

B
9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 289/90

~~P.A. No.~~

DATE OF DECISION 26.8.1992

Shri Prabhudayal Laxminarayan Petitioner
Khandalwal.

Party in person Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. M.R. Bhatt for Mr. R.P. Bhatt Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C. Bhatt

: Member (J)

The Hon'ble Mr.

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 ? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✗

Shri Prabhudayal Laxminarayan,
Khandalwal,
(Party in Person)

.... Applicant.

Vs.

1. Union of India,
Through
Secretary,
Ministry of Finance,
Deptt. of Revenue,
Central Secretariate,
New Delhi.
2. The Chief CIT (Admn.)
Aayakar Bhawan, 2nd Floor,
Ahmedabad.
3. Central Board of Direct Taxes,
Notice of the petition served
Through:
Secretary of the Board,
Ministry of Finance,
North Block,
Central Secretariate,
New Delhi- 110 001.

.... Respondents

(Advocate Mr. M.R. Bhatt for Mr.
R.P. Bhatt.)

J U D G M E N T

O.A. No. 289/90

Date: 26.8.1992

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

1. This application under Section 19 of the Administrative Tribunals Act, 1985 is filed by the applicant, Dy. Commissioner, Income Tax (Audit), Ahmedabad, against the respondents seeking the relief that the adverse comments conveyed from the C.C.R. of F.Y. 1987-88 vide Chief C.I.T. Ahmedabad's letter dated 14th October, 1988, including his

..3...

consequential letter dated 20th June, 1990, be quashed and the same be directed to be substituted with "Very Good" grading, in view of the "Outstanding" performance atleast which is now a Bench, mark so that the petitioner may not suffer in his service prospects, as Officers having "Very Good" grading are to be promoted by the respondents and in the alternative also the CCR of the year 1987-88 may be declared null and void or other suitable relief order also be granted. The case of the applicant is that he has been the Deputy Commissioner for more than 11 years, during which he had successfully held several posts including the Special Pay Post etc. i.e. post with heavier responsibilities and during this period of 11 years, his career is without any adverse entries except these adverse remarks for the year 1987-88 which has been made due to other considerations including elements of personal prejudice, malice, bias attitude, without basis and arbitrary, capricious and against rules. The adverse remarks Annexure A/1 were communicated to him on 17th October, 1988, against which he submitted representation vide letter dated 17th November, 1988 but the representations were not disposed of even after one year had passed. The applicant filed the application before this Tribunal on 18th June, 1990 and there^{after}, the Chief CIT (Admn.) Ahmedabad i.e. respondent no. 2 vide his letter Annexure A/12 dated 20th June, 1990 informed the applicant that his representation dated 17th November, 1988 had been

rejected. The applicant has amended the application contending that the delayed and bald rejection of his representation being illegal be quashed on the grounds mentioned in para 24 (i) (ii) and (iii) of original application.

2. The applicant has contended inter alia that during the period under consideration, the applicant functioned under two reporting officers i.e. for the first period 1st April, 1987 to 15th August, 1987 under Shri G.R. Patwardhan and for second period 15th August, 1987 to 31st March, 1988 under Shri P.C. Halakhandi. It is submitted in the application that Shri Patwardhan was to write the C.C.R. for the first period as per his letter to the applicant dated 21st August, 1987 vide Annexure A/3, accordingly the C.C.R. form was duly filled in and sent by the applicant vide letter dated 24th September, 1987 for which period no adverse remarks have been communicated, but the adverse remarks were communicated for the first time from the C.C.R. written by Shri Halakhandi vide letter dated 14th October, 1988 for the second period i.e. after one year and Shri Halakhandi wrote the C.C.R. of the applicant for the complete year 1987-88, though, he was not reporting officer in the applicants' case for the first period i.e. 1st April, 1987 to 15th August, 1987. It is alleged by the applicant that not only Mr. Halakhandi wrote the C.C.R. for the period for which he was not reporting officer, but extract of the adverse comments from Col. no. 15 specifically

says that he evaluated the performance of the applicant for the first period also i.e. upto August, 1987, for which he was not legally entitled to do. The applicant has produced at Annexure A/4 a copy of the letter of the Director General National Academy of Direct Taxes, dated 21st April, 1987, which shows that the said officer was to write the CCR of the applicant for the period for which the applicant was for training programme under him. He has also alleged that there has been no proper application of mind even on the part of the reviewing officer in as much as the reviewing officer has not collected his independent evidence. It is alleged that the adverse remarks have been communicated to the applicant months after the expiry of the time schedule and hence it is illegal. It is alleged that the C.C.R.s have been written late and hence, reviewed late and therefore, the same is illegal. It is alleged that since Shri Halakhandi, had a prejudicial attitude against the applicant, he wrote the CCR illegally after the prescribed period. In para 10 of his application, applicant has mentioned several grounds to show that Mr. Halakhandi ^{in order} to take revenge commented adversely in a non-speaking manner. The applicant in para 11, 12 and 13 also alleged that the adverse remarks in col. 3, 4 of part V are also not legal. He has alleged that Mr. Halakhandi was prejudiced against the applicant and ^{that} had malafides against the applicant. It is alleged in the case of senior D.R.S., no monthly review comments are sent as

per the practice of the department but in the applicants' case reporting officer started such practice of commenting through monthly review with regard to the applicants' disposal statement with a view to make up the case against him. It is further alleged that the C.C.R. form for the year 1987-88 along with the material on the basis of which the adverse have been Commented or under evaluation made be produced by the respondents so, that the applicant could have an opportunity to substantiate his stand in support of his contention.

3. The respondent no. 2, Chief Commissioner of Income Tax, Mr. O.P. Sharma, filed reply contending that as the applicant had been working under the Administrative Control of Shri P.C. Halakhandi, the-then Chief C.I.T. (Adm.) for major part of the year 1987-88, his Annual C.R. is written by Shri Halakhandi, that while writing the A.C.R. the reporting officer recorded adverse remarks against columns 15, 17, 18 and 21 and col. 3 and 4 in part V of the A.C.R. and the adverse remarks were communicated to the applicant by letter dated 14th October, 1988. The applicant by application dated 17th November, 1988 requested for expunction of all the adverse remarks recorded in his A.C.R. but the Chief C.I.T. being the reporting officer was not competent to consider the representation of the applicant and hence, it was forwarded to the Member (S & T), Central Board of Direct Taxes, under Chief C.I.T.'s letter dated 27th December, 1988, along with his report after obtaining the comments of Shri P.C. Halakhandi, the reporting officer who had retired at the that time. It is contended that the applicant made

another application dated 10th March, 1989, in continuation of his original application dated 17th November, 1988, which was also forwarded to the C.D.D.T. on 14th March, 1989. The Under Secretary, Government of India, vide his letter dated 12th June, 1990 intimated to the Chief C.I.T. (Adm.) Ahmedabad, that the Board, after considering carefully the points raised by applicant in his representation have regretted that his request for expunction of the said remarks could not be acceded and this decision was communicated by the Chief C.I.T. (Adm.) vide letter dated 20th June, 1990 to the applicant. It is contended that the adverse remarks had been recorded by the reporting officer only after objective consideration of the overall performance of the applicant.

4. The respondent no. 2 has denied that the adverse remarks had been recorded out of personal prejudice or malice or bias as alleged. It is contended ^{that} the delay caused in disposing of the representation of applicant by C.B.D.T. should be considered as normal since the C.B.D.T. has to dispose of number of similar representations before it. The respondents contended that Mr. Halakhandi, obtained the comments from his predecessor Mr. Patwardhan and that Mr. Halakhandi evaluated the performance after considering it. It is contended that Mr. Halakhandi obtained the comments of his predecessor Mr. Patwardhan for the period for which the applicant worked under the letter and took the same into account while making evaluation. It is contended that the applicant during the period of training was under the Administrative Control of the

Chief C.I.T. It is contended that the monthly reviews were prescribed in the case of the applicant with a view to gauge his performance periodically. It is denied that the adverse remarks had been written out of personal prejudice and it is contended that C.B.D.T. the appellate authority after carefully considering the submission made by the applicant in his representation had rejected the same. It is contended that since the A.C.R. is a confidential record, request for producing the same cannot be acceded. The respondents therefore, prayed that the application be rejected.

5. The applicant has filed rejoinder contending that, as the applicant worked under the control of two different Chief C.I.T. for different periods, A.C.R. should have been written in two separate forms and the A.C.R. for the complete year written by Mr. Halakhandi was basically illegal and hence, it should be declared as null and void. The applicant also contended that Mr. Halakhandi, without obtaining the remarks of other Commissioners for whom in fact the applicant worked should not have written the A.C.R. and Mr. Halakhandi before writing the A.C.R. should have obtained the comments of six other Commissioner whose jurisdictional cases were argued by applicant as Sr. A.R. and the copies of the judgment from the I.T.A.T. Bench were sent directly to these Commissioners and not to Mr. Halakhandi at all. It is contended that col. no. 3 and 4 of part V of the A.C.R. form were to be written and counter signed by the

ner

Reviewing Officer but it is shocking that both these parts IV and V of the A.C.R. form were written by the reporting officer Mr. Halakhandi himself as contended by the respondents in para two of the reply, and this conduct on the part of Mr. Halakhandi being illegal, the A.C.R. also becomes illegal. It is contended that the adverse remarks were bound to be communicated by one higher authority than the reporting officer /Reviewing officer but Mr. Halakhandi did that job which was illegal. The applicant has also controverted the other contentions taken in the reply.

6. At the time of hearing, the applicant has only pressed the relief for quashing the adverse remarks conveyed from the C.C.R. of the year 1987-88 vide Chief C.I.T. Ahmedabad's letter dated 14th October, 1988, Annexure A/1 and consequential letter dated 28th June, 1990 from Chief C.I.T. (Adm.) Ahmedabad, Annexure A/12 to the applicant intimating him that the board has rejected the request for expunction of the adverse remarks and the representation of the applicant dated 7th November, 1988. The applicant at the time of hearing has not pressed the point regarding the legality of Format of the C.R. form.

7. The applicant submitted that part III of this confidential report form which consisted of col. 14 to 21 were to be filed by the reporting officer while cols. of part V are to be filled by the reviewing officer. He submitted

that he had mentioned in the application para 18 that the respondents should produce the C.C.R. form for 1987-88 along with the materials with the help of which the adverse have been commented, so that the applicant may have opportunity to substantiate his stands in support of his contentions, but the respondents in the reply para 3 (R) contended that since the A.C.R. was a confidential record, the request of the applicant for producing the same could not be acceded to. He submitted that the respondents in the reply para 2 categorically contended that the reporting officer (C.C.I.T. (Adm.)) recorded adverse remarks against columns 15,17,18, and 21 and col. 3 and 4 in part V of the A.C.R. He submitted that in rejoinder, he specifically contended that the column 15,17,18 and 21 of part III of the A.C.R. form were to be written and signed by the reporting officer, while columns of part V were to be written and counter signed by the reviewing officer as specifically mentioned in the A.C.R. form itself and that it was shocking that both this parts were written by the reporting officer Mr. Halakhandi himself, which was illegal and against the very basis of the A.C.R. form itself and therefore, the adverse comments recorded be declared as illegal, null and void. He submitted that as Mr. Halakhandi functioned as reporting officer, still he filled col. 3 and 4 as reviewing officer as contended in the reply of respondents though the reviewing officer was the Member of Central Board of Direct Taxes

(Staff and Training). He submitted that col. 3 and 4 of part V signed by the reporting officer Mr. Halakhandi makes the report illegal. He drew my attention to the manual of office procedure, chapter 7 on this point and decisions on this point. This point went to the root of the whole case making the impugned adverse remarks Annexure A illegal. Both the learned advocates had argued on the merits of the case, and the matter was then kept for judgment on 27th April, 1992. The respondents realising very late their blunder committed in taking contention in para 2, "While writing the A.C.R. the reporting officer (C.C. Adm.), recorded adverse remarks against column 15, 17, 21, and Col. 3 and 4 in part V of the A.C.R." which it self would be sufficient to make the adverse remarks in the A.C.R. for 1987-88 illegal as reporting officer. Mr. Halakhandi could not have recorded adverse remarks in col. 3 and 4 of part V which was admittedly to be recorded by reviewing officer and therefore, while matter was reserved for judgment, the respondents filed one M.A./115/1992 in the office on 29th April, 1992 for production of documents, mark Annexure A, the zerox of the original A.C.R. Dossier in which, it was mentioned that the reporting officer was the-then Chief Commissioner of Income Tax and reviewing officer was the-then Member, Central Board of Direct Taxes. The applicant filed reply to it resisting the same on several grounds. Therefore, judgment had to be postponed till this M.A. was disposed of, therefore, the matter was placed before the Bench on 11th

June, 1992, on which date after hearing both the parties the Bench observed as under:

".....

On 29.4.1992, the application was moved that they may be allowed to produce the A.C.R. in original before the Court and they waive the objection which they have taken earlier. Secondly, it was stated that in the original reply some facts were not correctly placed on account of inadvertence. Even today the counsel for the Union of India, has not filed the application for the amendment of the reply, making prayer for the deletion of the uncorrect facts stated in the reply. The court is not bound to advise the parties that the application should be submitted and in what form and in what time. If any impression is gathered by the query of the Court, it is for the counsel what to do and what not to do. The reply will remain even today bearing wrong facts. Ordinarily in giving a wrong fact a person can be prosecuted but we are taking a liberal view in the matter and not going to prosecute. The time of the Tribunal as well as the time of the non-petitions in these Misc. Application, has been wasted only because of the mistake committed by the respondents. We accept the application in the facts and circumstances, and in the interest of justice, on the conditions that the Union of India will pay Rs. 2,000/- as cost to be original petitioner who is non-petitioner in this case. The cost should be paid on or before 18th June, 1992, and the matter may be listed on 18th June, 1992 for final hearing."

The matter was kept on 18th June, 1992 but it was also adjourned on the said date at the request of learned counsel for the respondents to 2nd July, 1992. On 2nd July, 1992, the matter was adjourned as the applicant made complaint

that he had not recieved the copy of M.A. on 9th July, 1992 the applicant had filed the reply to M.A. No. 115/92, which was taken on record and the matter was adjourned on 14th July, 1992. The matter was kept for the hearing of M.A. No. 115/92 about the production of the original A.C.R. in question but the respondents in meantime also filed M.A./229/92 for amendment of the reply presumably due to the observation of the Tribunal on 14th July, 1992 to the effect that the respondents had not filed application for the amendment of the reply making prayer for the deletion of the in-correct fact stated in the reply and the reply would remain even today bearing wrong facts etc. The applicant did not want to file any reply to the M.A. of the respondents to amend the written statement but he orally took objection to the purposed amendment being sought much latter even after the matter was pending for the judgement. The M.A. for amendment of the reply filed belatedly was allowed by which respondents have now amended para 2 of the reply adding the words "the-then Member, Central Board of Direct Taxes as reviewing officer recorded remarks at col. 3 and 4 in part V of the A.C.R." The original A.C.R dossier produced in envelop by respondent's learned advocate in M.A./115/92 was also allowed to be taken on record.

7. The applicant took very serious objection to the conduct of the respondents in this case first about the non production of the relevant A.C.R. till the matter was

reserved for judgement claiming it as confidential record but then realising probably that they would loose the case on the very first ground that adverse remarks against col. 3 and 4 in part V of the A.C.R. were recorded by Reporting Officer as per their reply, they produced original A.C.R when the judgement was about to be delivered which has caused great prejudice to the applicant. It is true that the applicant had as observed earlier categorically asked in his application, respondents to produce the same, the respondents did not produce it taking the contention that the A.C.R was confidential report. Moreover, there was a contention in unequivocal terms in reply that col. 3 and 4 of part V of the A.C.R. was recorded by the reporting officer, and which reply has been signed by the Chief Commissioner of Income-Tax Ahmedabad. The applicant submitted that the respondent must have filed this reply after verifying the contents of A.C.R as to who signed the said col. 3 and 4 of part V having been recorded by reporting officer, the whole A.C.R becomes illegal, but even then, till the arguments were over, the respondents did not care to verify original A.C.R or to call for original A.C.R. He submitted that under these circumstances, the decision should be given on the basis of specific contention of the Chief Commissioner of Income-Tax in the reply. As original A.C.R. is produced now, it requires to be looked into and considered. On perusing the original A.C.R. now produced, it is found that para V col. 3 and 4 are filled by the Member, Central Board of Direct Taxes, which is reviewing authority which goes to show the conduct of the

of A.C.R.
He submitted
that even
in rejoinder
he took
specific
contention
that the
said cols.
3 and 4 of
part V

respondents that the reply which was filed by the respondents was absolutely due to non application of mind by the person signing it and without verifying the original A.C.R. Thus the manner and method of respondents in dealing the case of the applicant is very shocking one. The applicant submitted that he is very much prejudiced now by this absolutely new and inconsistent defence taken by the respondents namely that, in the ^{original unamended} reply it is mentioned that col. 3 and 4 part 5 were recorded by the reporting Officer while original A.C.R. now produced shows that the same was recorded and counter signed by reviewing officer. It cannot be denied that the State has also to act justly, fairly and reasonably. In this case, it is shocking that the respondents took this stand in the reply that col. 3 and 4 of part 5 were recorded by the reporting officer. If the respondents had taken care to verify the original A.C.R. at the time of filing the reply such blunder would not have crept in. ^{Could} they even have corrected their blunder later before arguments, if they had chosen to produce the original A.C.R and if they **not** taken the stand that it was a confidential documents. In my opinion their conduct of taking stand, that the col 3 and 4 of part V was recorded by reporting officer, keeping back original A.C.R even after the rejoinder was filed by applicant demanding original A.C.R till the ~~xxxxx~~ matter was reserved for judgement but realising then that they have burnt their boat by taking defence in original reply which is not tenable in law and now producing original A.C.R should be viewed with great concern. Moreover, the amendment in the written statement was sought only after the remarks were made by the Tribunal on 11th June, 1992. The applicant therefore, seems to be right that this conduct of the respondents has caused great

prejudice to his case. No doubt, I have allowed both the Misc. Applic. of the respondents regarding production of original A.C.R. and amendment in written statement in the ends of justice, but none the same, the applicants case is greatly prejudiced by such conduct of the respondents. The fact remain that the respondents have acted in unfair and unreasonable manner and even though the original A.C.R now produced shows that etc col. 3 and 4 of part V were recorded by reviewing officer, the conduct of respondents in this case would come in their way. In such a case ~~the~~ ^{and the} adverse comments must loose its efficacy for which the fault squarely lies on respondents and the applicant is entitled ^{though} to succeed in this case on above ground alone. I proceed ^{decide} to other points also raised by the applicant in this case.

8. The applicant submitted that the original A.C.R which is now produced by the respondents shows period from 1st April, 1987 to 31st March, 1988. He submitted that "1st March, 1987" in ink is corrected in the place of original typed word "16th August, 1987", subsequenately. According to him, the correction in ink is not in his hand, though, the rest of the writing of part 1 is in hand. This correction though, does not bear any intial but that does not make the report illegal on that ground. The applicant submitted that he worked under the control of one Mr. Patwardhan, Chief CIT (Admn.), Ahmedabad, for the period 1st April, 1987 to 15th August, 1987 and for the remaining period i.e. w 16th August, 1987 to 21st March, 1988 under Mr. Halakhandi the - then Chief CIT (Admn.) and C.I.T. Gujarat-1 Ahmedabad

ms

and hence, for two different periods the A.C.R. should have been written in two separate form by these two officers, as per C.B.D.T. mannual 1984, Rule 1.3 of Cheptar 7 and that was the reason that the A.C.R. form was sent by Mr. Patwardhan to the applicant for the first period vide his letter dated 21st August, 1987 produced at Annexure A/3 in response to which the applicant sent the A.C.R. form to him after duly filling it up vide letter dated 24-7-1987. He submitted that Mr. Halakhandi cannot be said to have legal foundation and basis to write the A.C.R for the complete year and therefore, it is illegal. There is much substance in this submission of the applicant.

9. The applicant further submitted that the reporting officer Mr. Halakhandi before writing the A.C.R. should have obtained the comments of six other Commissioners whose jurisdictional cases were also argued by the applicant as Senior A.R. and the copies of the judgements from the I.T.A.T. Bench, were sent directly to these Commissioners and not to Mr. Halakhandi at all. He, therefore, submits that A.C.R written by Mr. Halakhandi without obtaining the comments of all these commissi ners would be without basis and hence, it is illegal in addition to the fact that he illegality commented even for the earlier part of the period of Mr. Patwardhan for which he was not entitled.too. Mr. Bhatt learned Advocate for the respondents submitted that the original A.C.R. dossior shows that reporting officer Mr. Halakhandi made adverse remarks in col. no. 15 on thebasis of the monthly disposal and remarks communicated to the applicant and that he had also obtained comments of applicant's work from the Member of Income Tax Tribunal

.....18.....

9.A. On examining the original A.C.R. Dossier and adverse remarks made in col. no. 15, it is clear that the reporting officer Mr. Halakhandi, without obtaining the material made the adverse remarks, that up to August, 1987, the applicants' performance was found to be poor. Moreover, the remarks on the basis of monthly statement is too vague. Mr. Halakhandi admittedly was not the controlling officer up to 15th August, 1989 but Mr. G.R. Patwardhan was controlling officer who has made observation about the applicant as a intelligent officer who is capable of hard work. The reporting officer Mr. Halakhandi has mentioned in col. 21 in margin that he did not agree with the evaluation made by Mr. Patwardhan. The applicant submitted that the adverse remarks in col. 15 was absolutely illegal which cannot be made by Mr. Halakhandi without obtaining the comments of other six Commissioners and he could not even make comments on the evaluation made by Mr. Patwardhan. The applicant relied on the Decision in V.R. Nair Vs. Union of India Ors. (1989) 9 ATC page 396, C.A.T. Madras Bench. It is held in para 21 of this decision that when a person does work pertaining to the charge of two or three Commissioners the assessment of that persons' worked should be done by all of them and the assessment by one commissioner alone cannot be taken to be a correct full and fair assessment of his work during the relevant period. Mr. Patwardhan had not given the adverse comments against the applicant and the reporting officer Mr. Halakhandi did not obtain the remarks

from the other five commissioners whose jurisdictional cases were also argued by the applicant. Thus, Mr. Halakhandi alone cannot be said to be legally entitled to assess the work of the applicant for the full year and also until all the commissioners have given assessment of the relevant period during which the applicant worked for cases under their jurisdiction. The assessment given by Mr. Halakhandi therefore, cannot be said to be fair and complete. He could not be the judge regarding the applicants' performance in attending cases in the charge of other commissioners and to base adverse remarks on the strength of monthly disposal and some comments by the Member of ITAT. Mr. Halakhandi was not entitled to deprive the applicant of comments of other commissioners. Therefore, the adverse remarks made by the reporting officer Mr. Halakhandi is illegal and must be expunged. The other decision relied on by the applicant on this point is Dr. B.R. Kulkarni Vs. Government of Gujarat 19 G.L.R. page 1021. In this case, under the Government resolution dated March, 8 1969 confidential report was required to be written for a unit of one year and the instruction issued by the Government on four different aspects referred on their resolution ^{required to} be followed. This decision also shows that reporting officer should take particular care to disregard all subjective considering and bias that he may have one way or the other and his judgment should be based on verifiable facts. It is held in this decision that a reviewing officer has to correct the

conscious or unconscious bias that may be there in the assessment given by the Reporting officer, particularly when any adverse remarks have been made.

10. The applicant has further submitted that the adverse remarks in col. 15, 17, 18, 21 in part III and comments in col. 2, 3 and 4 of part V are absolutely illegal, as the reporting officer Mr. Halakhandi had prejudicial attitude against him and he wrote the C.C.R. after the prescribed period and the reporting officer also acted for the period for which he was not a proper officer. He also submitted that the period of about one and half year taken in disposal of the representation without sufficient reason is also fatal. The contention of the respondents in the reply that the delay in disposal of the representation in the case of the applicant could be considered as normal could not be accepted as convincing explanation. The respondents have not produced the file to show how applicant's representations were dealt with and what was the reason for such delay in disposing the representation of the applicant. The applicant has relied on the Brochure on the preparation and maintenance of confidential Reports published by Government of India vide Annexure A/17 and he has drawn my attention to the "Instructions" mentioned therein which deals with the procedure to be followed in filling up the items of A.C.R. of an official.

11. The main attack of the applicant against the adverse remarks Annexure A/1 is that the A.C.R. is written by the reporting officer Mr. Halakhandi for complete financial year 1987-88, though, he was reporting officer for the part of period of the year i.e. 16th August, 1987 to 31st March, 1988 and though, the previous Chief Commissioner Mr. Patwardhan under whom the applicant was working by his letter dated Annexure A/3 dated 21st August, 1987 to the applicant stated that he would be writing C.R. of the applicant for the period from 1st April, 1987 to 15th August, 1987 and though, the applicant had sent the resume of work during that period, the reporting officer Mr. Halakhandi wrote the C.R. for and whole year which he was not entitled to / which is in contravention of the departmental circular dated 23rd September, 1985 which O.M. of Ministry of Personal and Training and the reviewing officer also did not consider that defect, which was still worse. The other attack on the adverse remarks is that the comments on col. 12 and 13 in col. 15 are filled in by Mr. Halakhandi who was controlling officer from 16th August, 1987 even then, he made adverse comments for the prior period. He submitted that in his representation Annexure A/15 to the Board, he has shown in details his performance in number of cases conducted by him but appellate authority has not shown how his representations were disposed of. / No record is produced on that point to verify the same. He has relied on judgment on this point on Ramkrishore Meharshi Vs. Union of India, All Indiaservice Law Journal 1989 (4) C.A.T. page 287. He also relied

on the decision in K.K. Khullar Vs. Ministry of Human Resources Development 1988 (6) A.C.T. page 836. He submitted that adverse remarks in col. 17 are completely wrong and without any basis. He submitted that the memo of service referred to by reporting and reviewing officer have not been produced by the respondents. He submitted that there is no basis for the adverse remarks in the cols. 17, 18 and 21. He submitted that the adverse remarks in col. 3 part V is not legal because col. 3 is deleted in A.C.R. form as per the judgment in case of R.K. Sareen Vs. Cantonment Board 1988 (6) SLR page 112 invited my my attention to para 13 and 14 of this decision. So far adverse remarks in col. 4 is concerned, he submitted that the same is also not in legal and reliance in placed on the decision/Tejendra Sing Vs. Union of India (1988) (2) All India S.L.J page 145 and also on O.M. dated 21st June, 1965 Annexure A/17.

12. The applicant submitted that the adverse remarks are made by the reporting officer Mr. Halakhandi against him because of bias and prejudice and that is the reason why he has not followed legal procedure in filling A.C.R. and hence the same be expunged

13. The learned counsel for the respondents submitted that the correct evaluation of the applicant is made by the reporting and reviewing officer after obtaining the correct date and the A.C.R. Dossier produced by respondents shows the material on the basis of which adverse remarks are recorded.

14. After hearing learned advocates on all the points raised in this matter, I hold that the adverse remarks communicated to the applicant as found in the original A.C.R. produced by the respondents are not legal and should be expunged on the grounds of prejudice caused to be applicant in as much as the respondents did not produce the same till the matter was reserved for judgment and proceeded on the strength of the reply given by the respondents that col. 3 and 4 in part V of the A.C.R. have been recorded by the reporting officer which was only corrected after 14th July, 1992 due to observation of this Tribunal and ^{then} producing original A.C.R. as observed earlier and the adverse remarks made in the A.C.R. in question are also held illegal on the ground that the reporting officer Mr. Halakhandi had not obtained remarks from other commissioners under whom, the applicant had worked and also on the ground that he gave report for the whole year though, he ^{was} the reporting officer only for the period from 16th August, 1987 to 31st March, 1988. The adverse remarks also require to be expunged because the C.R. from Mr. Patwardhan for the period of 1st April, 1987 to 15th August, 1987 was not obtained but a slip of his remark is affixed in the original C.R. produced by the respondents. He has decribed the applicant as intelligent officer capable of hardwork but the said view has been disagreed by the reporting officer Mr. Halakhandi who was not superior officer to Mr. Patwardhan. The reviewing officer Mr. Bhardwaj has also not noticed these illegalities. The applicant was for three

months period under him but as C.R. is for a complete year, he ought to have obtained comment of earlier review officer regard with whom. Applicant worked for nine months. Having to the illegal procedure adopted in this case, which go at the root of the matter, adverse remarks Annexure A/1 communicated to the applicant require to be expunged and the subsequent rejection of his representation vide letter dated 20th June, 1990 Annexure A/12 also requires to be quashed and set aside. Hence, the following order:

O R D E R

Application is allowed. The adverse remarks Annexure A/1 from the C.C.R. of year 1987-88 are expunged and the letter dated 20th June, 1990 Annexure A/12 by which representation of applicant is rejected is also quashed and set aside. No order as to cost. The original A.C.R. Dossier produced by the respondents be returned to the respondents or their learned counsel on usual terms.



(R.C. Bhatt)
Member (J)