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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO: 379 OF 1991

Date of decision: 27-2-1992.

Brundaban Behari Khatua Applicant

-Versus-

Union of India and others Respondents

For the applicant: M/s K.P. Bhaumik,
A.R. J. Sharma,
Advocates.

For the Respondents: Mr. K.C. Mohanty,
Government Advocate for State
of Orissa.

C O R A M:

THE HONOURABLE MR. K.P. ACHARYA, VICE CHAIRMAN

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporters or not? *yes*.
3. Whether His Lordships wish to see the fair copy of the judgment? Yes.

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for State of Orissa.

CORAM:

THE HONOURABLE MR. K.P. ACHARYA, VICE CHAIRMAN.

J U D G M E N T

K.P. ACHARYA, V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the Petitioner prays to quash the Adverse entries relating to the integrity of the Petitioner finding place in the Character Roll for the year 1987-88 and 1988-89 contained in Annexures-1 and 2.

2. Shortly stated, the case of the Petitioner is that initially he was appointed as Deputy Superintendent of Police on 2nd February, 1967 and he was promoted to the cadre of Indian Police Service on 24th November, 1984. The Petitioner took charge of the Post of Superintendent of Police, Mayurbhanja on 9th September, 1987 and continued till

5th October, 1988. The Petitioner received two communications from the Special Secretary, General Administration Department, Government of Orissa which forms subject matter of Annexures 1 and 2. Annexure-1 is dated 7th January, 1989 which is a Confidential Demi Official letter addressed to the Petitioner by the Special Secretary to Government of Orissa in the General Administration Department which runs thus:

" A review of the confidential report on your work for 87-88 (7.9.87 to 31.3.88) reveals that you were professionally mature and sound. You gave a fairly good account of yourself but you needed watch about integrity.

Government hope you will try to improve".

3. Annexure-2 is dated 19th February, 1990 which is also a Confidential D.O. letter addressed to the Petitioner by the Special Secretary, General Administration Department, Government of Orissa which runs thus:

" Review of the confidential report on your work for 1.4.1988 to 5.10.88 reveals that you were professionally competent but there were allegation about your integrity which are persistent, you needed watch.

Government hope you will try to improve."

4. Representation filed by the Petitioner for expunction of the remarks touching the integrity of the Petitioner did not yield any fruitful result and vide Annexure-5 dated 22nd January, 1991, the Petitioner was informed by the Special Secretary to the Government of Orissa, General Administration Department that his representation was duly considered by the Government and since

there is no ground for expunction, the representation was rejected. Hence this application has been filed with the aforesaid prayer.

5. In their counter, the Opposite Parties, maintain that the Government gave its anxious consideration to the representation made by the Petitioner and since there was no ground to expunge the adverse remarks, it was rightly rejected which should not be interfered - rather it should be sustained.

6. I have heard Mr. K.P. Bhaumik learned Counsel for the Petitioner and Mr. K.C. Mohanty learned Government Advocate for the State of Orissa. During the course of argument, Mr. Bhaumik learned Counsel for the Petitioner urged that as per the administrative instructions, before making any comment on one's integrity, the officer concerned should be informed in writing the various information received against him relating to his lack of integrity and he should be given an opportunity to meet the allegations. Such a procedure has not been followed. It was further submitted by Mr. Bhaumik that in Annexures 5 and 8 communicating the decision of the Government, no reasons have been assigned for rejecting the representation and it is unreasonable that an officer who has been commended in the first portion stating that ^{he is} professionally mature and sound and had expected a good conduct ^{certificate for} himself but unfortunately an adverse entry ^{was made} touching his integrity. In this connection reliance was placed by Mr. Bhumik on a judgment of the

Central Administrative Tribunal, Ernakulam Bench reported in ATR 1991(1)CAT 678 (Alphonse Louis Earayil Vs. Secretary to Government of India). The main bone of contention of Mr. Bhaumik was that once the officer has been found to be professionally sound and mature and in this regard both the range D.I.G., District Magistrate and R.D.C. have spoken about the performance of this officer in the high term, there was absolutely no justification to record an ~~the adverse~~ ^{remark} ~~entry~~ by the Director General of Police touching the integrity of this Officer. While relying on the aforesaid judgment, Mr. Bhaumik learned Counsel for the Petitioner contended that the Ernakulam Bench had quashed the Adverse entry made against the Petitioner before the Hon'ble judges of the Ernakulam Bench because opinion expressed by the higher authority at two different stages ran contrary to each other and in the present case opinion regarding the performance of the Petitioner at different stages run contrary to each other especially in regard to the view expressed by the Director General of Police who said in one breath that the Petitioner was professionally competent and in another breath the Director General of Police said that the Petitioner needs watch over his integrity ~~xxxxxxx~~. In the Case of Alphonse Louis Earayil (supra) the Petitioner was a member of the Indian Police Service of Kerala Cadre. In the first part of the report it has been stated that the Petitioner before the Ernakulam

Bench had been discharging his duties extremely well and
 latter comment in the same entry ^{is} that he has not been
 effective as Commissioner of Police. Rightly, the Ernakulam
 Bench held that both the observations run contrary to each
 other and therefore, it was quashed especially because no
 reasons were given while rejecting the representation of
 the Petitioner. The Ernakulam Bench further held that
 an authority which makes an order in exercise of quasi-
 judicial function it should give ~~the~~ reasons to support
 the order. The judgment of the Ernakulam Bench has no
 application to the facts of the present case because the
 observations made against the Petitioner before the Ernakulam
 Bench at two different stages forming subject matter of
 the same report ran contrary to each other. At one stage
 it was said that the Petitioner before the Ernakulam Bench
 had discharged his duties extremely well and that he had
 been taking interest in crime and law and order work and
 his relationship with public and control over staff had been
 amply good, excellent. ~~and xxxxxxxxxx~~. In another breath
 it was said that the said Petitioner was not effective as
 Commissioner of Police. Both observations were held to be
 inconsistent with each other. But that is not so in the
 present case. ~~xxxxxx~~ Lack of integrity does not run contrary
 to the competency and efficiency of a particular Officer in
 discharging the duties and responsibilities assigned to him.
 An officer can be ^{very} ~~was~~ competent and at the same time he may
 be dishonest. Hence the observation of the Director General

of Police regarding the professional competency of the present Petitioner does not run contrary to the opinion expressed by the Director General of Police in regard to the integrity of this officer. and both observations can not be held to be inconsistent..

7. As regards non-assignment of reasons for rejecting the representation, true it is that the Ernakulam Bench has observed that an illegality has been committed because of the reasons for rejection of the representation not having been assigned in the impugned order but ^{this view} stands over-ruled by ^{the view} expressed by the Hon'ble Supreme Court in a judgment reported in AIR 1991 SC 1216 (Union of India and others Vs. G. Mambudiri) Their Lordships at paragraph 10 were pleased to observe as follows:

" There is no dispute that there is no rule or administrative order for recording reasons ~~is in~~ rejecting a representation. In the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a Government servant against the adverse entries the competent authority is not under any obligation to record reason. But the competent authority has no licence to act arbitrarily, he must act in a fair and just manner. He is required to consider the questions raised by the Government servant and examine the same, in the light of the comments made by the officer awarding the adverse entries and the officer counter-signing the same. If the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of any statutory or administrative provision requiring competent authority to record reasons or to communicate reasons, no exception can be taken to the order rejecting representation merely on the ground of absence of reasons. No order of an

administrative authority communicating its decision is rendered illegal on the ground of absence of reasons ex facie and it is not open to the court to interfere with such orders merely on the ground of absence of any reasons. However, it does not mean that the administrative authority is at liberty to pass orders without there being any reasons for the same. In governmental functioning before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion. If the order as communicated to the Government servant rejecting the representation does not contain any reasons, the order cannot be held to be bad in law. xx xx xx xx".

8. The dictum laid down by Their Lordship's being a declaration the law under Article 141 of the Constitution, it superceeds the view expressed by the Ernakulam Bench. Therefore, with great respect to the Ernakulam Bench, I am unable to agree with the views expressed by the said Bench. So far as the present case is concerned nothing could be placed before me to indicate that there was any statutory rule or instruction by virtue of which the competent authority was bound to record reasons. In the absence of any statutory rules or any statutory instructions, I am of opinion that the observations made by the Hon'ble Supreme Court in the above quoted judgment have fullest application to the facts of the present case and therefore, the contention of Mr. Bhaumik that Articles 5 and 8 are liable to be quashed on the ground of nonassignment of reasons has no substance and is devoid of merit. Again applying the principles laid down by Their Lordships of Hon'ble Supreme
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Court to the facts of the present case one would find that order of rejection of representation does not appear to be arbitrary or capricious. The Government before considering the representation has called upon the Director General of Police to give his comments on the representation of the present Petitioner relating to the adverse remarks for the year 1987-88. In his turn the Director General of Police has offered his comment in his letter dated 21st April, 1989 forming Annexure-2/1 which runs thus:

" In inviting a reference to G.A.(SE) Department D.O. letter No.2312/SE: dated 4.4.89 on the above subject I am to intimate that this officer was cautioned by me personally to remain honest and not to make/accept pecuniary benefits from subordinates. I was not born yesterday in this Department and have various channels of information about an officer's conduct and reputation.

This officer carried a poor reputation for honesty. In fact he is now subject matter of Vigilance enquiry on allegations affecting his integrity. It is a pity that a professionally sound officer instead of trying to turn a new leaf in the matter of honesty should challenge his authorities quoting rules, which are not germane to the issue.

In any case my impression of his lack of integrity cannot be changed unless I watch him for a year."

The Director General of Police was also called upon to give his comments on the representation of the present Petitioner relating to the adverse remarks for the year 1983-89 and in his turn, the Director General of Police has observed as follows:

" This Officer was warned orally before being posted to Mayurbhanj that he should not give any

scope for suspecting his integrity as his conduct as Addl.S.P., Koraput had come under a cloud. He did well for some time but soon complaints of malpractices in recruitment of constables and collecting money through the officers of bordering Police Stations came to my notice. In fact some allegation was that the S.P. withdrew jeeps from C.Is and give them to the Os.I.C. so that the latter could use these jeeps to collect money from vehicles plying on the National Highway. Office bearers of the Service associations also told me orally about the greed of this officer. I asked Shri Khatua about this to which he replied that this was a smear campaign as he was very strict etc.

Subsequently, when recruitment of constables was going on there were persistent complaints of corruption and partiality. I rang up the S.P. from Cuttack and warned him about this and directed him to personally conduct the selection and not leave it to his R.I. I also warned him that he will be thrown out of Mayurbhanj district if there is slightest evidence of irregularities in the recruitment. He did not bother and the Vigilance Branch ultimately trapped the R.I. while he was accepting a bribe and subsequent enquiries revealed commission of gross irregularities by the S.P. and R.I. leading to cancellation of the appointments of many constables.

I still hold the opinion that this officer is professionally competent but is greedy. He does not hesitate to utilise political figures and petty middlemen to plead his cause. He has to correct himself."

9. From the above correspondence, it is clear that before passing any final order in his representation, the Government has obtained the views of the competent authority and after considering all aspects has passed the order which can never be held to be arbitrary, unfair or unjust.

10. Apart from the above, so far as the aspect relating to integrity is concerned, it is the higher authority who has the opportunity of watching the integrity of the subordinate officer and the Courts ~~being~~ have no scope to take

a different view unless the comment made by the higher authority is against the unimpeachable evidence on record or has resulted from any mala fide motives. In the present, case, there is absolutely no allegation of malafide against the Director General of Police, Mr.P.C.Rath. There is also no iota of evidence to contradict the opinion expressed by the Director General of Police. Hence in such circumstances, interference by Court to quash the adverse remarks is unwarranted and beyond its scope, in view of the peculiar facts and circumstances of this particular case.

11. Mr.Bhaumik also relied upon a judgment reported in 1979(1)-Vol.20 SLR 804(Gurudayal Singh fijji vs. State of Punjab and others) In the said case the petitioner felt aggrieved for non-inclusion of his name in the select list prepared for promotion to the cadre of I.A.S. The name of the petitioner was not included because the Chief Secretary to Government of Punjab had refused to give an integrity certificate to him, in view of the adverse entry made by the District and Sessions Judge, Amritsar against Shri Gurudayal touching his integrity. Though the adverse remark was communicated to Shri Gurudayal his representation was not considered and no orders were passed thereon till the Select Committee had prepared the panel. Therefore Their Lordships held that without any orders passed on the representation, it is denial of natural justice to Shri Gurudayal and hence the Government was directed to dispose of the representation and it was further directed that a fresh Select Committee

should reconsider the matter in the light of the order to be passed by the Government. The facts of the case of Gurudayal are clearly distinguishable from the facts of the present case and therefore, the principles laid down by Their Lordships in the said judgment have no application to the facts of the present case.

12. Further it was contended by Mr. Bhaumik that according to the instruction issued by the Government of Orissa, General Administrative Department, the Director General of Police is not the accepting authority and in order to substantiate his contention Mr. Bhaumik relied upon Col. 5 of the schedule of instructions on recording of Confidential Remarks on the work of Gazetted Officers of State Government and All India Service Officers issued by the General Administration Department. Against Sl. No. 10 under head of 'IBS', the reporting authorities of a Superintendent of Police, ~~of a District are District Magistrate~~ and D.I.G. of Police, the countersigning authority is R.D.C. and the accepting authority is ~~the~~ I.G. of Police. Therefore, it was contended by Mr. Bhaumik that the Director General of Police does not figure as the accepting authority. This contention of Mr. Bhaumik also carries no substance because Director General of Police is initially an Inspector General of Police to discharge its duties and function under the Police Act and the I.G. of Police is appointed as Director General of Police in the Administrative set up for discharging the

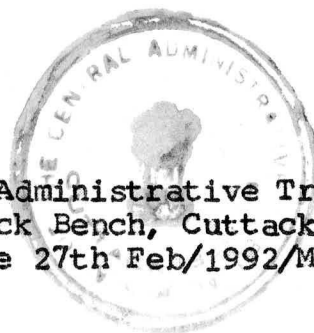
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administrative work. Therefore, the Director General of Police does not lose the characteristic of an Inspector General of Police provided or envisaged under the Police Act. Hence I find no merit in the aforesaid contention of Mr. Bhaumik.

13. It was lastly contended by Mr. Bhaumik vide letter No. 8623(150) dated 15th October, 1991, issued by the General Administration Department amending the schedule of instructions for recording remarks of the work of Police officers, the Director General of Police has been made the accepting authority and not the Inspector General of Police. It needs no repetition that the Inspector General of Police is designated as Director General of Police and both being the same authority, it makes no difference.

14. In view of the aforesaid facts and circumstances, and in view of the discussions made above, I find no merit in this application which stands dismissed leaving the parties to bear their own costs.



Central Administrative Tribunal
Cuttack Bench, Cuttack
dated the 27th Feb/1992/Mohanty

27.2.92.
VICE-CHAIRMAN