Advocate (applicant present in person))
Vs.

1. Union of India through the
Secretary to the Government of India,
Ministry of Home Affairs
North Block, New Delhi.
2. State of Maharashtra through the
Chief Secretary, Mantralaya, Bombay.
3. The Under Secretary, Government of
Maharashtra, Home Department,
Mantralaya, Bombay.
4. The Desk Officer, Home Department,
Government of Maharashtra,
Mantralaya, Bombay.
5. Shri S.S.Jog, Director General of
Police (Retd) C/o Director General of
Police, Police Headquarte, Bombay.
6. Shri V.K.Saraf, Director General of
Police, Police Headquarters,
Bombay.
7. Shri P.S. Narayanaswamy, Commissioner of
Police, Pune (Maharashtra).

(By Advocate Ms. Vandana Gore)

The application having been heard on 22.7.199, the
Tribunal 7.1999 delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant, Shri R.B.Sharma after serving
the Indian Army as an Emergency Commissioned Officer
for four years was appointed to the Indian Police
Service in the year 1968 on his success in the Civil
Service Examination held in the year 1967. The benefit
of service in the Indian Army was granted to him and

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he was treated as an appointee of the year 1964 in the Indian Police Service. He was discharged from service before completion of probation on 23.4.73 under Clause 12(bb) of IPS (Probation) Rules. He challenged the order successfully in Civil Writ Petition No.136/1974 before the Delhi High Court. Though the order of discharge was set aside by the High Court by order dated 11.1.79 a Letters Patent Appeal was filed as L.P.A.No.63 of 1979 by the Union of India against the judgment of the Delhi High Court. However, the Division Bench of Delhi High Court by its order dated 24.7.81 dismissed the LPA. He was reinstated in service on 27.1.1982. His present grievance arose from the communication of the adverse entry in his ACR by letter dated 3.10.86 for the period April, 1985 to March, 1986. The reporting officer was Shri Narayana Swamy, DIG, CID Crimes, the Reviewing Officer was Shri V.K.Saraf and the accepting authority was Shri S.S.Jog, Director General of Police. The letter contained the following adverse remarks for the years 1985-86:

"An average officer due to his long spell of absence from service prior to his reinstatement is handicapped in the sense that he lacks the experience and skill for his seniority. He identifies problems but seldom comes up with solutions.

Has average abilities in the sphere of man management. often reluctant to accept responsibility. Cheerfully carried out specific tasks allotted.

Is currently facing a D.E.
Father lonesome.

His performance was mediocre owing to limited application. Has no will to learn or improve after his initial set back."

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The applicant had on 30.12.86 made a representation to the second respondent praying for expunging the adverse remarks requesting inter alia that he might be given a personal hearing to lead evidence in support of the submissions made by him. He stated in the representation that adverse remarks communicated to him were vitiated for bias, prejudice, subjectivity and partiality. He also stated that he was never informed of any shortfall in his performance by the Reporting Officer nor had the Reviewing or Accepting Authority^{ies} any occasion to advise the applicant of insufficiency of performance or incompetence and that therefore, the adverse remarks made in the ACR of the applicant were not made bonafide with a view to improve his performance. He further alleged that Shri Narayana Swamy, the Reporting Officer as also Shri Saraf, the Reviewing Officer had at the relevant time acted as preliminary enquiry officer and regular enquiry officer in regard to certain departmental proceedings against the applicant and therefore, their assessment of his work and conduct could not be held free from bias. However, his representation was rejected by letter dated 3.2.1989 (Annexure.C) (English translation at Annexure.C-1). The applicant then submitted a memorial to the President on 7.3.91. He had in the above memorial stated, inter alia, that after his reinstatement and posting as Superintendent of Police (L&R) State CID Erime, Pune during April, 1983 to January, 1985 there were ^{extremely} ~~very~~ damaging adverse remarks in the ACR for the years 1983-84 and 84-85 and all these

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adverse entries were expunged by the Government of India pursuant to the memorial submitted by him and that in that matter Shri S.D.Rege, who was the Reporting Officer for the above mentioned ACR had written in his D.O. letter dated 15.3.85, as he had by then retired, that at the relevant time there was considerable hostility against the applicant in the department mainly because his staging a come back to service through the court and that as he did not have much personal contact with the applicant and as the adverse matters not well found having been brought to his notice by mischievous subordinates, the adverse entries happened to be made and that coming to know of the qualities of the applicant, he wanted to record that the applicant was a loyal, sincere and hard working officer which qualities were reflected in the later ACR recorded by him. All these adverse entries in the A.C.R. of the applicant for the years 1983-84 and 1984-85 were expunged. The present adverse entries in the ACR according to the applicant were not based on a dispassionate, proper and careful assessment of his work and conduct but motivated by the hostility prevalent in the department on account of his staging a come back to the department being successful in legal battle. The applicant has further alleged that Shri Jog was instrumental for filing the L.P.A. against the order of the Single Judge of the Delhi High Court directing his reinstatement in service and therefore his acceptance and opinion in the A.C.R. under challenge also cannot be considered

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as free from bias. With these allegations the applicant has filed this application praying that the impugned orders namely the adverse entry in the ACR, the rejection of his representation by the State Government and the rejection of his memorial to the President may be set aside and with appropriate direction prohibiting the respondents from taking into consideration the impugned adverse remarks in question for any purpose whatsoever, may be issued.

2. The respondents 2 to 7 have in their reply statement stated that the 7th respondent recorded in the ACR of the applicant for the year 1985-86 that: "An average officer; due to his long spell of absence from service prior to his reinstatement is handicapped in the sense that he lacks the experience and skill for his seniority. He identifies problems but seldom comes up with solutions. Has average abilities in the sphere of man management, often reluctant to accept responsibility. Cheerfully carried out specific tasks allotted. Is currently facing a D.E. Rather lonesome. His performance was mediocre owing to limited application. Has no will to learn or improve after his initial setback," and therefore, Shri Jog the Director General of Police, the Accepting Authority remarked: "Has no will to learn or improve after his initial set back." On a proper evaluation of the work and conduct of the applicant. The representation of the applicant was considered and rejected finding no reason for interference. contend respondents. They contend further that the remarks made by the Reporting Officer was based on factual basis objectively and that the observations

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of ShriJog, the Director General that he had no will to learn or improve after his initial set back was based on the facts that during his visit to the State CID and during conferences and discussions he found that Shri Sharma, the applicant, had no particular inclination to improve his individual performance. As the representation submitted by the applicant to the second respondent was considered in the light of the comments offered by the Reporting, Reviewing and Accepting Authorities, the respondents contend that the rejection of the representation by the respondents was fully justified.

3. In the reply statement filed on behalf of first respondent, it is contended that the memorial was rejected as there was no justifiable reason for expunging the adverse remarks. They have contended that just because Shri Narayana Swamy and Saraf were holding preliminary and regular enquiries against the applicant, there is no reason to hold that they were prejudiced against him and that the decision to reject the applicant's memorial was taken on a careful assessment of the material available. This respondent contends that judicial intervention is not called for in the facts and circumstances of the case.

4. The applicant in his rejoinder has reiterated his contention in the application that there is no factual basis for the adverse entries which were made only with the sinister motive of harrassing the applicant further as there was hostility in the department on his staging a come back to service.

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5. When the application came up for final hearing today, the applicant stated that his advocate has informed that he being unwell is not in a position to appear in court and requested that he may be permitted to present his case himself. We have heard the applicant at length and also learned counsel for respondents 2 to 7. The applicant had filed a Miscellaneous Application No. 786/99 praying that the documents produced along with the Miscellaneous Application (AI-AI(1), J and K) may also be taken into account and may be considered before taking a decision in the application. The Miscellaneous Application stands allowed. We have considered the facts disclosed in these documents also. We have also perused the entire pleadings and the documents brought on record.

6. The applicant argued that respondents 5 to 7 the accepting, reviewing and reporting officers respectively in respect of the applicant in regard to adverse entries in the ACR in issue were more bent upon harming the applicant than making a proper assessment of his work and conduct and guiding him to improve his performance, if any shortfall had ever been identified. He argued that the whole department having been deeply prejudiced against him as he had been successful after a prolonged legal battle with the Government to have his discharge as Probationer by order dated 11.1.79 set aside in rejoining service on 20.2.82 and the adverse entries in the ACR is a reflection of the hostility. He referred to the fact that during the years 1983-84 and 1984-85 adverse remarks were recorded

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in his ACR and that these remarks were expunged on consideration of his representation and memorial as also the Letter of Shri Rege who was the DIG at the relevant time to the effect that the remarks offered by him in the letter that he was hard working, sincere, obedient, helpful to subordinates having cordial relations with senior officers of all the departments and public in general had reflected in his subsequent ACR written by him for the period early to August, 1984 and that the adverse entries happened to be recorded earlier as mischievous subordinates made insinuations and inventoes against the applicant which was later found out by him as false or highly exaggerated. If the applicant's work and conduct was as opined by Shri Rege in his D.O. letter dated 15.3.85 considering that also the adverse entries in his previous ACRs were set aside, it is improbable that all of a sudden the applicant would have deteriorated to the level of an average officer without experience, reluctant to accept responsibilities and unwilling to learn or improve, argued the applicant. The hostility in the department fortified by the personal dislike of the reporting, reviewing and accepting officers resulted in their making the adverse entries in the ACR probably with a view that the applicant might leave the service himself or remain in the position of Superintendent of Police through-out his carrier, states the applicant.

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If the reporting officer was really motivated to improve the performance of the applicant, he should have pointed out the short comings in his performance and guided him towards improvement, which had never been done but on the other hand the reporting officer has wantonly written the damaging entries in his ACR because of his personal dislike towards the applicant, probably ^{because} he was at the relevant time conducting a preliminary enquiry against the applicant, states the applicant. Similarly either the reviewing officer or accepting officer had no occasion to assess the work and conduct of the applicant nor had at any point of time either ^{of them} advised him or pointed out to him that his application was not sufficient and therefore on a consideration of the entire documents it could be easily discerned that the adverse entries in the ACR did not reflect the real facts and was the product of a scheme to mar his career, argued the applicant.

7. Smt. Vandana Gore, learned counsel appearing for respondents 2 to 7 tried to meet the argument of the applicant stating that there was no special reason as to why the respondents 5 to 7 should have any personal vendeta against the applicant. The main thrust of the argument of the learned counsel for the respondents was that after ^{the} filing of this application, the applicant was compulsorily retired from service by order dated 2.2.94 in terms of Rule 16(3) of All India Services (Death Cum-Retirement) Rules, 1958 on considering the record of service of the applicant and that the Mumbai Bench of the Tribunal in its order dated 27.4.98 in O.A.131/94

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after careful consideration of the entire service records of the applicant including the adverse entries which is subject matter of this application, has refused to interfere and dismissed the application and therefore as the adverse entries in the ACR were also considered by the Mumbai Bench of this Tribunal, this application has become infructuous.

8. Before considering the rival contentions and arguments raised by the counsel on either side, it would be appropriate to mention here that the purpose of writing ACR is to have an accurate and proper assessment of the calibre/level of performance of work and character of an official and to improve his performance, if he is found wanting in any aspect ~~xxxx~~ by giving him notice of his shortcomings. It is also pertinent to mention here that the superior officer empowered to report on an official working under him in the Annual Confidential Report, has an official as also a moral responsibility to be faithful in reporting keeping in view the object of writing the ACR which is improvement of the performance of the incumbent as also to provide an accurate assessment of the work and conduct of the incumbent to be of guidance in considering the incumbent for elevation in service. If the task is not exercised with fairness, objectivity and truthfulness, it may even demolish ~~xxx~~ the career of an officer reported on.

9. From the pleadings in this case, it is evident that the discharge of the applicant under Rule 12(bb) of the IPS (Probation) Rules by order dated 23.4.73 was held by the Single Bench of Delhi High Court in its

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order in Writ Petition No.136/74 as unsustainable and that the Letters Patent Appeal filed against the order of the Single Judge was dismissed by the Division Bench of the High Court vide its Judgment dated 24.7.81 and that even after that the applicant was reinstated in service only by order dated 27.1.82. ~~Thereafter for a~~ **long period of about nine years, the consequential orders have not been issued unjustifiably** when the applicant joined back in service while he should have been treated with sympathy for the harrassment which he had suffered it appears that the entire department was hostile towards him. Extremely bad adverse entries in the ACR of the applicant were recorded for the years 1983-84 and 1984-85 which were later expunged on considering his representation and memorial and on getting a D.O. letter from Mr.Rege who had made ^{the} remarks and who in his letter felt sorry for having made such entries being misguided by his subordinate and finding that the applicant was a hard working, sincere, obedient officer who had cordial relations with his superiors and subordinates. **It is rather difficult to accept that all of a sudden the performance of the applicant deteriorated** to be adjudged as an average officer with no application, unwilling to learn and improve himself as has been assessed in the adverse ACR which is the subject matter of this application. The allegation that the reporting officer and reviewing officer were at the relevant point of time holding preliminary and departmental enquiries against the applicant is not disputed. Similarly the

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allegation that Shri Jog, the accepting Officer was the Joint Secretary (Police) Government of India while the Letters Patent Appeal against the order of the Delhi High Court setting aside the applicant's discharge was filed is also not disputed. Though this may not be a sufficient reason to characterise the action of Mr. Jog, Mr. Narayana Swamy and Mr. Safaf as colourable, the argument of the applicant that the circumstances that the applicant was under enquiry and that he was fighting a litigation against his discharge from service might have influenced the decision of these officers in adjudging the work and conduct of the applicant, cannot be brushed aside. It is also to be remembered that in spite of the fact that the Delhi High Court in its order directed reinstatement of the applicant with consequential benefits, he was reinstated only as Superintendent of Police and that it is only by order dated 7.12.93 (Annexure I(1) produced by the applicant along with MA.786/99 issued by the Govt. of Maharashtra that the applicant was promoted to the Selection Grade of Rs.4500-5700 with effect from 1.1.78, the date on which his immediate junior Shri Gyan Chand Verma was promoted and to the rank of Dy. Inspector General of Police with effect from 5.9.81 on the date on which Shri Gyan Chand Verma was promoted as such with retrospective effect and consequential benefits. This order was issued consequent on the decision of the Delhi High Court on the Civil Writ Petition No. 136/74. Though the L.P.A. against the single judge's order of Delhi High Court setting aside the discharge of the applicant was dismissed by the Division Bench as early as on 24.7.81 the applicant was reinstated only

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as a Superintendent of Police in Senior Scale while he should have been immediately considered for promotion to Selection Grade and for a further promotion as Dy. Inspector General in Police without delay. The Order Annexure.I(1) of the second respondent promoting the applicant with retrospective effectt was passed more than ~~after~~ twelve years of his reinstatement and after a contempt petition was filed by the applicant before the Delhi High Court alleging defiance of the High Court's order. Had the second respondent considered the applicant for promotion at the appropriate time immediately on his reinstatement, Shri Narayana Swamy could not have been the reporting officer and Saraf could not have been the reviewing officer in regard to the ACR of the applicant for the relevant period. The applicant argued that by the inaction on the part of the second respondent, which was wilful, the applicant has been made to work under his juniors by atleast three years and suffered the humiliation of his ACR being written by him. Referring to the notification issued by the State of Maharashtra on 20.2.80 (Annexure.J) the applicant stated that his ACR for the relevant period would have initiated by the Inspector General of Police, reviewed by the Home Secretary and accepted by the Chief Secretary. The writing of the ACR of the applicant for the period in question by respondents 5 to 7 being the direct result of the inaction on the part of the second respondent in giving the applicant the two promotions at the appropriate time, the applicant submits that the impugned adverse remarks in the ACR may not be permitted to stand. We find considerable

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force in this argument of the applicant.

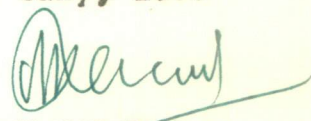
10. The argument of the learned counsel for respondents 2 to 7 that as the Mumbai Bench of the Central Administrative Tribunal considered the entire service records of the applicant including the ACR which is the subject matter of this application, has dismissed the application challenging his compulsory retirement, the application has become infructuous and as the ACR has stood the judicial scrutiny the application may be dismissed, has no force at all. The Mumbai Bench of the Tribunal in the case referred to by the learned counsel was considering whether there was scope for interference with the order of compulsory retirement of the applicant made on the basis of the service records of the applicant as they then stood. The Bench had no occasion to consider whether the adverse entries in the ACR would stand and whether the representations and memorial have been properly considered and disposed of.

11. On an anxious consideration of the entire facts, circumstances and background of the case, we are of the considered view that the interests of justice demands expunging the entire adverse entries in the ACR of the applicant for the relevant period.

12. In the result, the application is allowed setting aside the impugned orders and expung^{ing} the adverse entries in the ACR of the applicant for the year 1985-86 as communicated vide order dated 3.10.86 from the character roll of the applicant, with all consequential benefits. No order as to costs.

Dated this the 29th day of July, 1999


S. P. BISWAS
ADMINISTRATIVE MEMBER


A. V. HARIDASAN
VICE CHAIRMAN

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