

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 433 of 1988.
~~Ex No.~~

DATE OF DECISION 30th November, 1993.

Shri A.K. Pradhan, IAS. Petitioner

Shri B.B. Gogia Advocate for the Petitioner(s)

Versus

Union of India and others. Respondent

Shri A.R. Dave and Shri Sandip Shah. Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C. Bhatt : Member (J)

The Hon'ble Mr. M.R. Kolhatkar : Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? X
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓

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Shri A.K.Pradhan, IAS,
Chairman
Rajkot Urban Development Authority,
Rajkot.

...Applicant.

(Advocate : Shri B.B.Gogia)

Versus

1. State of Gujarat,
Through : Chief Secretary,
Sachivalaya,
Gandhinagar,
GUJARAT.

2. Union of India,
through : Chief Secretary,
Department of G.O.I.,
NEW DELHI.

...Respondents.

(Advocate : Shri A.R.Dave and
Shri Sandip Shah)

J U D G M E N T

O.A.NO. 433 of 1988.

Date : 30th Nov. 1993.

Per : Hon'ble Mr.M.R.kolhatkar : Member (A)

This is an application under Section 18 of the Administrative Tribunals Act, by an I.A.S. Officer praying for expunction of adverse remarks in his confidential report for the year 1984-85, the representation against which was rejected by the State Government.

The relevant order dated 04.06.1987, is reproduced below :

"In the Confidential Report for the period from 1.4.1984 to 31.3.1985 in respect of Shri A.K.Pradhan, IAS-1966, the adverse remarks, which were communicated to him under this department confidential D.O.letter No. AIS-1885-IAS-CR-G, dated 18.2.1986, read as under : -

...3.

"Poor power of expression on paper as well as in discussions. Though he has knowledge of work he did not use it for the improvement of the works and did not detect the malpractices going on in soil conservation works. Not eager to acquire general information. Relations with subordinates not partial. Public relations very poor."

2. Shri Pradhan submitted a representation under Rule-9 of the All India Services (Confidential Rolls) Rules, 1970 against the above adverse remarks vide his letter No. RUDA/AKP/7/86/459 dated 3.7.86. The State Government has carefully considered Shri Pradhan's representation and the points advanced therein against the adverse remarks and is satisfied that there are no sufficient grounds warranting the expunction of the adverse remarks from his C.R. for the above mentioned period. In the result, Govt. has decided to reject his representation. Now, therefore, in exercise of the powers conferred by rule-10 of the said Rules, the above mentioned representation of Shri Pradhan is hereby rejected.

By order and in the name of the Governor of Gujarat."

2. The grounds on which the order is assailed are briefly that the adverse remarks are contrary to law and rules and instructions in this regard in as much as time schedule in regard to communication as also reply to representation was not adhered to, that the remarks conveyed are too vague, that he has not been conveyed any adverse remarks for the year 1983-84 (the previous year), that the reply rejecting the representation does not give any reasons,

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that the applicant has a blameless record and ^{that} ~~2~~ the adverse remarks are based on caprice of the reporting officer.

The applicant has covered detailed ground already covered by him in his representation.

3. In their reply, the Government of Gujarat have explained the delay in communicating the remarks which was due to late receipt of the C.R. from the reporting officer. It is stated that applicant does not have a blameless record, adverse remark having been communicated to him earlier in the years 1969, 1971 and 1975. It is stated that averments regarding not giving adverse remarks for the year 1983-84, are irrelevant. It is stated that decision communicated by the Government gives reasons and the said decision is just, legal and proper. It is pointed out that the reporting officer has not been joined as a party and that applicant has not availed of the alternative remedy of memorial to the President.

4. In his rejoinder, the applicant relies on the judgment of the High Court of Gujarat in the case of S.Tripathy Vs. State of Gujarat- (1985 (2) GLR 616), pertaining to writing of C.R. The relevant para-13 is reproduced below :

..5...

"The above Rules and particularly Rule 5 make it clear that the confidential report is mooted for the purpose of assessing the four attributes of a public service, namely, his performance, his character, his conduct and his qualities. As observed during the course of the period under report and from the very nature of things also, these are four conceivable heads under which an officer's performance can be assessed and adjusted. If an officer is to be adjudged meritorious or otherwise, it would be on the basis of these four broad factors and none other. It is in consonance with common sense also. If no arbitrariness is to be allowed to have its play, if personal likes and dislikes in the assessment of the merit or otherwise of a public officer are to be avoided, the assessment of an officer's worth has to be based on these four well known criteria. Whoever, certifies a public servant as a man of good performance, character, conduct and qualities has to do so, on the basis of some objective material. Similarly, if he devalues him for the purpose of judging his suitability for the post or for some higher post or grades that also ordinarily would be by these very ~~yearxyxax~~ yard sticks. If there is any attempt to judge a person or on the criteria other than these four well-known conceivable reasonable data, that exercise can be brandished as arbitrary, capricious and therefore, violative of the rule of law ; which in its turn is enshrined in Article-14 of the Constitution of India read with Art.16 with specific reference to the public service. It is in the light of these settled legal position that the cases are to be viewed by the concerned authorities.

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The High Court cannot arrogate to ~~xxx~~ itself the powers of a super administrator. Its jurisdiction is highly hedged and it is confined to watching the confinement by the public authorities to the limits of law or rather keeping watch over the transgression of those limits. If in a given set of circumstances, the administrative decision, including the assessment of the merits or otherwise of the public servant can be possible reasonable true, this High Court has no power to interfere even though the High Court on its own may be inclined to take a different view of the matter. (para-6).

If these four factors are found to be above normal by the offices who had the direct contact with the petitioner, flinging of such remarks without any factual foundation by a man like the Chief Secretary can hardly be countenanced in a society governed by the rule of law and not by caprice. It can not do to day that the Chief Secretary while reviewing or counter-signing is not bound to base his conclusions on these four factors. If such a bald exposition is to be entertained it would amount to putting a seal or approval on rank arbitrariness, whim or prejudices (Para-II).

Idea behind communicating adverse remarks to any officer like the petitioner is to apprise him of two things. Firstly, if the adverse remarks are unjustifiable, he may make a representation against the same. Secondly, if there is base for the same he on knowing all those lapses on his part,

might be more vigilant and try to improve his performance. To tell a man simply he is "not yet fit" can serve neither of the two purposes.(Para-12).

It is easy to say that representations are "fully considered" and it is quite different to find whether there was effective or fruitful consideration. It was expected of these personalities to disclose how they considered the representations, particularly when the petitioner was in cudgels against the authorities ever since the year 1969. On most of the occasions for no fault of his because whatever was arraigned against him in the course of ~~xxx~~ this decade was neither dropped or frowned upon by other authorities.(Para-13)."

5. The applicant contends that Government of Gujarat have not clarified what was the consideration on account of which they hold adverse remarks to be just and proper and reject the representation. They have not passed a reasoned order. According to him, not only the Chairman but also State of Gujarat are prejudiced and biased against him because they have attempted to justify the action of the Chairman at all cost.

6. We have heard the advocates for the parties. At the stage of arguments, the advocate for applicant also relied on the judgment of C.A.T.Chandigarh reported in 1993 (4) SLR 47, whose ratio is that when representation is rejected without considering the points raised in the representation, the adverse remarks are liable to be expunged. In this connection relevant para is reproduced as below :

"16. "It is true that in the absence of any statutory Rules or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a Government servant, against adverse entries, the competent authority is not under any obligation to record reasons but the competent authority has no licence to act arbitrarily. He must act in a fair and just manner. He is required to consider the questions raised by the Government Servant and examine the same in the light of the comments made by the officer awarding the adverse entries and the officer counter-signing the same. If the representation on is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons. However, it does not mean that the administrative authority is at liberty to pass order without their being any reason for the same. In Governmental functioning before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion. If the order, as communicated to the Government Servant rejecting the representation, does not contain any reasons, the order cannot be held bad in law. If such an order is challenged in a court of law it is always open to the competent authority to place the reasons before the court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence aliunde before the court to justify its action (See - Union of India and Others vs. E.G.Nambudiri- 1991 (2) SLR 675 (SC) and C.L.Agrawal Vs. Union of India and others- 1992 (5) SLR 665). As we have observed

earlier, the points raised by the applicant in his representation on the basis of facts and provisions of relevant Rules were not at all considered while rejecting his representation which was rejected only on the ground of delay and Rule - 6 -B which too was misinterpreted. In the circumstances, we are of the considered view that the impugned order- (Annexure-A/1), cannot be legally sustained."

7. We do not consider ^N that the delay in communication of adverse remarks in the circumstances explained by the State Government is fatal to sustenance of the same. The time limits are of a directory nature and not mandatory. The CR was ~~xx~~ written by the Reporting officer on 29th August, 1985 and reviewed by Reviewing officer on 24th January, 1986. The said CR was received in G.A.D. on 06th Feb.1986, and adverse remarks were communicated on 18th February, 1986. For that matter, as pointed out by Government of Gujarat, the representation against adverse remarks was required to be made by applicant within three months but he actually made it after five months. The delay or non-compliance with time schedule, therefore, neednot detain us.

8. The judgements cited by the applicant also do not help him. The Judgement of the High Court of Gujarat relates to the summary remarks of C.S. ~~Regarding~~ the

Officer in question not being fit for promotion. The Judgement of C.A.T. Chandigarh relates to rejection of representation not on merits but on ground of limitation.

9. However, on a cursary glance at the C.R.file as well as correspondence, same doubts about effective review occurred to us. It is well, therefore, to reproduce our order dated 19th October, 1993, at ~~this~~ juncture.

"In our order dated 4th Aug.1992, we had directed to first respondent to produce the entire character role of the applicant as well as the records dealing with the Annexure-A/2, representation against the adverse remarks for the year 1984-85 at the next hearing. Today we have heard the learned advocate for the applicant. We also glanced at the record produced by the respondent no.1. At the first glance it appears that the confidential report which had been written by the Chairman of the Land Development Corporation, i.e., Reporting officer, has not been reviewed by the reviewing authority in a real sence in as much as he has recorded remarks to the effect that the period was too short and that he has asked a senior officer to go in to the allegations. It is clear therefore, that the reviewing authority has not really been able to perform the function of the review on the ground of the period being too short, that more over he has treated the remarks as not final but as allegations and he has also indicated his intention of asking a senior officer to investigate the matter. If the Senior Officer, reviewing authority had in mind had looked into the allegations and submitted the matter to the reviewing authority the same ought to have formed part of the C.R.file, but thereis no such documents. .11..

: 11 :

It is settled position that it is the CR as reviewing and as accepted which constitutes the confidential report for a year of which the adverse remarks are to be communicated along with the gist of good points. The review of the report written by the ~~Reviewing~~ Reporting authority is not an empty formality. It is designed to correct superficialities and aberrations of the report. In the All India Service (Confidential Rules), Rules-1970, "Reviewing authority" has been defined to mean such authority supervising the performance of the reporting authority as may be specifically empowered in this behalf by the Government. Thus, reviewing authority which its vantage position is in the unique position to have a correct perspective on the report. It can, so to say, read between the lines or decode the sub-text of the report and correct it so that the officer ~~appointed~~ reported upon does not suffer unjustly and the mischief of unjustly recorded adverse remarks is ripped in the bud of the unmerited exaggerated tone or the glow of the report is toned down or moderated. While the proforma of the Report 1984-85 in question is an old one, the revised proforma brings out the very strategic role played by the Reviewing authority. The form CR which was prescribed by notification no. GSR 841 (E) dated 10.6.1986, expects the Reviewing authority inter alia to give following remarks:

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(2) In the Reviewing authority satisfied that the reporting authority has made his/her report with due care and attention and after taking into account the relevant material ?

(3) Do you agree with the assessment of the officer given by the Reporting authority? (in case of disagreement, please specify the reasons. Is there anything you wish to modify or add ?)

(4) General remarks with specific comments about the general remarks given by the Reporting authority, and remarks about meritorious work of the officer including the grading.

(5) Has the officer any special characteristics and/or any abilities which would justify his/her selection for special assignment or out of turn ~~of~~ promotion ? If so specify.

2. We have quoted these subsequent proforma and instructions at length not because they in terms apply to the instant case but because they clearly bring out the crucial role of Review and Reviewing authority and to underline our observation that inadequately reviewed CR is not CR in its true sense.

3. In the representation of the applicant and in the arguments by the learned advocate for the applicant it has also come out that there are no adverse remarks against the officer for the previous year viz. 1983-84, for the whole of which the officer worked in the same capacity under the same Reporting Officer. We notice on going through the CR file that the CR for the year 1983-84 is not on record. In the connected file

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of representations there is a letter dated 5th May, 1987, from the Reporting authority ~~xxxxx~~ that he had ~~not~~ written the CR of the applicant for the year 1983-84, since it was not brought to his notice. It is notable that the State Govt. started inquiry in the matter only after the adverse remarks for the year 1984-85, were communicated. Normally, it is the duty of the concerned Dept. namely, CR cell of General Administration department to ensure that the CR of the officer for a particular ~~xxxx~~ year wherever he may have worked and whether he was on deputation and whether deputation is in India or abroad, the CR is obtained and kept on file. The relevant executive instructions issued under Personnel and Training Departments Memo no. 210611/8185-ESTT.(P), dated 23rd Sept.75, read.

"It shall be the duty of the administration or CR Section/cell to keep a regular watch on the progress on the completion of the CRs at different stages. If no intimation is received from the Reporting officer regarding submission of the CR's by him to the Reviewing officer within five days after the expiry of the stipulated date for completion of his part of the CR, the matter should be taken up immediately so, that report is submitted by him to Reviewing officer without any further delay. Similar action should be taken if the complete report is not received from the Reviewing officer. Any delay on the part of the reporting/reviewing officer in spite of their being reminded as above should be brought to the notice of the reviewing officer/officer superior to the reviewing officer as the case may be. "

We are ofcourse not concerned with the administrative failure but its legal implications. First of all the remarks by Reporting officer may well have been different if a CR for an earlier year was written up. Secondly, there would not have been a room for applicant to say that his work which was free from adverse remarks for 1983-84, could not have suddently deteriorated. Thirdly, ~~and~~ and more importantly, the report for 1983-84, if it contained any adverse remarks might have been reviewed by a reviewing authority who had seen the work of the applicant for a longer period and it would have served as an early warning signal to applicant and facilitated the process of improvement in his performance which is the real objective of a CR. All in all, absence of CR for the crucial and relevant year 1983-84, has operated unjustly for the applicant.

3. The advocate for the respondents State Govt. state that ~~xxx~~ he is not in a position to deal with the points raised by us and would like to seek instructions in order to enable the State Govt. to deal with the points raised by us, the CR file along with the connected file are being returned to them, State Govt. should however take care to produce the same at the time of next hearing.

4. The State Govt. is directed to file an affidavit at the time of next hearing, specifically on the point of absence of CR for the year 1983-84, and the failure to effectively review the CR for the year 1984-85, as was contemplated by the reviewing authority and the implications of the same on the prayer of the applicant, to expange the adverse remarks as being

unjustified. The advocate for the respondent State Govt. is directed to seek specific instructions of the State Govt. so that if possible this case could be disposed by issue of ~~the~~ direction at the next hearing.

5. This should be kept on part heard board. Put up on 09th Nov.1993.

6. A copy of this order be given to the learned advocate for the State of Gujarat for transmission to the authority concerned."

10. In the reply filed by ~~the~~ respondent on 05th Nov.1993, it was conceded that CR for 1983-84, was never written. It is further contended that the decision of the opponent Govt. on the representation made by applicant on his CR for the year 1984-85, is not only just and proper but also final. In view of this ~~xx~~ we reserved the matter for judgement.

11. On going through the connected file, we note the following :

(i) The Reporting officer ~~xxxxxxx~~ wrote against the column of integrity that a note is attached. In the attached that the note, he stated integrity of applicant seems doubtful for reasons given. The scrutiny note on the representation of the applicant states as below :

"Separately, an inquiry has been carried out by Shri V.B.Buch, the then Secretary, F&CSD into the allegations of malpractices /irregularities committed by Shri Pradhan, levelled by the Chairman. The case has been separately submitted ^{to} the Government.

The inquiry officer has also pointed out the improper way in which Shri Pradhan had entrusted the inquiry to the officers concerned into the allegations of malpractices going on in the soil conservation works in Panchmahal's District levelled by Shri Shantilal Patel, M.L.A. "

The Reviewing officer has made following Review :

"The period ^{is} too short for me to comment. A senior officer has been asked to look into the allegations". Evidently, the Reviewing officer did not deal with the body of adverse remarks. He was mainly concerned with allegations about integrity. The result of the inquiry therein is indicated above.

(ii) The representation has been examined by the office which had followed the comments in representation given by Reporting officer. The Reporting officer who was a non-official, he has stated, "I am in public life since, last 40 years, I have held ~~which~~ with success many law and high posts of responsibility in Administration. I am not accustomed to think and act under whim, caprice or baseless prejudice."

~~xxxx~~

12. & This is quoted to bring out the points that the CR has been written by a person who ~~is~~ is not accustomed to write the CR. It is well known that CR writing itself is an art and requires practice and skill especially because what is regarded as adverse and not adverse itself tends to be a matter of interpretation.

13. As examples, we note the following remarks ~~for~~ Reporting Officer :

"Shri Pradhan, is a Civil Engineer. We expected that under his leadership, quality of our works will improve considerably. The works showed same improvements but not to the extent it should have been."

14. It is notable that Reporting Officer had conceded that under applicant's tenure, work showed improvement. Now this is not an adverse remarks, but a rather a positive remark. It is the cardinal principle of CR writing that being an instrument of human resources development, it must praise where praise is due. The CR therefore, gives an impression of one sidedness. Another example is :

"It is true that with the help of N.A.B.A.R.D. our project preparation was improved when Shri Pradhan was our M.D. This positive aspect ^{is} not reflected in the CR."

The adverse remarks " he did not detect the malpractices going on in soil conservation works", is followed by the following adverse remarks.

"Not eager to acquire the general information", on this point, the comments of the Reporting officer are as below :

"I do not remark this with reference to national affairs, International affairs, or nuclear arm/race. It is not needed for the working of our corporation though

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Shri Pradhan extensively toured as M.D., he could not
a
detect/sing~~le~~ case of malpractice and misuse of Govt. money.
I came to the conclusion that he did not care to get general
information about what is going on under his nose in fields,
the real test of working", it is clear that this remark really
means nothing more than what was stated earlier. It therefore,
becomes otiose.

15. Our conclusion, therefore, is that the report
by the Reporting Officer was one sided and was not written
carefully omitting positive remarks, warranted and
including negative remarks which were ^{otiose} and further that
^{is} prejudice/ caused to the applicant because there was no
real review of the adverse remarks, in which the one sided
and un-intended adverse remarks could be corrected or toned
down. We have already noted that prejudice has been caused
to the applicant because of non writing of CR for 1983-84.
To the extent the integrity of the applicant was held to be
doubtful Government of Gujarat apparently has taken action on
the basis of the report of Shri Buch, ~~the~~ then Secretary,
Food and Civil supplies Department. We have also seen
remarks to the effect that at one stage, a departmental
inquiry was contemplated against the applicant. Available
record does not indicate the correct position in this regard,
but confining ourselves to the present case, We are of
the considered view that the adverse entries in the CR or the


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officer for the 1984-85 are unjustified and cannot be allowed to stand. Justice cannot be done to the officer by piecemeal deletion of stray remarks and by suggesting incorporation of certain positive remarks which the Reporting officer ought to have included to make a balanced ~~picture~~ picture. Justice can be done to the case only by ordering expunction of the adverse remarks - in toto which we hold to be unjustified. We therefore, dispose of the case by passing the following order:

ORDER

"The application is allowed.

The adverse remarks in the C.R. of the applicant for the year 1984-85 are hereby directed to be expunged and should be deemed never to have existed in the CR of the applicant and any consequential benefits flowing from this decision and the declaration should be allowed to the applicant. There would be no order as to costs."


(R.C. Bhatt)
Member (J)


(M.R. Kolhatkar)
Member (A)

AIT/SSH.