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**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

O.A. 404 of 91

DATE OF DECISION :- 26/11/99

Mr. V.N.Maira : Petitioner [s]

Mr.Kamal Trivedi & : Advocate for the petitioner [s]
Mr. K.K. Shah

Versus

Union of India & ors : Respondent [s]

Mr. B.N. Doctor for R-1 & Advocate for the Respondent [s]
Mr. Paresh Adhveryu

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THE HON'BLE MR. V.RAMAKRISHNAN : VICE CHAIRMAN

THE HON'BLE MR. P.C. KANNAN : MEMBER [J]

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the judgment? yes
2. To be referred to the Reporter or not ? yes
3. Whether their Lordships wish to see the fair copy of the judgment ? no
4. Whether it needs to be circulated to other Benches of the Tribunal ? no

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Mr. V.N. Maira,
G-1, Sun Terrace Flats,
"C" Block, Opp : Gurukul,
Drive-in-Road,
Ahmedabad - 380 052.

-- Applicant --

(Advocate : Mr. Y.H. Vyas &
Mr. K.K. Shah)

Versus

1. Union of India
(Notice to be served through :
The Secretary, Government of India,
Ministry of Personnel, Public
Grievances & Pensions),
New Delhi.
2. The Secretary,
General Administration Deptt.,
State of Gujarat,
Sachivalaya,
Gandhinagar.
3. State of Gujarat
(Notice to be served through :
The Chief Secretary / Deputy
Secretary,
Department of Personnel,
Sachivalaya,
Gandhinagar.

-- Respondents --

(Advocate : Mr. Paresh Adhveryu for R - 2 & 3
Mr. B.N. Doctor for R - 1)

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JUDGMENT

O.A 404 OF 1991

Date : 26/11/99

Per Hon'ble Shri. P.C. Kannan : Member (J).

The applicant who is a member of Indian Administrative Service (IAS) (1975 Batch) is aggrieved against the order of the State Govt., dated 27.08.90 (Annexure A-16) intimating the decision of the State Govt. not to expunge the remaining two adverse remarks in the ACR for the period from 10.06.82 to 28.02.83 as well as the action of the respondents granting selection grade to the applicant with effect from 01.07.89 instead of granting the same w.e.f. 01.07.88 along with other four officers to whom the selection grade was granted with effect from 01.07.88 though they were juniors to him. The applicant prayed for the following reliefs :-

- (A) The Hon'ble Tribunal may be pleased to quash and set aside the impugned order dated 27.08.90 ;
- (B) The Hon'ble Tribunal may be pleased to hold and declare that the remaining two remarks at serial No.3 and 4 have, in view of the fact that the main two remarks at serial No.1 and 2 have been expunged, and also due to efflux of time, have become irrelevant, redundant, meaningless and do not survive and ought to have been expunged and / or ought to have been and deemed to have been expunged / not surviving ;
- (C) The Hon'ble Tribunal may be pleased to hold and declare that the action of the respondent authorities of not considering the case of the applicant for selection grade at the time when the cause of other 4 officers junior to him were considered and when they were granted the selection grade, is illegal,

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arbitrary and violative of Article 14 and the Hon'ble Tribunal may be further pleased to hold and declare that the action of the respondent authorities of disregarding the case of the applicant as regards the granting of selection grade without considering the Confidential Reports for the preceding 5 years is illegal, arbitrary and violative of statutory regulations as well as Article 14, and the Hon'ble Tribunal may also be pleased to hold and declare that the action of the respondent authorities of not granting selection grade to the applicant with effect from 01.07.88 is illegal, arbitrary and violative of Article 14 of the Constitution of India ;

- (D) The Hon'ble Tribunal may be pleased to direct the respondent authorities to grant selection grade to the applicant with effect from 01.07.88 and also to pay the consequential benefit to the applicant, including the arrears ;
- (E) The Hon'ble Tribunal may be pleased to direct the respondent authorities to expunge the remaining two remarks in the C.R. of the applicant for the period from 10.06.82 to 28.02.83 ;
- (F) The Hon'ble Tribunal may be pleased to hold and declare that the action of the respondent authorities of not deciding the representation of the applicant as regards the adverse remarks within the period of three months, is illegal and arbitrary and the Hon'ble Tribunal may also be pleased to hold and declare that due to inordinate delay as well as inaction and indecisiveness on the part of the respondent authorities of not deciding the case of the applicant within the stipulated time limit has caused irreparable injury and grave injustice to the applicant.

2. The applicant has stated that he is a direct recruit IAS officer of 1975 batch and was assigned to the Gujarat Cadre and after training was posted as Assistant Collector, Broach in 1977. In 1979, the applicant was posted as Manager (Admn.) Gujarat Narmada Fertilizer Co., and in 1980, he was appointed as Dy. Secretary in

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the Dept. of Agriculture, Forest and Cooperation. In 1981, the applicant was appointed as Joint Chief Executive, G.I.D.C., and from 1982 - 84 he worked as the Deputy Secretary (Planning) in GAD and Social Welfare Dept.

3. For the period 10.06.82 to 28.02.83, the following adverse remarks were communicated by the Chief Secretary vide letter dated 29.07.83 (Annexure A) :-

"I. He devotees his energy in achieving certain unfair objectives and motives in a suitable climate. He possesses an alert mind and good comprehension, but does not make good use of these qualities. He devotes his power of acquiring general information to a limited purpose with the result that the public interest suffer. Whenever it suits him, he avoids additional responsibility and also taking decisions.

II. His relations with the public and the subordinate were based on suspicion and suppressed disrespect. Mr. Maira earned a bad name by going to see the cinema movies during office hours and allowing nearness to some people of bad repute. His perverse judgments in some cases spoiled the image of this office in the eyes of the public. He deliberately worked to lower the reputation of this office. At times, he complicates the matters by his thoughtless actions and then submits rambling notes to explain his conduct."

"III. He should be carefully watched and work involving public dealings should not be entrusted to him."

"IV. It is true that his general reputation was far from desirable."

The applicant submits that the remarks were absolutely baseless, illegal and arbitrary and the same were recorded without application of mind and out of ill-founded bias as well as in contravention of the rules and regulations. Immediately on receipt of the letter dated 29.07.83 (Annexure A), the applicant made a

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representation dated 27.10.83 (Annexure A-2), requesting the authorities to expunge the remarks on various grounds. The applicant submits long before the said remarks came to be recorded in CR, the applicant made a written submission to the Chief Secretary, to the effect that his immediate superior officer i.e the reporting authority, was harbouring some baseless bias and prejudice against him. On 08.07.88, the applicant submitted another representation. The respondents vide order dated 22.08.88 (Annexure A-4) deleted first two remarks and retained the following two remarks from the ACR of the applicant for the period 10.06.82 to 28.02.83.

- i) He should be carefully watched and work involving public dealings should not be entrusted to him ;
- ii) It is true that his general reputation was far from desirable."

4. On 20.08.88, the respondents issued orders for granting selection grade to four officers junior to the applicant w.e.f. 01.07.88. On 17.09.88, the applicant was informed by the respondents that the review of the applicant's ACR for the period 01.04.86 to 11.10.86 is delayed. On 30.09.88, the applicant was informed that his ACR for 01.04.87 to 31.03.88 was awaited. On 27.03.89, the applicant made a representation to the Chief Secretary against the injustice done to him by the order dated 20.08.88 granting selection grade to four officers junior to him w.e.f. 01.07.88. On 01.07.89, the applicant being found fit, was granted selection grade w.e.f. 01.07.89 which ought to have been granted w.e.f. 01.07.88.

5. The respondents by order dated 09.08.89 rejected the representation of the

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applicant against the remaining adverse remarks on the ground that there was no adequate justification for doing so. By letter dated 30.08.89, the applicant again represented to the respondents seeking an opportunity of being heard and reconsideration of the decision of the Govt., not to expunge the remaining adverse remarks. By letter dated 15.09.89, the applicant made a representation to the Deputy Secretary against the order dated 09.08.89 which was passed without granting opportunity of being heard though asked for. The respondents by their letter dated 19.09.89, informed the applicant that the Govt., having taken a conscious decision, finds no reason / justification for grant of personal hearing in the matter and also stated that the matter has been finally closed and no further representation shall be entertained. The applicant again represented by letter dated 20.10.89 stating that elementary principles of natural justice have not been followed by the respondents and in the interest of justice and in fairness personal hearing at the level of Chief Secretary may be granted. On 14.06.90, the applicant again requested for a personal hearing in the matter. The respondents by their letter dated 27.08.90 rejected the request of the applicant for expunging the remaining two adverse remarks. The applicant thereafter filed the present O.A.

6. The applicant submits that during the entire span of his service, from 1977, he was working with diligence, sincerity and distinction. In view of his high standard of efficiency, the applicant have been assigned higher responsibilities one after another. The applicant had worked under as many as 17 to 18 IAS officers who recognised high standard of efficiency of applicant and never given any adverse remarks in the Confidential Reports. So far as the adverse remarks in 1982-83 is

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concerned, the applicant stated that even before the said remarks came to be recorded in the Confidential Report, the applicant had made written submissions to the Chief Secretary of Gujarat that his immediate superior officer was harboring some baseless bias and prejudice against him. Vide letter dated 26.10.83, the applicant had requested for personal hearing and also requested the respondents to transfer him to some other post before the reporting authority could do some harm to him. During the relevant period, he was working as Deputy Secretary (Appeals) in the Revenue Department. The duties of the applicant were of quasi-judicial nature under the provisions of Bombay Land Revenue Code. The work that the applicant was executing at that point of time did not involve any field work, administration work or extensive public contacts because only advocates were appearing in the matters dealt with by him. The applicant submits that despite his specific request, no hearing was granted to the applicant nor any decision in connection with his request was taken by the respondents authorities despite the fact that as per the provisions contained in All India Services (Confidential) Rules 1970 the decision in connection with the representation made by any officer is required to be considered within a period of three months and necessary decision in that regard is to be taken by the authorities concerned before completion of the said period. Despite the specific provisions in the Rules, the concerned authorities remained silent and did not take any decision for such a long period of about five years in the process.

7. So far as the adverse remarks is concerned, the applicant submitted that the remarks at Sr. No.1 and 2 are the specific remarks and the remarks at sr. no. 3 and 4 are only consequential to the remarks at sr. no. 1 and 2. He further submits that

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remarks 3 and 4 did not amount to any assessment of the applicant nor do they amount to any opinion or any remark about the performance, character, behavior, abilities, attitude or reputation of the applicant. The applicant also states that the remarks at sr. no. 3 and 4 which pertains to his integrity should have been recorded in separate sheet as required in the Rules. The applicant further submits that as the remarks at sr. no. 1 and 2 have already been expunged, the remarks at sr. no. 3 and 4 do not survive and the respondents ought to have considered the above referred aspects and should have also expunged the remarks at serial no. 3 and 4. However, the respondents somehow did not take into consideration the logical inference and without any rhyme or reason, decided to let the remarks at serial nos. 3 and 4 survive in the C.R.

8. The applicant submits that the respondents issued the order without even granting personal hearing to the applicant despite the fact that he had categorically requested for the same vide representation dated 08.07.88. He submits that if the applicant had been granted personal hearing as requested by him, then in that event, he would have been able to satisfy the authorities that even the remarks at serial nos. 3 and 4 were required to be expunged and that the same is otherwise also not survive in view of absence of the remarks at serial no. 1 and 2. It was in this background, the applicant submitted further representation dated 27.03.89 and requested for personal hearing. The applicant also referred to the fact that he served on various positions of importance like Collector and Additional Development Commissioner, after the above referred adverse remarks were recorded and nothing adverse against him was found by any of the reporting / accepting authorities against him.

[Signature]

9. The respondents in their reply stated that the O.A is not maintainable as the applicant has not filed any memorial to the President of India under Rule-25 of the A.I.S (Discipline and Appeal) Rules 1969 and in the circumstances, the applicant has not exhausted all the administrative remedies available to him. On the merits of the case, it was stated that the delay in disposing of the representation of the applicant was due to the delay in reviewing the remarks of the reporting officer Shri. K. C. Sagar and also from the Revenue Department. It was also stated that the relevant file was not traceable subsequently and a new file had to be reconstituted by obtaining copies of the relevant documents from the office of Secretary, (appeals), Revenue Dept.,

The respondents submitted that the representation of the applicant was examined in consultation with the reporting authority, the reviewing authority or the accepting authority in terms of rule – 9 and the representations of the applicant were disposed of by Govt., and the applicant was informed that after careful consideration of all the points raised by him, Govt., had decided not to expunge the remaining two adverse remarks as there was no adequate justification for doing so. It was also submitted that under rule – 10 of the A.I.S. (Confidential Roll) Rules 1970, there is no provision for a further representation and the earlier order passed on the representation shall be final.

Regarding the grants of selection grade with effect from 01.07.88, it was stated that the screening committee did not find him fit for grant of selection grade w.e.f. 01.07.88 and the recommendations of the screening committee were based on

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the overall assessment of the CRs of the applicant.

10. We have heard Shri. Kamal Trivedi and Mr. K.K. Shah, counsel for the applicant, Mr. Doctor, counsel for the 1st respondent and Shri. Paresh Adhvaryu, counsel for the respondents 2 and 3. At our direction, the State Govt., produced the relevant records for our perusal.

11. Shri. Kamal Trivedi referred to in detail the adverse remarks made and the various representations of the applicant and submitted that the adverse remarks were made without there being any material particulars to justify the same. He further submitted that remarks at sr. no. 3 and 4 are consequential to remarks at sr. no. 1 and 2. As the respondents had expunged the remarks at sr. no. 1 and 2, the remarks at sr. no. 3 and 4 are also to be expunged as there was no material to justify the same. In this connection, he referred to the following judgments; (i) Ashok Kumar Vs. State of U.P. (1988) 7 ATC 979 ; (ii) L. Jayaseelan Vs. U.O.I. (1991) 16 ATC 748 ; (iii) Keshav Datta Vs. Director (1993) 25 ATC p. 125 ; (iv) Ashok Kumar Vs. State of U.P. (1987) 3 ATC 581 ; (v) M.A. Rajasekhar Vs. State of Karnataka (1996) 10 SCC 369 and (vi) M.S. Sarma Vs. State of A.P. (1982) 2 LLJ 40.

Mr. Trivedi, further submitted that in terms of the rules governing the subject, the competent authority before forming an opinion to make adverse remarks against any officer, he should be confronted and given an opportunity to improve or explain his conduct. He submitted that the applicant was not confronted or given any opportunity to explain his conduct by the reporting officer / reviewing authority and in

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the circumstances, the adverse remarks are liable to be quashed. In support of this submission, he referred to the following authorities : (i) State of U.P. Vs. Yamuna Shankar Mishra (1997) 4 SCC 7.

12. The next contention of the counsel for the applicant is that the rejection of the representations of the applicant by the respondents without adverting to the points raised in the representations is violative of principles of natural justice and therefore, the action of the respondents is liable to be set aside. In support of this contention, he referred to the case of :- (i) Alphonse Louis Earayil Vs. Secretary, GOI (1999) 19 ATC 210 and (2) S.C. Jain Vs. State of Punjab (1994) 26 ATC 418.

13. The next contention of the applicant is that the respondents cannot deny selection grade to the applicant on the basis of adverse remarks against which representations were pending consideration with the Govt., at the relevant point of time. In support of this submission, the applicant relied upon the following authorities ; (i) Brij Mohan Singh Chopra Vs. State of Punjab, (1987) 3 ATC 469 ; (ii) Amarkant Choudhary Vs. State of Bihar (1984) 1 SLR 470 (iii) T.S. Gill Vs. U.O.I. (1988) 6 ATC 821 and (iv) O.P. Jal Nigam 1999 (1) SCC 241.

14. Shri. Paresh Adhveryu, counsel for the respondents referred to in detail the relevant notings in the official record and submitted that the respondents had considered all the relevant matters and had taken the decision to expunge the adverse remarks at sr. no. 1 and 2 but at the same decided not to expunge the adverse remarks at sr. no. 3 and 4. He submitted that the remarks at sr. no. 3 and 4

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are not consequential remarks as contended by the applicant and there were material to support these remarks. He also referred to the reasons furnished by the respondents for the delay in the disposal of the representation and submitted that it was due to certain factors, the respondents could not adhere to the time limit and contended that it cannot by itself make the adverse remarks meaningless or redundant.

15. We have carefully considered the submissions of both counsel and examined the pleadings and other records submitted by the respondents. The respondents state that the applicant ought to have filed a memorial to the President of India under Rule 25 of the AIS (Discipline and Appeal) Rules, 1969. In the light of the provisions of the AIS (CR) Rules 1970, there is no provision for filing memorial and the order passed by the Government on the representation shall be final. In view of the above, we reject the contention of the State Government that the applicant had not exhausted all the remedies available to him.

For the period 10.06.82 to 28.02.83, the following adverse remarks were awarded by the reporting officer [then Secretary, R.D. (Appeals)] which was communicated to the applicant :-

- i) He devotes his energy in achieving certain unfair objectives and motives in a suitable climate. He possesses an alert mind and good comprehension, but does not make good use of these qualities. He devotes his power of acquiring general information to a limited purpose with the result that the public interests suffer. Whenever it suits him, he avoids additional responsibilities and also taking decision ;

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- ii) His relations with the public and subordinates were based on suspicion and suppressed disrespect. Mr. Maira earned a bad name by going to see the cinema movies during office hours and allowing nearness to some people of bad repute. His perverse judgments in some cases spoiled image of this office in the eyes of the public. He deliberately worked to lower reputation of this office. At times, he complicates the matters by his thoughtless action and then submits rambling notes to explain his conduct ;
- iii) He should be carefully watched and work involving public dealings should not be entrusted to him ;

The following remarks were awarded by the Reviewing Authority (the then Chief Secretary).

PART-III

Remarks of the Reviewing Authority

1. length of Service under Reviewing Authority.	Extra period
2. Do you agree or disagree with the assessment of the officer given by the Reporting Authority ? Is there anything you wish to modify or add ?	I have personally not seen his work but it is true that his general reputation was far from desirable.
3. General remarks with specific comments about the general remarks given by Reporting Authority and remarks about the outstanding work of the officer.	- do -

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(a) **Fitness for promotion to higher grade (s)**
in his turn :

(1)	Fit.	Too early but is likely to be unfit.
(2)	Not yet fit.	
(3)	Unfit.	

(Sd/-)

Signature of the Reviewing Authority

On the representation dated 27.10.83 of the applicant, the respondent no. 3 expunged only a part of the remarks at sr. no. 1 and 2.

Before we consider the merits of the case, it may be useful to refer to the relevant provisions of A.I.S. (Confidential Rolls) Rules, 1970 (hereinafter referred to as C.R. Rules. According to sub-rule (1) of Rule 5 of these rules, a confidential report assessing the performance, character, conduct and qualities of every officer of the service has to be written for each financial year or calendar year, as may be specified by the Government ordinarily within two months of the close of the said year. Sub-rule (1) of Rule 6 of CR Rules requires that the confidential report shall be reviewed by the reviewing authority ordinarily within one month of its being written.

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The proviso to this sub-rule provides that this requirement may be dispensed with in such case as may be specified by the Government by general or special order. Thus, the normal rule is that the reporting authority shall write its report within two months of the close of the year in question and the reviewing authority has to review the confidential report within one month of its being written. The proviso to Rule 6 (1) makes it clear that it is not always necessary to review the confidential report and this requirement may be dispensed with by the Government by general or special order. It, therefore, reasonably follows that when the reviewing authority, for any reason, is not able to review the confidential report within one month or thereafter within a reasonable time, the requirement of reviewing the report may be dispensed with in proper case.

Sub-rule (3) of Rule 5 of CR Rules provides that where more than one confidential reports are written on a member of the service during the course of a financial year or a calendar year, as the case may be, each such report shall indicate the period to which it pertains. Though it is clear from sub-rule (1) of rule 5 itself that the confidential report is to be written for each financial or calendar year, the sub rule (3) further makes it clear that when necessary there may be more than one confidential report for smaller periods of a year and in no case, a confidential report has to cover the period of more than one year. In other words, the performance or the events following the year under assessment cannot be improved or used by the reporting or reviewing authorities for the purpose of writing or reviewing the report. The principle seems to be very logical and equitable. An officer has to be awarded or condemned for his performance or conduct during the year under comment and not for the

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conduct and performance of any subsequent period as the same will not go unwatched and it will be given due consideration when the confidential report for that year is written or reviewed subsequently.

One other salient feature relating to the confidential reports is contained in Rule 8 of the CR Rules, which provides that where a confidential report of a member of service contains an adverse remark or a critical remark, it shall be communicated to him in writing together *with a substance of the entire confidential report* (emphasis supplied) within ~~three~~ ^{two} months of the receipt of the confidential report. This rule further provides that in the event of any difference in opinion between the Central Government and the Government of a State as to whether a particular remark is to be deemed as an adverse remark or critical remark or not, the opinion of the Central Government shall prevail. The idea behind this rule is that as soon as the confidential report of a member of the IAS is received by the Government or any authority specified by it and it contains an adverse or critical remark, the same should be communicated to the officer concerned expeditiously so that he may know the shortcomings at the earliest and be cautious for future and may take suitable steps for improvement. In case the confidential reports are recorded or reviewed after a lapse of several years, the very purpose of writing them is likely to be frustrated at least in part and the officer to whom such report relates may get prejudiced in his service career.

Keeping these principles in view, we propose to examine the adverse remarks retained in the ACR of the applicant. The first remark of the reporting officer states that " The applicant should be watched and work involving public dealings should not be entrusted to him". The reviewing authority awarded the following remarks :

" I have personally not seen his work but it is true that his general reputation was far from desirable."

In his representation dated 27.10.83 (Annexure A-2), the applicant made the following submissions :- The remarks are not only vague and false but are made with the deliberate intention of spoiling his reputation. He also states that such serious remarks ought to have been made only after collecting sufficient evidence and to have sufficient number of concrete and specific instances to show how the conclusion was arrived. He further submitted that he was neither guided by his superior nor any counselling was given to him. In this connection, he states that he wrote a letter on 05.02.83 to the Chief Secretary wherein he had given several instances to describe the Reporting Officer's negative attitude and sought the protection of the Chief Secretary. In the facts circumstances, he submits that these remarks were made without any basis or substance whatsoever. He also submit that after 1983, nothing adverse were found in his performance and conduct. By another representation dated 20th Oct' 89, the applicant again requested for personal hearing at the level of Chief Secretary. However, respondent no. 3 rejected the same.

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A perusal of the relevant records of the department shows that the remaining two adverse remarks were retained mainly on the ground that the reviewing officer had also mentioned about the general reputation of the applicant. The relevant portion of the file reads as follows :-

" 7. This means that the base / evidence on which the edifice of adverse remarks is built does not survive. Hence, as far as the question of providing evidence for giving adverse remarks is concerned, it can be said that there is no adequate evidence to give the adverse remarks, but as mentioned earlier it is extremely difficult to provide evidence in such matters and to bring home the charges regarding illegal gratifications through witnesses. But at the same time the remarks regarding integrity of the officer cannot be ignored, because these have been incorporated after studying the overall profile and the general reputation of the officer among public and his colleagues.

8. Even if one presumes that the Reporting Officer had given these adverse remarks with prejudiced mind, how can one ignore the fact that the Reviewing officer (Shri. H.K.L. Kapoor, CS) has also mentioned that Shri. Maira's general reputation was far from desirable and that he was likely to be unfit when he became due for promotion. Even Accepting Authority has also accepted the remarks of the Reporting and Reviewing Authorities.

9. In view of above, it is necessary to view the matter in its entirety and not only with reference to the limited fact that the Reporting Officer has not been able to provide evidence for the observations made by him about Shri. Maira in the reporting part of the C.R.s. Therefore, the adverse remarks contained in the C.R.s. of Shri. Maira for the period from 10.06.82 to 28.02.83 cannot be fully expunged. In my opinion, the following adverse remarks should be retained in his C.R.s. :-

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- i) He should be carefully watched and work involving public dealings should not be entrusted to him ;
- ii) it is true that his general reputation was far from desirable. "

From the above notings, it is clear that the department was not able to provide sufficient evidence in support of the remaining two adverse remarks. It appears that the remaining two adverse remarks at Sr. No. 3 and 4 were retained mainly on the basis that the reviewing officer had mentioned that the applicant's general reputation was far from desirable.

The reviewing officer has made the remarks probably on the basis of heresay and not after studying the overall profile and the general reputation of the applicant among public and his colleagues.

In Krishan Lal Sharma V/s. U.O.I. (1987) 4 ATC 709 an employee of the Union of India was awarded the adverse remarks "highly indisciplined", "doubtful in honesty", "irregular, careless and casual and "unfit". The Principal Bench of the Tribunal quashed the said adverse remarks with the following observations : (ATC p. 713, para 7)

" It is not clear as to how he was indisciplined as no particular incident is mentioned or communicated to the petitioner. It is also stated that he is irregular, careless and casual but no particulars whatsoever, are given. In the absence of these particulars and specially in the background of the facts of this case, these adverse remarks cannot be sustained and are accordingly quashed."

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Despite the detailed representation of the applicant to the authorities, the applicant was never communicated the reasons on which the remaining adverse remarks for 1982-83 were retained. It is not clear under what circumstances, the Reporting Officer doubted the integrity of the applicant. The remarks of the Reviewing Authority also shows that he had no personal knowledge about the general reputation of the applicant.

It is also seen that adverse remarks at Sr. No. 1 and 2 were based on certain facts. A perusal of the entire adverse remarks shows that the remarks at sr. no. 1 and 2 were based on certain facts and the remarks at sr. no. 3 and 4 were consequential to the reporting officer's remarks at sr. no. 1 and 2 that the applicant had earned bad name by going to see cinema movies during office hours and passed perverse judgements in some cases which spoiled the image of the office in the eyes of the public. Based on the above adverse facts, the reporting officer further commented at sr. no.3 that the applicant should be watched and work involving public dealings should not be entrusted to him. The Reviewing authority who had no personal knowledge about the applicant had remarked, that the general reputation of the applicant was far from desirable. These remarks appears to have been made as a consequent to the first two remarks of the Reporting Officer. In our view, the remarks at sr. no. 3 and 4 are consequent to the remarks at sr. no. 1 and 2. When the Government obtained the comments of the reporting officer and examined the same, it was found that the findings of reporting officer's statement showed that there was no *prima facie* case against the applicant and that due to lack of sufficient experience, the applicant might have erred in a couple of cases. In these

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circumstances, the remarks of the reporting officer justifying his adverse remarks were rejected and it was decided to expunge the remarks at Sr. No. 1 and 2. In our view, after expunging the adverse remarks at sr. no. 1 and 2 there appears to be no justification for not expunging the remarks at sr. no. 3 and 4 also. It further appears from the representation of the applicant, the applicant had given evidence about his good performance and also stated that in no case decided by him, the High Court made any comments adversely and in no case decided by him, the Government itself preferred any appeal to the High Court to set aside his order. He also stated that in no case, the Secretary (Appeals) sought an explanation from him for not applying his mind or otherwise. No material has been brought to the notice of the Tribunal to indicate that the points raised by the applicant were duly considered. These facts were not controverted in the reply filed on behalf of the State Government.

In the present case, the applicant had not been communicated any adverse remarks either before 82-83 or subsequently. In such a situation, it is all the more necessary for the authority concerned to examine specifically the pleas raised by the applicant in his representation and pass a speaking order. Even though, the competent authority is not under any obligation to record reasons in rejecting a representation, in such circumstances the authority must act in a just and fair manner. He is required to consider the question raised by the Government servant and examine the same in the light of the comments made by the officer awarding the adverse remark and the officer countersigning the same. If a representation is rejected after its consideration in fair and just manner, the order of rejection would

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in the disposal of representation, the respondents ought to have granted the request for personal hearing and its rejection in our view, was improper and illegal.

In the case of M.S. Sharma Vs. State of Andhra Pradesh (Supra) the Hon'ble Andhra Pradesh High Court held as follows :-

Held : The need to communicate the adverse remarks to the official concerned is based on the salutary principles of natural justice that no one should be condemned without being heard. These principles of natural justice should be followed in every case whether there are administrative instructions or not.

If the provisions of Rule 5 and instruction No.4 are appreciated in their proper perspective it should be understood that the superior officers who write confidential reports should be more careful and cautious in writing them and they should not make adverse remarks in the report regarding the character and integrity of an officer unless they have specific evidentiary examples or instances to support such adverse remarks. They should not make adverse remarks on the basis of rumours.

In the absence of specific evidentiary examples or instances adverse remarks regarding character and integrity, should be treated as vague and based on rumours. Such adverse remarks have no value at all. "

In the case of State of U.P. Vs. Y.S. Misra (Supra) the Hon'ble apex court held as follows :-

" The object of writing the confidential reports and making entries in them is to give an opportunity to a public servant to improve excellence. Article 51-A (j) enjoins upon every citizen the primary duty to constantly endeavour to prove excellence, individually and collectively, as a member of the group. Given an opportunity, the individual employee strives to improve excellence and thereby efficiency of administration would be augmented. The

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officer entrusted with the duty to write confidential reports, has a public responsibility and trust to write the confidential reports, objectively, fairly and dispassionately while giving, as accurately as possible, the statement of facts on an overall assessment of performance of the subordinate officer. It should be founded upon facts and circumstances. Though sometimes, it may not be part of the record, but the conduct, reputation and character acquire public knowledge or notoriety and may be within the knowledge of such officer. Before forming an opinion to make adverse entries in confidential reports, the reporting / reviewing officers should share the information which is not a part of the record, with the officer concerned. This amounts to an opportunity given to the erring / corrupt officer to correct the errors of the judgment, conduct, behaviour, integrity or corrupt proclivity. If, despite giving such an opportunity, the officer fails to perform the duty or correct his conduct or improve himself, necessarily the same is to be recorded in the confidential report and a copy of thereof supplied to the affected officer so that he will have an opportunity to know the remarks made against him. If he feels aggrieved, it would be open to him to have it corrected by appropriate representation to the higher authorities or any appropriate judicial forum for redressal. Thereby, honesty, integrity, good conduct and efficiency get improved in the performance of public duties and standards of excellence in services constantly rises to higher levels and it becomes a successful tool to manager the services with officers of integrity, honesty, efficiency and devotion. "

In the case of M.A. Rajasekhar Vs. State of Karnataka (Supra), the apex court held as follows :-

"The integrity of the appellant was not doubted and his work also in all respects was found satisfactory. Under those circumstances, the remark that he "does not act dispassionately when faced with dilemma" must be pointed out with reference to specific instances in which he did not perform that duty satisfactorily so that he would have an opportunity to correct himself of the mistake. He should be given an opportunity in the cases where he did not work objectively or satisfactorily. Admittedly, no such opportunity was given. Even when he acted in a dilemma and lacked objectively, in such circumstances, he must be guided by the authority as to the manner in which he ought to have acted upon. Since this exercise has not been done by the respondents, the said adverse remark was not consistent with law."

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18. " In the case of Ashok Kumar Vs. State of U.P. & Others [1987 (3) ATC 581], the Allahabad bench of this Tribunal held that if no specific instance forming basis of adverse remarks is given, such remarks cannot be sustained.

19. In the case of Ashok Kumar Vs. State of U.P. [1987 (7) ATC 979]. The Allahabad Bench held that if adverse remarks are not based on any material, such unjustified remarks can be quashed.

20. If there is any question about officer's integrity, the instructions laying down the procedure in this regard, have not been followed. In the light of the above, we are of the considered view that the order dated 22.08.88 at Annexure A-1 retaining the remaining two adverse remarks vide para 2 of the said order and the order dated 27.08.90 (Annexure A-16) rejecting the representation dated 14.06.90 cannot be legally sustained.

21. The next contention of the applicant is regarding the grant of selection grade w.e.f. 01.08.88 when four of his juniors were considered and granted. He submits that his Confidential Reports for the preceding five years were not placed before the selection committee. It is also an admitted fact that the applicant's representation against adverse remarks made on 1982-83 was pending before the competent authority at the relevant point of time and only after the decision of the respondents to deny selection grade to the applicant from 01.07.88, the competent authority disposed of the representation. In the light of the judgments in the Brij Mohansingh

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Chopra Vs. State of Punjab, (1987) 3 ATC 496 ; Amarkant Choudhary Vs. State of Bihar (1984) 1 SLR 470 ; T.S. Gill Vs. U.O.I. (1988) 6 ATC 821 ; and U.P.Jal Nigam reported in 1999 (1) SCC 241 ; the Government cannot deny selection grade to the applicant on the basis of adverse remarks in 1982-83 against which the representation made by the applicant was pending. In the light of our direction to expunge the remaining adverse remarks made in the confidential report of 1982-83, the earlier recommendations of the screening committee is liable to reviewed. Accordingly, we direct the authorities to re-consider the case of the applicant for the grant of selection grade w.e.f. 01.07.88 and consequential benefits in accordance with the rules and instructions of the Government.

22. In the facts and circumstances, we quash the order dated 22.08.88 (Annexure A-4) retaining the two adverse remarks awarded to the applicant for the year 1982-83 and direct the respondents to examine and re-consider the case of the applicant for granting selection grade and consequential benefits w.e.f. 01.07.88 according to the rules when four of his juniors had been granted such relief within a period of three months from the date of receipt of a copy of this order.

23. The O.A is disposed of accordingly with no orders as to costs.

P.C. Kannan
(P.C. Kannan)
Member (J)

MB

V. Ramakrishnan
26/11/1999
(V. Ramakrishnan)
Vice Chairman