

(14)

CAT/3/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 95/89

~~Tax No.~~

DATE OF DECISION 18-11-1991

Shri Vijay Shanker Sinha, _____ Petitioner

Party-in-Person _____ Advocate for the Petitioner(s)

Versus

Union of India & Ors. _____ Respondent

Mr. R.J. Oza for Res. No. 1 _____ Advocate for the Respondent(s)
Mr. P.M. Raval for Res. No. 2.

CORAM :

The Hon'ble Mr. P.S. Habbeeb Mohammed : Administrative Member

The Hon'ble Mr. R.C. Bhatt : Judicial 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? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

Shri Vijay Shanker Sinha, IAS
Additional Chief Secretary,
Government of Gujarat,
Revenue Deptt. (Appeals)
M.S. Building, Lal Darwaja,
Ahmedabad.
(Party-in-Person)

: Applicant

Versus

1. Chief Secretary to
Government of Gujarat,
General Administration
Department, Sachivalaya,
Gandhinagar.
2. Secretary,
Government of India,
Department of Personnel &
Administrative Reforms,
Ministry of Personnel,
Public Grievances & Pension,
CGO Complex, Lodi Road,
New Delhi.

: Respondents

(Advocate: Mrs.S.D.Talati for
Mr.R.J.Oza for Resp.No.1
and Mr.E.S.Samuel for
Mr.P.M.Raval for Resp.No.2)

J U D G M E N T

O.A.95/89

Date: 18.11.1991

Per: Hon'ble Mr. R.C.Bhatt

: Judicial Member

1. This application under Section 19 of the Administrative Tribunals Act, 1985, is filed by the applicant - Additional Chief Secretary, Government of Gujarat, Revenue Department (Appeals) praying that the decision of the respondent No.2, Government of India turning down the applicant's memorial be set aside and the respondents be directed to delete the adverse remarks conveyed to the applicant in his C.R. for the years 1965-66 and 1966-67 vide letter No.AIS/1878/IAS/

C.R.-G, dated 18.7.1978. The applicant by the amendment application further prayed that after expunging the remarks against the applicant the words to the effect that "there was substantial improvement in performance during last two years" and it was one of the best, if not the best performance amongst all the districts in the State" be added. The applicant is a Member of Indian Administrative Service allotted to the Gujarat State, that he was transferred and appointed to the post of District Development Officer, Valsad, a post in the senior scale of IAS of Gujarat cadre, on 1st June, 1964 and he continued on that post till 30.6.1967 when he was transferred and sent on deputation to the Government of India. The adverse remarks listed in the Confidential Reports for the year 1965-66 and 66-67 were communicated to him vide General Administration Department's letter No.AIS/1878/IAS/CR-G dated 18.7.78 which have been produced by the respondent No.1 at Annexure A and B. It is alleged by the applicant that he submitted representation on 18.10.1978 to the respondent No.1 to which the respondent No.1 replied vide G.A.D.'s letter dated 18.1.1979 that the grounds given in the representation were not adequate for deleting the adverse remarks. The applicant, according to him, sent letter dated 30.4.1986/1.5.1986 vide Annexure A/3. It is alleged by the applicant that the respondent No.1 thereupon took the view that the representation had already been turned down earlier and therefore, no action was possible on another communication. The applicant, thereafter, submitted a memorial to the President of India under Rule 25 of All India Services (Discipline and Appeal) Rules on 23.10.1986 produced at Annexure A/5.

It is alleged by the applicant that the respondent No.1 thereupon took the view that the memorial was barred by limitation and could not be forwarded. It is alleged that this was not true as the State Govt.'s decision was conveyed to the applicant only on 28.5.1986 and therefore, the memorial was well within the time and appeal was preferred for reversing the decision for not forwarding the memorial. The applicant has alleged in the application that he has now been informed vide G.A.D.'s letter dated 14th September, 1987 Annexure A/9 which is the impugned order that the respondent No.2, Govt. of India has rejected the memorial. Thus the applicant has filed this application impugning the letter Annexure A/9 dated 14.9.1987 from the respondent No.1.

2. It is averred by the applicant in his application that officers appointed by the State Govt. to supervise the work of District Development Officer, control the activities of the district panchayat and provide guidance. The Ministers are appointed to look after portfolios allotted to them. The work of supervising and controlling the activities of the District Panchayat are entrusted to the Development Commissioner under the Gujarat Panchayat Act, 1961. He has to report on the work of the Development Officer. and he is the reporting officer in terms of Rule 2(a) of All India Services (Confidential Rolls) Rules. The Officer immediate superior to the Development Commissioner is the Reviewing authority and the authority superior to the reviewing authority is the accepting authority. It is the case of the applicant that the Development Commissioner for the years 1965-66 and 1966-67 were Shri H.K.L.Kappoor and Shri R.M.Desai respectively.

The post of the Development Commissioner is in the super time scale of I.A.S. The authority immediately superior to the Development Commissioner is the Chief Secretary to the Govt. of Gujarat. The Chief Secretary during both these years was Shri V.L.Gidwani. It is alleged by the applicant that he had pointed out in his representation that the objectives set before the District Panchayat's performance were realised in adequate measure and the District Panchayat's performance was way ahead of other District Panchayats figuring in the list of first five District Panchayats in the State. It is alleged by the applicant that he had pointed out in his representations that he received encouragement all alone from the Development Commissioner and all the Secretaries and Ministers to the State Govt., that there was no discordant notwithstanding, that neither Development Commissioner nor the State Govt. had to resort to the corrective action at any time. It is alleged that had the Development Commissioner or for that matter the State Govt. observed any trait in his work as District Development Officer which was not conducive to obtaining the optimum results, they would have certainly drawn his attention to it. It is alleged by him that had any such trait existed, the Development Commissioner on account of the duties entrusted to him and the Ministers on account of oath of office, would have brought to his notice and taken corrective measures. He, therefore, alleges that adverse remarks are completely misplaced, incorrect and not warranted and hence he submitted his representations against the adverse remarks.

3. It is alleged by him that the remarks in the instant case have been communicated to him 11 years after he handed over the charge of the post. He submitted that the adverse remarks are communicated to enable the officer reported upon to make vigorous efforts to remove the shortcomings. The All India Services (Confidential, Rolls) Rules therefore, provide that adverse remarks be communicated within three months after they are reported. He has ~~xxx~~^{averred} that he has not received any adverse remarks during last five years which bear the slightest resemblance to these remarks. He has alleged that the adverse remarks communicated to him after 12 years were untrue, contrary to actual conduct and performance, and no reasonable person would have ever attributed to these remarks to him. It is alleged by him that he had listed certain instances where the instructions of Director of Health and Medical Services were likely to result in resources being unnecessarily locked up thereby causing financial loss, and therefore, these were reversed but the then Director of Medical and Health Services, unfortunately took it up as a personal affront and it is possible that he conveyed to the then Secretary, Panchayats and Health Department that the District Panchayat was not helpful. It is alleged that this was far from truth but this might have weighed with the Secretary, Panchayats and Health Department when he came to record his views on the confidential reports and the incorrect impression conveyed by the Director, Medical and Health Services would not have been removed as he was not in the know of things. He has alleged that it is not only possible but quite likely that the Secretary, Panchayat and Health Deptt. might have given^a wrong impression about his conduct and behaviour,

secretary and ~~the~~ might have accepted the complaints without verification. He has averred in the application that the inter-action with the Secretary, Panchayats and Health Department was necessarily very limited as all financial proposals were disposed of by the Development Commissioner and other Heads of the department. It is averred by the applicant that the Secretary is very much dependent upon Health Department for realising his objectives and would be natural for the Secretary to endorse whatever Director asks him to do. It is the case of the applicant that injustice have been done to him because the Secretary had wholehearted accepted certain views which were wholly incorrect merely because they were conveyed by the Director Medical & Health Services. It is alleged by him that the State Govt. in all fairness should not have permitted him to record his views. It is alleged by the applicant that the Secretary, Panchayats and Health Department and the Development Commissioner, both are super time scale officers, one cannot be held to be superior to the other. It is alleged by the applicant that Shri R.M.Desai, the then Development Commissioner was senior than the then Secretary, Panchayats and Health Department. It is the Development Commissioner who is the reporting officer. The Secretary, Panchayats and Health Department, in accordance with the Rules cannot record his views on the confidential reports. It is alleged by the applicant that even if it is held that the Secretary, Panchayats and Health Department could record his views as part of the duties, it was necessary that the adverse remarks were conveyed to him in a reasonable time at least within six months after they were recorded, which would have enabled the applicant to bring the correct facts to the notice of the State Government and the State Government would have ^{been} in a position to do justice.

It is also alleged by the applicant that the remarks were not placed before the accepting authority. It is averred by the applicant that the then Minister for Panchayats and Agriculture, Shri Thakorebhai Desai, had ^{applicant} publicly commended on his performance which act was just the reverse of the adverse remarks.

4. It is alleged by the applicant that his request for personal hearing by the then Chief Minister was also turned down. It is also alleged by him that the Minister in the Govt. of India should also have heard him before deciding against him. It is alleged by him that the adverse remarks against him was void, far from truth, are arbitrary and bad in as much as they were communicated to him after 11 years and against the rules. He, therefore, prayed that the decision of the Govt. of India turning down his memorial be set aside and the adverse remarks against him be deleted.

5. The respondent No.1 has filed reply contending that the adverse remarks figuring in the confidential reports for the years 1965-66 and 1966-67 were communicated to the applicant on 18.7.1978 and while communicating these remarks although it had been 12 years, the respondent No.1 examined the position in the light of the instructions contained in the AIS (Confidential Rolls) Rules, 1970 which provide that the adverse remarks shall be communicated to the members of the services ordinarily within three months of the receipt of the C.R. and further the instructions of the Govt. of India contained in letter dated 26.8.1972 vide Annexure D also stated therein

that the communication of an adverse remarks was mandatory and the period specified in the rule was only directory having regard to the scheme and purpose of the rule. It is further contended that on consideration and examining the question as to whether the communication of the adverse remarks requiring to be communicated after a period of 12 years to the applicant whether the same were justified or not, the State Government on consideration came to the conclusion that in view of the instructions of the Govt. of India, the adverse remarks could be communicated to the applicant even at this late stage which would enable the applicant to represent in the matter.

6. The respondent No.1 contended that the applicant had made two representations vide his letter No.S-EPB-65-66 dated 18.10.1978 which were carefully considered by the Government and as there were no adequate grounds warranting expunction of the adverse remarks from his confidential reports for the years 1965-66 and 1966-67, his representations were rejected. The respondent No.1 in para-9 of the reply has reproduced the remarks of the applicant in C.R. for 1965-66, 1966-67, 1970-71, 1971-72, 8.7.72 to 2.7.73, 6.3.75 to 19.9.75. It is contended by the respondent No.1 ^{that} while examining the representations of the applicant, Ex.Chief Secretary had reported his views in 1978 as under:-

"The quality (he was occasionally impolite in correspondence) was noticeable even to me when Shri Sinha was D.D.O., Bulsar. I recall that he had addressed letters to Development Commissioner factlessly and some heads of Departments had also spoken of this matter-though at this length of time, it is difficult to quote chapter and verse. I have no doubt in my mind that the adverse remarks recorded in Shri Sinha's C.Rs. for the years in question were objectively recorded and require no change". (Annexure -D- Chief Secretary is specified as Reviewing Authority under AIS (CR) Rules, 1970).

7. It is contended that in view of the position cited above, Government on consideration of the representation of the applicant decided to reject the representations. The applicant thereafter wrote a letter dated 25.2.1986 by which he demanded a copy of Govt. letter by which he was asked to give justification for expunction of the remarks figuring in the Confidential Reports for the years 1965-66 and 1966-67. The applicant was asked vide Govt. letter dated 19.4.1986 to mention the number and date of the Govt. letter of which he wanted a copy. It is contended that the applicant was also informed vide Govt. letter dated 28th May, 1986 that his earlier representation dated 18th October, 1978 were duly considered by the Govt. and a decision was conveyed to him vide letter dated 18th January, 1979 and that no further letter had been addressed to him in the matters seeking any clarification or reasons from him and there was no question of reopening the matter. It is contended that the applicant wrote another letter on 22.7.1986 giving reference to his earlier letters stating that he had asked for a copy of GAD's letter dated 18.1.1979 which was not supplied to him. It is contended that when the Govt. gave the reply ^{vide} letter dated 28.5.1986 the applicant did not demand a copy of the letter allegedly asking for his detailed justification nor did he demand a copy of letter dated 18.1.1979 but it was only in his letter dated 4.6.1986 that he had demanded a copy of the letter dated 18.1.1979. It is, therefore, contended by respondent No.1 that the say of the applicant in his letter dated 22.7.1986 that he demanded the copy of the letter dated 18.1.1979 is not correct. It is contended that the letter dated 18.1.1979 was duly posted to applicant at his address when he

was Settlement Commissioner and Director of Land Records. It is contended that the applicant had made a Memorial to the President of India for expunction of his adverse remarks figuring in the confidential records of 1965-66 and 1966-67 under Rule 25 of AIS (Discipline and Appeal) Rules, 1969. As per these rules, a memorial can be submitted against any order of the Govt. within three years, but as the representation of the applicant was rejected by the state Govt. on 18.1.1979, his memorial dated 23.10.86 was time barred and there were no valid reasons for condoning delay after about 8 years and therefore, his memorial was rejected and the applicant was accordingly informed vide Govt. letter dated 19.1.1987. The Government did not consider it a fit case to condone the delay and therefore, it was regretted that the memorial could not be forwarded to the Government of India for consideration of the President of India. The Govt. of India then wrote a letter on 21.4.1987 to State Govt. in which it was requested that the comments of the State Govt. on the points raised by the applicant in his appeal submitted on 7.2.1987 may be forwarded to the Govt. of India but the Govt. of India was informed vide State Govt. letter dated 12.5.87 that the memorial submitted by the applicant was time barred and therefore, it was not forwarded to the Govt. of India. It is contended that again being aggrieved of the decision, regarding the memorial, the applicant submitted an appeal to the President of India vide his letter dated 7.2.1987 under Rules 16 of All India Service (Discipline and Appeal) Rules, 1969. The State Govt. had considered his appeal and decided that Rule 16 of the A.I.S. (D & A) Rules, 1969 was not applicable in his case and hence the appeal was rejected by the Govt. and therefore, there was no need to forward any comments of the State Govt. on the points raised by him in his appeal and the Govt. of India

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was also informed accordingly under State Government letter dated 12.5.1987. It is contended that in the matter of appeal under Rule 16 of AIS (D & A) Rules, 1969 against treating the memorial dated 23.10.1986 time barred and not sending it to the Govt. of India for consideration of the President of India, the Govt. of India under their communication dated 21.4.1987 addressed to the State Govt. referred therein to the applicant's letter dated 7.2.1987 addressed to Respondent No.1 and a copy of which had been sent to Govt. of India called for the comments of the State Govt. on the points raised by the applicant in his appeal and to furnish the same to the Govt. of India for taking a decision thereon. The State Govt. under its communication dated 12th May, 1987 addressed to the Govt. of India gave details as mentioned in para 19(a) of the reply and ultimately the Govt. of India under its communication dated 28.8.1987 informed the State Govt. that the memorial dated 23.10.86 submitted by the applicant against the adverse remarks recorded in his C.Rs. for the year 1965-66 and 1966-67 was considered and Govt. of India decided to reject the same vide Annexure A/E and the decision of the Govt. was communicated to the applicant vide letter dated 14th September, 1987 which is the impugned order.

8. It is contended by the respondent No.1 that the Govt. of India while offering parawise comments on the application filed by the applicant has stated that the memorial dated 23.10.86 from the applicant was not received through State Govt. and the State Govt. did not forward it to the Govt. of India as it was time barred. It is

contended that since representation of the applicant was rejected by State Govt. on 18.1.1979 his memorial dated 23.10.1986 was rejected as being time barred. vide Annexure A/F.

9. The respondent No.1 contended that it is not known whether the then Director of Health and Medical Services had influenced the then Secretary, Panchayat and Health Department about the conduct and working of the applicant. However, it is pointed out that as per the instructions 2.3 of the Government of India's letter 28.8.1972, late communication of the adverse remarks is in order. It is contended that as the memorial of the applicant was time barred it was not necessary to grant him personal hearing for the said purpose. It is contended that the representations made by the applicant were considered and the same were rejected and the memorial submitted by the applicant was also carefully considered by the State Govt. but it was rejected as it was time barred. It is contended that the applicant is not entitled any relief as prayed for.

10. No reply has been filed by the respondent No.2.

11. The applicant has challenged the adverse remarks incorporated in his confidential reports for the period 1st April, 1965 to 31.3.1966 and for the period 1st April, 1966 to 31st March, 1967 communicated to him vide letter dated 18.7.1978 Annexure A and B and the impugned order Annexure-9 dated 14.9.1987 by which letter the memorial sent by him to the President of India under Rule 25 of All India Services (Discipline and Appeal) Rules 1969 was **turned** down by the Govt. of India grounds. The main challenge to the communication

of adverse remarks incorporated in his confidential reports for the period 1.4.1965 to 31.3.1966 and for the period 1.4.1966 to 31.3.1967 vide Govt. letters G.A.D. No. AIS-1878-IAS-C.R.-G Annexure A & B dated 18.7.1978 is that the same having been communicated by respondent No.1 after 11 years should be held as unsustainable, arbitrary, null and void and hence the said remarks be expunged. The adverse remarks incorporated in Annexure/A were as under:

"A somewhat immature officer who is apt to rub people on the wrong side. He is not co-operative with his officers or Heads of Departments. He requires to work in a team spirit and trust his officers for normal administrative matters".

The adverse remarks incorporated in his confidential reports Annexure-B were as under:

"Rigid outlook. Could not inspire confidence amongst his District Officers. He was occasionally impolite in correspondence." "Fair".

It is submitted by the applicant that the adverse remarks have to be communicated in a reasonable time to enable the State to derive advantage from that communication and reporting officer tries to improve the working of the officers reported upon by continuous guidance. He submitted that if certain traits persist even after the efforts of rectification, the officer has to incorporate them in the confidential report. These remarks are communicated to enable the officer reported upon to make vigorous efforts to remove the shortcomings. He submitted that the remarks in the instant case have been communicated to him 11 years after he had handed over the charge of the post. He submitted that he ^{was} the District Development Officer at Valsad from 1964 to

1967 and these remarks pertain to the said period. We inquired from the learned advocate for the respondents as to the rules regarding the confidential reports and its communication to the concerned officer during that period because the respondent No.1 has not mentioned anything about the same in its reply while the respondent No.2 has not filed the reply at all. The respondent No.1 has produced the file **containing** the instructions regarding writing and maintenance of annual confidential reports. There is an accompaniment to Government Resolution, General Administration Department No.WCR-1063-A dated 28.2.1963 which deals with the instructions regarding writing and maintenance of annual confidential reports. Instruction 14 reads as under:-

"Communication of adverse remarks:- It is necessary that every employee should know what his defects are and how he can remove them. The best results can be achieved only if every Reporting Officer realises 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 advise, 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 because they would only refer to defects which have persisted despite the Reporting Officer's efforts to have them corrected. Accordingly, then mentioning any faults or defects, a Reporting Officer should also give indication of the efforts he had made by way of guidance, admonition, etc. to get the defects removed and the result of such efforts.

A Government servant should at no time be kept ignorant of the Reporting Officer's opinion when his service is not considered satisfactory. But no adverse remarks should be communicated by a superior officer to a subordinate except under orders of the Reviewing Officer. When communicating the adverse remarks, those made in praise of the officer should be excluded though the conveying

of the adverse remarks should be done in a manner so as to bring out the substance of the entire report. Remarks recording improvement in respect of defects communicated in previous years should also be communicated to give an indication that the efforts made to improve have not gone un-noticed.

In communicating remarks to the person reported upon, the following procedure should be followed:-

(a) Where no adverse entry is made in a confidential report, nothing should be communicated except in cases referred to in (c) below.

(b) Where an adverse entry is made, whether it relates to a remediable or to an irreparable defect, it should be communicated, but while doing so the substance of the entire report including what may have been said in praise of a person should be communicated, and

(c) Where the report on an officer shows that he had made efforts to remedy or overcome defects mentioned in the preceding report, the fact should be communicated to the officer in a suitable form and a copy of such communication added to the character roll."

12. In the instant case, no averment is made in the reply by the respondent No.1 as to why the adverse remarks were not communicated to the applicant in a reasonable time. There is resolution dated 6th April, 1967 by which an amendment is made in the instructions para 14(4) (e) as under:

" In the case of All India Service Officers and Heads of Departments, adverse remarks made against them in their confidential report should be communicated by the Chief Secretary".

There is also a Circular dated 24.3.1966 by the Govt. of Gujarat, General Administration Department bearing Circular No.WCR-1066-K, in which it is mentioned that all Reporting Officers are requested to ensure that confidential reports of All India Services Officers are invariably written in duplicate and this is necessary as one copy has to be sent to the Government of India. Then there

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is another circular No. 1067-68/569-K, dated 5th March, 1968 regarding the time limit for writing confidential reports and communicating adverse remarks to person concerned. It is mentioned in this resolution that the period of reporting should be as far as possible within two months from the period for which the report is sent (i.e. till end of May for the confidential reports in respect of the year ending March every year). The subsequent work of reviewing, grading and communication of adverse remarks, should be completed by the end of July every year. However this should not be regarded as rigid limits precluding suitable action but these instructions should be observed as far as practicable.

The applicant stated that the respondent
The applicant has produced before us the instructions regarding writing and maintenance of annual confidential reports vide Resolution No. 1169-K, dated 8th March, 1969 of General Administration Department of Respondent No. 1. The resolution shows that the question of consolidating instructions regarding writing and maintenance of annual confidential reports had been under consideration of the Govt. for some time. In supersession of all previous orders issued in this connection, the respondent No. 1 was pleased to direct that instructions contained in the accompaniment of this resolution should be followed hereafter. The accompaniment to Government Resolution G.A.D. dated 8.3.1969 shows the instructions regarding writing and maintenance of annual confidential reports. The applicant invited our attention to paragraph 14 of these instructions which deals with communication of adverse remarks and para 15 which deals with representations against the adverse remarks. In para 15, it is mentioned

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"Government servants should not be kept ignorant of the adverse remarks made against them in their annual confidential reports and such remarks should be communicated to them as stated above as soon as possible." The object of communicating the adverse remarks to the Government servants concerned is to help them to improve their work, conduct, etc. so that they should become better officials removing the defects pointed out to them." The applicant submitted that not only the adverse remarks were not sent to him as soon as possible as per this paragraph but it was not communicated to him even within reasonable time. He submitted that the whole object of communicating the adverse remarks to the concerned Government was frustrated, in the instant case and now it is not open to the respondent No. 1 to contend that the respondent No. 1 was justified in communicating the adverse remarks after 11 years. He rightly submitted that such an unordinate delay not explained by respondent No. 1 will completely nullify the words "as soon as possible" and it is not just and fair on the part of the respondent No. 1 to take action of communicating the adverse remarks after 11 years as reasonable action. He submitted that this inaction suffers from the vice of arbitrariness on the part of the respondent No. 1 and therefore these remarks should be considered as nullity. We agree with him on this point.

13. The applicant submitted that the respondent No. 1 has not communicated the adverse remarks to him within a reasonable time even though this Resolution and instruction were issued during the relevant period, and no averment is made in the reply by the respondent No. 1 as to why these adverse remarks were not communicated to him within a reasonable period.

14. The applicant also invited our attention to Rule 5 and Rule 8 of All India Services (Confidential Rolls) Rules, 1970. Rule 5 deals with Confidential Reports. Rule 8 deals with communication of adverse remarks which reads as under:-

"8. Communication of adverse remarks:- (1) Where the confidential report of a member of the service contains an adverse remark, it shall be communicated to him in writing together with a substance of the entire confidential report by the Government or such other authority as may be specified by the Govt. ordinarily within two months of the receipt of the confidential report and a certificate to this effect shall be recorded in the confidential report.

(2) where the reporting authority or the reviewing authority or the accepting authority records an adverse remark, he shall record a note to the effect that the remark is an adverse remark:

Provided that the question whether a particular remark recorded in the confidential report of a member of the service is an adverse remark or not shall be decided by the Govt.

Provided further that in the event of any difference of opinion between the Central Government and the Government of a State whether a particular remark is to be deemed and adverse remark or not, the opinion of the Central Government shall prevail."

"Explanation:-For the purpose of these rules an adverse remark means a remark which indicates the defects or deficiencies in the quality of work or performance or conduct of an officer, but does not include any word or words in the nature of counsel or advice to the officer".

The applicant submitted that even as per this Rule the Govt. was bound to communicate the adverse remarks in writing with a substance of the entire confidential reports by the Govt. ordinarily within two months of the receipt of the confidential report and a certificate to this effect has to be recorded in the Confidential reports. He submitted that even after All India Services (Confidential Rolls) Rules, 1970,

the respondent No.1 did not communicate the adverse remarks of the said relevant years in a reasonable time.

He submitted that these remarks have been communicated to the applicant after about 11 years from the relevant years 1965-66 and 1966-67 and even after 8 years of All India Services (Confidential Rolls) Rules, 1970 hence the said act on the part of the Respondent No.1 is arbitrary, illegal, in violation of principles of natural justice and in violation of Rule 8 and the same should be declared as null and void and the remarks should be expunged.

15. The learned advocate for the respondent No.1 invited our attention to para 7 of the reply of the respondent No.1. He submitted that Govt. of India issued instructions on 16.7.1971 vide Annexure-C to all State Govts. that in a matter of communication of adverse remarks the gist of good points should also be communicated and in para-3 of the said Govt. letter, it was also brought to the notice of the applicant that the adverse remarks figuring in his C.Rs. for 1965-66 and 1966-67 were brought to his notice in order that he might make positive efforts to overcome his shortcomings. The respondent No.1 has contended further in para-7 of the reply as under:-

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"While communicating the adverse remarks for the periods 1965-66 and 1966-67 although it had been twelve years, the State Govt. examined the position in the light of the instructions contained in the A.I.S.(Confidential Rolls), Rules 1970 which provided that the adverse remarks shall be communicated to the member of the service ordinarily within three months of the receipt of the C.R. Further the instructions of the Govt. of India contained in letter dated 26.8.1972 vide Annexure-D also stated that in the communication of an adverse remarks is mandatory and the period specified in the rule is only directory having regard to the scheme and purposes of the Rule. Further on consideration and examining the question as to whether the communication of the adverse remarks

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requiring to be communicated after a period of 12 years to the applicant whether the same were justified or not, the State Govt. on consideration came to the conclusion that in view of the instructions of the Govt. of India, the adverse remarks ~~could~~ be communicated to the applicant even at this late stage which would enable the applicant to represent in the matter".

This is ~~the~~ interpretation and explanation of the respondent No.1 about the delay of communication of adverse remarks to the applicant after 11 years. Can this defence be considered as reasonable, proper just and fair. In our view, the explanation furnished by respondent No.1 is absolutely vague. The respondent No.1 has only relied on the Govt. of India letter dated 26.8.1972 para 2.2 that the period specified in the rule for the communication was only directory. The question arises whether the Govt. can take shelter under this letter justifying its inaction for 8 years and then communicating adverse remarks after a lapse of 8 years after coming into force of the All India Services (Confidential Rolls) Rules, 1970. It may be noticed that in same letter dated 26th August, 1972 in para 2.3, it is mentioned that in view of the position explained in para 2.2, if an adverse remarks is not communicated within three months, to the member of the service concerned, in any particular case, it may be communicated to him now as early as possible.

16. Rule 8 of All India Service (Confidential Rolls) Rules, 1970 even if is made applicable to the case of the applicant, the respondent No.1 was bound to communicate the adverse remarks of the relevant years ordinarily within two months of the receipt of the Confidential reports but the same has been sent to the applicant as late as in 1978. The applicant, has, therefore, rightly impugned this action on the part of the respondent No.1. It is not in dispute that object of communicating the adverse remarks to the Govt. servants concerned, is to help them to improve their work, conduct etc. so that they should

Government of Gujarat, Revenue Department (Appeals) and during the pendency of this application he has made an application on September, 3, 1991 which shows that he is promoted as Principal Secretary, Govt. of Gujarat, Revenue Department (Appeal), Ahmedabad. He, therefore, submitted that as he has been promoted, this would have the effect of wiping away adverse confidential remarks given to the applicant and recorded in his ACRs prior to that event. This is an additional ground of attack on the action of the respondents. In our opinion, this contention of the applicant is correct contention in terms of the decision of the Hon'ble Supreme Court in the cases of D.Ramaswamy vs. State of Tamil Nadu 1982-S.C.C. (L & S) 115 and J.D.Shrivastava vs. State of M.P. and Ors. AIR 1984 S.C.C. page 630. Thus old and stale entries in the service record of the applicant for the year 1965-66 and 1966-67 has lost all its efficacy and force because of the applicant's subsequent promotion. In other words, now adverse record would not be relevant as it was deemed to have been washed away once having promoted the applicant. It is important to note also that there is no plausible reason indicated in reply by the respondent No.1 and the impugned state action therefore appears to be ex-facie arbitrary. The respondent No.1 has not explained its action as fair and reasonable except putting reliance on the letter of the Govt. of India dated 26.8.1972 Annexure 'D' but even in that letter para 2.3 it is mentioned that the adverse remarks be communicated as early as possible. It is too late in a day for the respondent No.1 to contend

that the communication of the adverse remarks as late as in 1978 is in consonance with this letter Annexure-D nor could the respondent No.1 justify that the words used in Rule 8 "ordinarily within two months of the receipt of the confidential reports" would cover the period of such a long time as late as in 1978 proper or just even if this rule is construed as directory. The word "ordinarily" has come in for judicial consideration in a number of cases (1) Kailash Chandra vs. Union of India AIR 1961 S.C. 1346 (2) In re Putta Ranganayahula and Ors. AIR 1956 A.P. 161. It is held in these decisions that "ordinarily" means usually, normally and not exceptionally as contrasted with "extra ordinarily". In our opinion, the respondent No.1 is also unable to justify action of communication of adverse remarks to the applicant in 1978 as fair and reasonable. It is now too well settled that every state action in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of article 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is a very negation of the rule of law. The respondent No.2 has not filed any reply. Considering all aspects of the case, we are unable to hold respondents action of communication of the adverse remarks of the year 1965-66 and 1966-67 to the applicant as late as in 1978 as just, legal or proper. As observed above, these old and stale entries in the service record of the applicant which has lost all its efficacy and force because of his subsequent promotion and would not be relevant and would be deemed to have been washed away once the applicant is promoted. Secondly because of undue delay the action of the respondent No.1 becomes arbitrary and the action of the respondent No.1 should be held as unsustainable.

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Having regard to all these facts we hold that the action on the part of the respondent No.1 of communication of adverse remarks incorporated in his confidential reports Annexure A and B vide letter 18.7.1978 is unjust, not fair, unsustainable, arbitrary and the said adverse remarks become null and void and hence the same require to be expunged. Moreover the action of the respondent No.1 in communicating the adverse remarks in 1978 is not in consonance with Rule 8 but is contrary and in violation of said rule 8 of All India Services (Confidential Rolls) Rules 1970 and, therefore, also the adverse remarks at Annexure A & B require to be expunged.

18. The other points raised by the applicant before us are that the letter Annexure 4 dated 28.5.1986 by the respondent No.1 to the applicant turning down the additional grounds furnished by the applicant by way of representation dated 30.4.1986/1.5.1986 Annexure-3 was not legal and just. He submitted that on receipt of the adverse remarks from the respondent No.1 by letter dated 18.7.1978, he submitted a representation on 18.10.1978 but the respondent No.1 vide letter dated 18.1.1979 informed him that the grounds given in the representation were not adequate for deleting the adverse remarks and hence he had sent additional grounds by way of representation vide Annexure A-3 which were not considered by respondent No.1. The respondent No.1, on the other hand, has contended that the representation of the applicant dated 18.10.1978 were duly considered by the respondent No.1 and the Ex-Chief Secretary has recorded his views also which are reproduced in para 12 of the reply of respondent No.1. The respondent No.1 contended that the decision was also conveyed to the applicant on 18.1.1979 and thereafter no further letter

had been addressed to the applicant seeking any clarification or reasons from the applicant and therefore, there was no question of reopening the matter. The applicant submitted that he had demanded a copy of the letter dated 18.1.1979 from the respondent No.1 but it was not given to him, while the respondent No.1 in the reply has contended that the applicant by his letter dated 22.7.86 had only asked for the letter of the Govt. allegedly asking for justification for expunction of the remarks figuring in the confidential reports for the year 1965-66 and 1966-67 vide his letter dated 25.2.1986 and 21.4.1986 only. It is contended that when the Govt. gave the reply vide letter dated 28.5.1986, the applicant did not demand copy of the letter allegedly asking for his detailed justification nor did he demand a copy of letter dated 18.1.1979. The respondent No.1 has contended that it was in the applicant's letter dated 18.1.1979 and the say of the applicant in his letter dated 22.7.1986 that he had demanded a copy of the letter dated 18.1.1979 was not correct. The applicant has also raised another point that his memorial to the President of India under Rule 25 of All India Services (Discipline and Appeal) Rules, 1969 dated 23.10.1986 produced at Annexure A/5 was also wrongly not ~~forwarded~~^{forwarded} to the respondent No.2 by respondent No.1 on the ground that the memorial was barred by limitation. The applicant submitted that the said memorial was not barred by limitation because the State Govt.'s decision turning down the representation was conveyed to him only on 23.10.1986 and, therefore, the memorial was within the time. The applicant had also preferred appeal under Rule 16 of All India Services (Discipline and Appeal)

Rules, 1969 against treating the memorial dated 23.10.1986 as time barred vide Annexure-6 dated 7.2.1987 to the Chief Secretary, Govt. of Gujarat and also the respondent-Government of India on 12.5.87 vide Annexure A/7. The respondent No.1 in its reply contended that as per AIS (Discipline and Appeal) Rules 1969 a memorial can be submitted against any order of the Govt. within three years but since the representation of the applicant was rejected by the State Govt. on 18.1.1979, his memorial dated 23.10.1986 was time barred and there were no valid reasons for condoning delay after 8 years and therefore, his memorial was rejected and the applicant was informed vide Govt. letter dated 19.1.1987 that the memorial submitted by him was time barred and therefore, the memorial was not forwarded to the Govt. of India for consideration of the President of India. It is contended that the Govt. wrote a letter dated 21.4.1987 to State Govt. in which it was requested that the comments of the State Govt. on the points raised by the applicant in his appeal submitted on 7.2.1987 may be forwarded to Govt. of India urgently. The Govt. of India was informed by the State Govt. vide letter dated 12.5.1987 that the memorial submitted by the applicant was time barred and, therefore, it was not forwarded to the Govt. of India and the applicant was also accordingly informed vide letter dated 19.1.1987.

19. The applicant again being aggrieved by the decision regarding the memorial submitted an appeal to the President of India vide his letter dated 7.2.1988 under Rule 16 of the All India Services (Discipline and Appeal) Rules, 1969. The respondent No.1 had considered this appeal and decided that Rule 16 of the

AIS (D & A) Rules, 1969 was not applicable in the applicant's case and the appeal was rejected. The respondent No.1 has contended that in the matter of appeal under Rule 16 of AIS (D & A) Rules, 1969 against treating the memorial dated 23.10.1986 time barred and not sending it to the Govt. of India for consideration of the President of India, the Govt. of India under their communication dated 21.4.1987 addressed to the State Govt. referred therein to the applicant's letter dated 7.2.1987 addressed to Respondent No.1 and a copy of which had been sent to the Govt. of India^{ia} called for the comments of the State Govt. on the points raised by the applicant in his appeal and to furnish the same to the Govt. of India for taking the decision thereon. The respondent No.1 under its communication dated 12.5.1987 gave its comments to the Govt. of India and ultimately the respondent No.2 under its communication dated 28.8.1987 informed the respondent No.1 that the memorial dated 23.10.1986 submitted by applicant against the adverse remarks recorded in his C.Rs. for 1965-66 and 1966-67 was considered and Govt. of India decided to reject the same vide Annexure-E. The respondent No.2 further directed the respondent No.1 to inform the decision to the applicant and the respondent No.1 vide letter dated 14.9.87 Annexure-9 informed the applicant about the decision on the memorial submitted by the applicant to the President of India.

20. The applicant has submitted that the action on the part of the respondents in turning down his representation and his memorial was illegal and bad in law because there was not a single incident on his part which resulted in the adverse remarks nor there was a single suggestion made to him by superiors which was not carried when he was District Development Officer during the period.

He submitted that the Development Commissioners for the years 1965-66 and 1966-67 were Shri H.K.L. Capoor and Shri R.M. Desai, respectively and the Chief Secretary during both these years was Shri V.L. Gidwani. He submitted that he has mentioned in details in his representations that the objectives set before the District Panchayats realised in adequate measure and he had received encouragement all alone from the Development Commissioner and all the Secretaries and Ministers to the State Govt. He submitted that the adverse remarks were untrue, contrary to actual conduct and performance and no reasonable person would have ever attributed to these remarks to him. He submitted that the then Director of Medical Services prejudiced the then Secretary, Panchayat and Health Department that the District Panchayat was not helpful but that allegation was wrong. He submitted that the incorrect impression conveyed by the Director of Medical and Health Services seems to have weighed with the Secretary, Panchayats and Health Department. He submitted that the part of the adverse remarks in his C.Rs. of 1965-66 "he requires to work in a team spirit and trust his officers for normal administrative matters" were recorded by Shri J.G. Shah while C.R. remarks recorded in 1966-67 were by Shri J.G. Shah also. He submitted that the C.R. remarks are contrary to the executive instructions. He submitted that in 1966-67 largest number of works were completed by him. He has referred to various provisions of Gujarat Panchayat Act 1961, Rule 3 of All India Services (Conduct) Rules, 1968 and submitted that the applicant was doing nothing contrary to the instructions or contrary to his duties nor his superior has told the applicant

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about it. Such an occasion had never arisen and therefore, these adverse remarks have no basis. The applicant in his petition has spelt out his various achievements through out his service but it would not be necessary to recapitulate them. In this context, we may observe that what is relevant is the assessment ^s recorded in the A.C.Rs. and not what an officer considers to be his achievement.

21. In view of our finding on the first main point that the adverse remarks incorporated in applicant's C.R. for the periods 1965-66 and 1966-67 communicated to the applicant after 11 years should be held as unsustainable arbitrary, null and void, unjust etc. the impugned letter Annexure-9 dated 14.9.1987 and Annexure-E i.e. dated 28.8.1987 shall have to be quashed and set aside. The decision of the respondent No.1 rejecting the representations of the applicant will merge with the final decision of the respondent No.2 by which the memorial made by the applicant to the Govt. of India was rejected by respondent No.2 and therefore, the said orders shall have to be quashed. In view of this finding, it is not necessary for us to decide the rest of the points raised by the applicant that the C.R. remarks were contrary to executive instructions or the same were made due to the prejudice against him by the then Secretary, Panchayats and Health Department Mr. J.G. Shah or that he was not given personal hearing by the respondents after he made representations and memorial or that the remarks were untrue, contrary to actual conduct and performance, etc. The applicant has also submitted that the respondents could have considered the case of the applicant under All India Services (Conditions of Service-

Residuary Matters) Rules, 1960.

22. Having regard to the facts and circumstances of the case, we direct the respondents to expunge the adverse remarks contained in the applicant's C.Rs. for the years 1965-66 and 1966-67 on the ground that the same have been communicated by respondent No.1 after 11 years and therefore, they should be held unsustainable, arbitrary, null and void, unjust and also because the applicant has been promoted also after the period of relevant remarks and therefore the said remarks have lost all its efficacy and force and same should deem to have been washed away. The applicant has by way of amendment in his application prayed that after expunging the remarks the relief should also be granted that there was substantial improvement in performance during last two years and it was one of the best, if not the best performance amongst all the districts in the State. In our opinion, this part of the relief cannot be granted to the applicant because it is not for us to judge or decide the applicant's performance as one of the best amongst all the districts in the State as urged by him nor such relief about his performance can be given.

23. The result is that the decision of the Govt. of India turning down applicant's memorial is set aside and the respondents are directed to delete the adverse remarks of the applicant for the years 1965-66 and 1966-67 as conveyed to him vide letter Annexure A & B dated 18.7.1978. The application is allowed to the above extent. Having regard to the facts of the case, we pass no order as to costs.



(R.C. Bhatt)

Member (J)

(18/11/78)



(P.S. Habeeb Mohammed)

Member (A)