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CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH, CUTTACK

378/95
O.A.Nos. 767/95, 371/96, 380/95, 381/95 & 379/95

IN ALL THE CASES

Bidyanath Jena

Applicant(s)

-VERSUS-

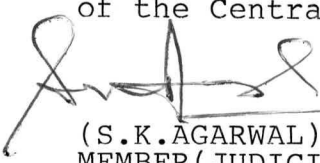
Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

Yes,
NO.


(S.K. AGARWAL)
MEMBER (JUDICIAL)

4/5/98


(SOMNATH SOM)
VICE-CHAIRMAN

4/5/98

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.Nos.767/95,371/96,380/95,378/95,381/95 & 379/95
Cuttack this the 4th day of May, 1998

CORAM

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI S.K.AGARWAL, MEMBER(JUDICIAL)

...

O.A. NO.767/95

Bidyanath Jena
aged about 56 years,
A.I.G. of Police,
Cantonment Road,
CUTTACK

By the Advocate:

...

Applicant
M/s.N.C.Panigrahi
and S. Patra

1. Union of India represented
through it's Secretary,
Home Affairs, New Delhi
2. State of Orissa represented
through it's Special Secretary,
General Administrative Department
At/Po:Bhubaneswar, Dist:Khurda
3. State of Orissa represented
through it's Deputy Secretary to
Government, General Administrative
Department, At/Po:Bhubaneswar
District:Khurda

...

Respondents

By the Advocate:

...

Mr.U.B.Mohapatra
(Res.1)
Mr.K.C.Mohanty,
Govt.Advocate
(Res.2 and 3)

O.A.No.371/96

Bidyanath Jena
aged about 57 years
A.I.G. of Police,
Cantonment Road,
Cuttack

...

Applicant

By the Advocate: ...

M/s.N.C.Panigrahi
S.Patra

1. Union of India represented through it's Secretary, HomeAffairs, New Delhi
2. State of Orissa represented through it's Special Secretary General Administrative Department At/Po:Bhubaneswar,Dist:Khurda
3. State of Orissa represented through it's Deputy Secretary to Government, General Administrative Department,At/po:Bhubaneswar Dist:Khurda

...

Respondents

By the Advocate:

Mr.K.C.Mohanty
(Res.2 & 3)
Mr.U.B.Mohapatra
(Res.1)

O.A.No.380/95

BBidyanath Jena,
aged about 56 years,
Cantonment Road,
Cuttack

...

Applicant

By the Advocate: ...

M/s.N.C.Panigrahi
S.Patra

-VERSUS-

1. Union of India represented through its Secretary, Home Affairs New Delhi
- 2.State of Orissa represented through its Secretary, General Administrative Department At/Po:Bhubaneswar,Dist:Khurda

...

Respondents

By the Advocate: ...

Mr.U.B.Mohapatra
Addl.Standing
Counsel(Res.1)

Mr.K.C.Mohanty,
Govt.Advocate
(Res.2)

O.A.No.378/95

Bidyanath Jena, aged about
56 years, Cantonment Road
Cuttack

...

Applicant

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By the Advocate: ...

M/s.N.C.Panigrahi
S.Patra

-VERSUS-

1. Union of India represented
through its Secretary,
Home Affairs, New Delhi
2. State of Orissa reresented
through its Secretary,
General Administrative Department
At/PO:Bhubaneswar
Dist:Khurda

By the Advocate: ...

Respondents
M/s.K.C.Mohanty
Govt.Advocate(R
(Res.2)

Mr.U.B.Mohapatra
Addl.Standing
Counsel(Res.1)

O.A.NO.381/95

Bidyanath Jena, aged about
aged about 57 years,
S/o.S.Jena, residing
At/PO:Cantonment Road,
P.S.Cantonment Road,
Munsif/Dist:Cuttack

By the Advocate: ...

Applicant
M/s.N.C.Panigrahi
S.Patra

-VERSUS-

1. Union of India represented through
its Secretary,
Home Affiairs, New Delhi
2. State of Orissa represented
through its Secretary,
General Administrative Department
At/Po/P.S:Bhubaneswar,Dist:Khurda

Bythe Advocate: ...

Respondents
Mr.U.B.Mohapatra
Addl.Standing
Counsel(Res.1)

Mr.K.C.Mohanty
Govt.Advocate
(Res.2)

O.A.No.379/95

J.Sam

O.A.No.379/95

Bidyanath Jena, aged about
57 years, S/o.S.Jena,
residing at/Po:Cantonment Road,
P.S.Cantonment Road,
Munsif/Dist:Cuttack

By the Advocate

...
...

Applicant
M/s.N.C.Panigrahi
S.Patra

-VERSUS-

1. Union of India represented through
its Secretary, Home Affairs,
New Delhi
2. State of Orissa reresented
through its Secretary, General
Administration Department,
At/Po:Bhubaneswar,
Dist:Khurda

...

Respondents

By the Advocate:

...

Mr.K.C.Mohanty
Govt.Advocate
(Res.2)

Mr.U.B.Mohapatra
Addl.Standing
Counsel(Central)
(Res.1)

ORDER

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MR.SOMNATH SOM, VICE-CHAIRMAN:This batch of six cases have been heard together though on different dates, in all the cases the petitioner has prayed for expunging the adverse entries in his C.R.s for different years and for quashing the the order communicating the adverse entries for the relevant years to him and the order rejecting his representation. There is also a prayer to allow the applicant all the other consequential service benefits.

2. Before going into the facts of each of these six cases, one general point has to be considered. Original Application No.767/95 relates to adverse entries in the C.R.

of the applicant for the year 1974-75. The applicant was originally a member of Orissa Police Services and he was allowed officiating promotion to the Indian Police Service in July, 1982. Thus the entries for the year 1974-75 and 1975-76 relate to his period when he was working in the State Police Service. In view of this in respect of the applicant's prayer for expunging the adverse entries of these two years, i.e. 1974-75 and 1975-76, a preliminary objection has been taken by the State of Orissa that as the entries made in the applicant's C.R. relate to the period of work in Orissa Police Service, this Tribunal has no jurisdiction to consider his prayers in these two Original Applications and the appropriate forum for seeking the relief in those two applications is the State Administrative Tribunal.

Learned counsel for the petitioner on the other hand relied on a decision of the Hyderabad Bench of the C.A.T. in the case of P.S. Varaprasada Rao vs. Government of India and others (1989) 9 A.T.C. 117 and the decision of Allahabad Bench in the case of Pratap Singh vs. Union of India and others (1991) 18 A.T.C. 720.

J. S. M.
In P.S. Varaprasad Rao's case the applicant prior to being appointed to Indian Administrative Service by way of promotion was a member of Andhra Pradesh State Civil Services. While in that service he made a representation for correction of his date of birth in his service record. Initially his application was rejected by the Government. But he further submitted various documents and other material to the State Government and according to him, orders were passed by the Revenue Minister and the Chief Minister in his favour in

February, 1982, but his service record was not corrected. He was appointed to the Indian Administrative Service by way of promotion in Government of India notification dated 4.2.1982. The applicant's case was that State of Andhra Pradesh is to pass orders on his representation for correction of date of birth as till his confirmation in the Indian Administrative Service he holds the lien in the State Civil Service. But the State Government did not pass any orders and the Department of Personnel and Administrative Reforms, Government of India passed the impugned order rejecting his claim to change the date of birth. Thereupon he approached the Hyderabad Bench. The question arose whether this application should have been filed before the Andhra Pradesh State Administrative Tribunal for issuing a Writ of Mandamus ^{the} directing ~~the~~ State Government to pass orders on his representation or whether the Hyderabad Bench of this Tribunal has ~~any~~ jurisdiction to pass orders in the matter. The Tribunal took the view that non-consideration of the representation by the State Government while the applicant was the Member of State Civil Services affects his right to continue in the Indian Administrative Service beyond a particular date and therefore, ^{as} ~~his~~ conditions of service as Indian Administrative Service officer is involved, the C.A.T. has jurisdiction in that matter.

Pratap Singh's case was where a State Police Service officer of Uttar Pradesh ^{was} not getting promotion to the Indian Police Service because of adverse entries in his Confidential Roll for the years 1984-85 and 1985-86 for which issue of

Integrity Certificate was withheld, there the Tribunal held that the controversy is mainly about the applicant's non-appointment to Indian Police Service and that is a dispute which is admittedly within the jurisdiction of the C.A.T. and once the jurisdiction of the C.A.T. is attracted, then the jurisdiction of U.P. Public Service Tribunal would be ousted.

3. In the instant case the adverse entries made in the C.R. of the applicant for the years 1974-75 and 1975-76 are admittedly of the period when he was a member of State Police Service. But he has been subsequently promoted to the Indian Police Service and his conditions of service, chances of advancement and other related matters in the Indian Police Service undoubtedly come within the jurisdiction of the C.A.T. In several cases relating to promotion, justification for continuation in the service beyond a particular age and other matters, service record as a whole is required to be considered. At that time applicant's conditions of service as an Indian Police Service officer may conceivably be adversely affected because of these adverse entries and therefore, we hold that this Tribunal has jurisdiction to consider the prayer of the applicant in these two O.A.s. ~~here is~~ another preliminary objection regarding jurisdiction has been raised. It has been submitted by the learned Government Advocate and has also mentioned in the counter filed by the State of Orissa that as the grievances of the petitioner in these two applications related to the adverse entries in the year 1974-75 and 1975-76, these grievances related to a period prior to three years before the constitution of the Tribunal,

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i.e. prior to 1982 and therefore, this Tribunal has no jurisdiction to entertain the prayers of the applicant in these two applications. In these two cases we find from the enclosures filed by the applicant that in Original Application No.767/95, his last representation was rejected in order dated 8.8.1995 which is much after 1982 and the petitioner has prayed for quashing this order of August, 1995. Similarly in O.A.371/95, his prayer for expunging the adverse entries for the year 1975-76 has been rejected in order dated 8.8.1995 and the petitioner has prayed in that O.A. for quashing this order. In view of this, we hold that this Tribunal has jurisdiction to consider the prayer of the applicant in these two Original Applications.

4. Coming to the facts of Original Application No.767/95, the petitioner's case is that he joined Orissa Police Service in October 1966 and in 1974-75, he was working as Deputy Superintendent of Police, Rayagada. The applicant states that he worked diligently and to the satisfaction of his superior officers. The then I.G. of Police issued him commendation in his letter dated 14.8.1974 for his hard and sincere work and during railway strike/a copy of this letter was also placed in his personal file. This letter has been enclosed to the O.A. It is further stated that in that order I.G. of Police inspected his office and gave a note in the inspection file that overall working of the office of S.D.P.O. was satisfactory, but adverse entries under Annexure-A/2 were communicated to him in order dated 8.10.1975. He represented against the adverse entries and two remarks, viz. "you were found to be ... unreliable" and "Behaves very rudely with the

public" were expunged in order dated 23.9.1976 which is also enclosed the application. In the present application the petitioner has challenged the other adverse entries which were allowed to stand in his C.R. He has stated that his C.R. for that year ^{was} written by the Superintendent of Police as Reporting Officer and D.I.G. of Police as Reviewing Officer. He has mentioned in para-4.6 of the petition that for that year the D.I.G. of Police saw his work only for two and half months and according to circular dated 21.5.1970 (Para-8), unless the D.I.G. had seen his work for a minimum period of four months, he could not have made any adverse remarks.

The respondents in their counter have not made any averment as to how long the petitioner worked under the D.I.G. of Police who gave the countersigning officer's remarks in the year 1974-75. It is further stated by the learned counsel for the petitioner that the adverse remarks have been given arbitrarily and whimscally without taking into account the actual work done by him which was found satisfactory by the I.G. of Police and moreover, in order dated 23.9.1976 in which his representation against adverse remarks was rejected except expunging two sentences referred to earlier, no reason for rejection of his representation was given. It is, therefore, submitted by the learned counsel for the petitioner that the order rejecting his representation regarding expunging the remaining adverse entries is illegal and on that ground the adverse entries should be expunged.

5. The respondents in their counter have elaborately pointed out that in respect of adverse entries for that year

the petitioner kept on filing representations even though his earlier representations were rejected. In all he submitted eight memorials, but all those were rejected and ultimately he submitted a mercy petition on 22.11.1993 for expunging the adverse entries made in his C.R. for the year 1974-75. His mercy petition was also rejected and communicated to him on 30.12.1993. Earlier, after rejection of his 5th and 6th memorials, it was intimated to the applicant that no further memorial from him with regard to ~~the~~ adverse remarks for 1974-75 would be entertained. After rejection of his first mercy petition, he submitted a second mercy petition on 1.7.1995 for expunging the adverse entries for 1974-75 and 75-76. It is this petition which was rejected in order dated 8.8.1995. Thus it is seen that the petitioner has gone on submitting a series of representations in spite of the fact that his earlier representations have been rejected. The position of law is ~~well~~ settled that filing repeated representations would not keep the cause of action alive and would not extend the period of limitation. Therefore, his case for quashing the rejection order of his adverse remarks for the year 1974-75 in order dated 8.8.1995 is held to be without any merit and the same is rejected.

6. As regards his first contention that the first rejection order dated 23..1976 is liable to be quashed because it is not a speaking order, so far as rejection of his remaining adverse remarks are concerned, he cannot pray for quashing this order of 1976 after a lapse of more than 20 years. This prayer is, therefore, held to be without any merit

and the same is, therefore rejected.

As regards the specific assertion made by the petitioner that the adverse remarks given by the D.I.G. of Police are incompetent because the concerned officer, who had worked as D.I.G. saw the work of the petitioner only for a period of about two and half months during 1974-75 (at the end of the year), we have noted that respondents in their counter have not replied to this. Even though we have rejected O.A.767/95, we would like to record that according to instructions of the Government, no officer can record remarks much less adverse entries, unless he has seen the work of the subordinate for a minimum period of three months. In view of this the State Government is directed to check up if any adverse remarks in 1974-75 were reported by the D.I.G. of Police and if the ~~the~~ assertion of the petitioner that the D.I.G. of Police saw his work only for a period of two and half months in the year is correct. In such a case the remarks given by the D.I.G. of Police whether good or bad would be incompetent and the State Government ^{would be} well advised to delete such a remark of DIG of Police in case he has seen the work of the petitioner only for two and half months in the year 1974-75.

7. In view of the above O.A.767/95 ^{with the above direction} is disposed of ~~with~~ no order as to costs.

8. Subject matter of O.A.371/96 is the adverse entries for the year 1975-76. The petitioner's case is that in 1975-76 during the relevant period he was working as Deputy Superintendent of Police, Sambalpur and the adverse entries nature of which is dealt with in letter dated 13.12.1976 was

communicated to the petitioner vide Annexure-1. He represented vide Annexure-3 stating that the entry is not adverse and therefore, the same should be expunged. The respondents have admitted in their counter that this representation was not disposed of. A further representation filed by the applicant on 3.7.1995 at Annexure-4 was rejected in order dated 8.8.1995. The petitioner has stated that during the period ~~any~~ no deficiency was found in his work, no explanation was called for and no deficiency was pointed out, but the impugned recording was made which in any case according to him, is not adverse.

9. The State Government in their counter have submitted that when his representation dated 30.4.1977 was not disposed of within a period of six months, he should have filed a Writ Petition before the Hon'ble High Court. They have also mentioned about repeated representations filed by the applicant and have opposed the prayer.

10. The adverse entry in question can be noticed at this stage. It was communicated to the petitioner that report of his work for ^{*1975-76} ~~1974-75~~ reveals that he did well as D.S.P. Sambalpur, but better still is expected from him. With this Government also added to ~~their~~ expectation that the petitioner will try to improve. There are a series of decisions which lay down that contradictory remarks should not be allowed to stand. In the case of S.T. Ramesh, I.P.S. vs. State of Karnataka (1988) 7 ATC 820, the Bangalore Bench of the Tribunal held that while the officer was adjudged outstanding and under all counts his work was considered highly satisfactory, the remark that he could

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have produced much better result had he been taken the District Magistrate into confidence in a few law and order situation cannot be allowed to stand because of the striking difference between the two parts of the confidential report. The Hon'ble Supreme Court in the case of M.A.Rajasekhar Rao v. The State of Karnataka and Anr. J.T. 1996(7) SC 708 took the note that the applicant was a Tahasildar, who was adjudged satisfactory on all terms under which he was assessed, but one remark was made which was really advisory in nature and the Hon'ble Supreme Court noted that the Karnataka Administrative Tribunal held that ends of justice would be served if the remarks are treated as advisory with the direction that they should not be made use of against the applicant for any purpose. On an appeal to the Hon'ble Supreme Court their Lordships held that the remarks that the officer does not act dispassionately when faced with dilemma cannot be allowed to stand when he should have been guided by the authority as to the manner in which he acted upon.

11. In the instant case overall assessment is that the applicant did well as D.S.P., Sambalpur, but better still is expected of him. This later part of the remarks cannot, by any stretch of imagination be taken to be adverse and therefore, this Original Application can be disposed of with the observation that no action adverse to the interest of the petitioner should be taken basing on the following observation:

"But better still is expected of him".

12. With the above observation O.A.371/96 is disposed of leaving the parties to bear their own costs.

13. Original Application NO.380/95 relates to adverse entries for the year 1984-85. Original Application No.378/95 relates to adverse entries for the year 1985-86. Original Application No.381/95 is about adverse entries for the year 1987-88 and Original Application N.379/95 is for adverse entries for the year 1989-90.

14. Before considering the pleadings of the parties and the detailed submissions made by the learned counsel for the petitioner with regard to adverse entries relating to particular years, some general points raised by the learned counsel for the petitioner will have to be considered. It has been mentioned by the learned counsel for the petitioner that in Para-5 of the Circular dated 21.5.1970 issued by the Political and Services Department, it has been mentioned inordinate delay in recording the remarks does not serve any useful purpose and delay is likely to give incorrect picture of the work and conduct of the petitioner reported upon. Accordingly Government had directed all concerned to record the remarks of the previous year by the end of June. It was mentioned that if by that time no remarks are received then an entry indicating "no remarks" will be kept in the C.R. folder of the concerned. This is a direction given by the Political and Services Department of the State Government to make the C.R. writing up to date and prompt. This does not give any right an officer to claim that if adverse remarks have been given beyond the period indicated above, then in stead of those adverse entries a no remarks entry should be substituted. The effect of delay in writing the C.R. will have

J. J. M.

to be adjudged in each case taking into account the facts and circumstances of the case, the nature of entries made etc. Therefore, this contention is held to be without any merit.

15. The second contention of the learned counsel for the petitioner is that Political & Services Department in their circular dated 4.5.1968 pointed out that the reporting officers are some times mentioning the C.R. that the defects reported to them about an officer were verbally communicated to the concerned officer, but this is not mentioned in the ephemeral character rolls which are to be maintained. It is submitted by the learned counsel for the petitioner that as early as 9th September, 1964, Political and Services Department, directed that all Reporting Officers should maintain ephemeral character rolls of each officer working under them and mention should be made in the C.R. regarding communication of adverse remarks on the basis of recording in the ephemeral character roll. In this case no defects have been communicated to the petitioner by the Reporting Officer or the Reviewing Officer and the Accepting Officer before writing the adverse entries on the basis of such remarks in ephemeral character roll and on this general grounds also quashing of adverse entries for these years have been prayed for.

16. Heare again the direction in the General Administration Department Circular dated 9th December, 1964 is for the Reporting Officer to maintain ephemeral character roll. This has not been emphasised in the circular dated 4.5.1968. If ephemeral character rolls have not been maintained, the

Government would be within their rights to pull up the reporting Officer, but non-maintenance of ephemeral character roll would not give any right to the petitioner to claim that the adverse remarks should be expunged merely on the ground that no ephemeral character rolls have been maintained or if maintained, without deficiency as written in his C.R.s has/ ^{not} been noted in the ephemeral character rolls and communicated to him prior to writing of the C.R. for the particular year. Coming to the particular entry for the year 1984-85 in O.A.380/95, the petitioner has prayed for expunging the adverse remarks communicated to him in order dated 12.5.1986 at Annexure-1, wherein it has been mentioned that the applicant was warned for leaving station unauthorisedly on the pretext of undergoing check up of his heart ailment and it was later on learnt that he has apparently proceeded to Delhi for following up his appointment to the Indian Police Service. Petitioner's case is that he fell ill and was under treatment as is supported by medical certificate at Annexure-2 given by the Head of the Department of Clinical Haematology, S.C.B. Medical College, Cuttack. He further states that he was not on unauthorised absence. Because of his heart trouble he was taken to Cuttack from Dhenkanal on the advice of Doctor and others. The Superintendent of Police was informed about this over wireless and he suggested his removal to Cuttack. Later on the leave was also sanctioned and on the above grounds he has submitted that the adverse remarks are liable to be expunged.

S. J. M.
16. The Respondents in their counter have stated that

that the petition is barred by limitation and the averments of the applicant related to Home Department, who have not been made a party. The adverse entries were communicated to the applicant in letter dated 12.5.1986, but his representation for expunction of adverse remarks for the year 1984-85 was sent only on 10.3.1994, i.e. after a lapse of more than seven years. By that time the petitioner was in the Indian Police Service. According to rules applicable to all India Services Officers, Government have the power to entertain a representation against adverse entries beyond the stipulated period of three months for good and sufficient reason if the same is filed within the period of another one year. In this case the petitioner has mentioned in his representation that he was under suspension and certain relevant documents were not in his possession. Therefore, he could ~~not~~ file the representation earlier. It is for the Government to consider whether these grounds are genuine or not. Government have rejected the representation as being time barred. They have not gone into the merits of the representation. In the present application the petitioner has made no averment as to why he could ^{not} file the representation in more than seven years from the date of communication of the adverse entries. In the representation itself, the petitioner has mentioned that as he was under suspension for long years, after receipt of communication of the adverse entries, ~~there~~ was delay in submitting this representation because some documents were not available with him. In the Original Application he has not mentioned as to what documents he was waiting for before

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submitting the representation. In view of this, we find no merit in the application. The petitioner cannot claim that his representation filed against the adverse entries should be considered even though he has filed the application after delay of seven years. The order of the State Government rejecting his representation on the ground of delay cannot be found ~~fault~~ with and therefore, the petition is held to be without any merit and the same is rejected.

17. Original Application No.378/95 deals with adverse entries in the C.R. for the year 1985-86 (11.4.1985 to 16.1.1986) These adverse entries were communicated to the applicant in letter dated 19.3.1987 at Annexure-1 to the Original Application. The petitioner filed a representation against the adverse entries only on 10.3.1994, i.e., after passage of ^{about} seven years. In this representation he had mentioned that as he was under suspension for long period, after receipt of the communication regarding adverse entries for the year 1985-86, ~~as~~ he was not able to get some official documents having no link with the office, there has been delay in filing the representation and he had prayed for condoning the delay. Government in their impugned order dated 15.4.1994 at Annexure-3 of that O.A. rejected the representation on the ground that the representation has been filed long years after the stipulated period of three months and even the extended period of one year thereafter, and accordingly the representation was rejected as being time barred.

J. Som.

18. As we have noted in the case of O.A.380/95, the grounds given by the petitioner for submitting the

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representation with seven years delay have not been accepted as genuine by the Government. In the present application also the petitioner has made no averment with regard to this delay. He had merely stated that the State Government should not have taken the plea of limitation ^{and} as they themselves have not communicated the adverse remark in time, they should not have rejected the representation the ground of delay. We are not inclined to persuade ourselves to accept this line of reasoning. We note that the C.R. for the year 1985-86 was communicated to the petitioner in letter dated 19.3.1987. It is not known by which time the Reporting Officer, Reviewing Officer and the Accepting Officer recorded their remarks and the C.R. reached the General Administration Department. Even if it is taken for the argument sake that the C.R. was written by the stipulated date, i.e., end of June, even then the G.A. Department has communicated the adverse remarks to the petitioner in March, 1987; in nine months. The reasons given by the learned counsel for the petitioner for delay in submission of his representation are not acceptable; firstly because, even if the applicant was under suspension, he could have submitted the representation while he was under suspension. He has also not indicated the nature of documents he was looking for before filing his representation. In consideration of the above, we hold that the Government's impugned order at Annexure-3 of this O.A. rejecting his representation for having been filed much after the time-limit prescribed cannot be found ~~fault~~ with. Accordingly the petition is held to be without any merit and the same is rejected.

J. J. M.

19. Original Application No.381/95 relates to adverse entries for the year 1987-88 communicated to the applicant in letter dated 27.9.1989(Annexure-1). He filed a representation against the adverse entries in letter dated 10.3.1994, i.e. after passage of more than four years at Annexure-2 and on the ground of delay his representation was rejected by the State Government in order dated 15.4.1994 at Annexure-4 of the Original Application.

20. For the reasons indicated in respect of earlier O.A.s in our orders in O.A.378/95 and 380/95, we hold that the Government's order rejecting his representation for expunging adverse remarks filed after lapse of four years of communication cannot be legally assailed. Therefore Original Application No.381/95 is held to be without any merit and the same is rejected.

J.J.M.
20. In Original Application No.379/95, the petitioner has prayed for quashing the adverse remarks in his C.R. for the year 1989-90 communicated to him in letter dated 23.9.1993(Annexure-1) of the Original Application. The applicant filed a representation on 27.2.1994 which is at Annexure-2. The petitioner's case is that this representation has not been considered by the respondents and no orders have been passed by the Government on his representation and communicated to him. In view of this he has prayed for quashing the order communicating the adverse entries and for expunging the adverse entries and for conferring consequential benefits.

22. The State Government in their counter have taken the

stand that the applicant should have filed his representation under Rule-9 of All India Services(Confidential Roll)Rules, 1970 within 45 days. But as his representation has been filed after passage of five months, the representation is barred by limitation. The respondents have also taken the stand that the petitioner has not made Home Department a party and therefore, the petition is not maintainable. They have also taken the stand that in various earlier years he has got adverse remarks and has been submitting repeated representations. On the above grounds they have opposed the prayer of the petitioner.

23. The fact that the petitioner has got adverse remarks in many years before and after the relevant year 1989-90 which is the subject matter of this O.A. are not relevant at all. The C.R.s are written on the basis of work and conduct of an officer for a particular period of an year. His work and conduct for the previous years cannot be of any relevance for writing Confidential Report for a particular year. It has also to be noted that the stand of the Respondents in their counter rejected for that the representation dated 27.2.1994 having been filed beyond 45 days is belied by the statement of the respondents themselves in letter dated 15.4.1994 which is at Annexure-3 of the O.A.378/95 dealing with the adverse entries for the year 1985-86. In this letter while rejecting his representation against adverse remarks for the years 1984-85, 85-86 and 87-88, the State Government have made the following observations:

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"Further your representation dated 27.2.1994 against adverse remarks for 1989-90 will be processed after receipt of three more copies from you."

From this it is clear that State Government had condoned the delay which in any case is for a few months and had called for three more copies of the representation apparently for forwarding the same to the Reporting Officer, Reviewing Officer and Countersigning Officer for their comments. It has also to be noted that Rule-9 of the All India Services (C.R.) Rules, 1970 was amended in 1987 and the earlier period of three months granted for filing representation against adverse remarks was reduced to 45 days. The delay of the petitioner in this case cannot be considered unreasonable and in any case we have noted that the delay has been condoned by the State Government. The second aspect of the matter is even though the representation has been filed on 27.2.1994, no orders on the representation have been passed or in any case communicated to the applicant. In the case of adverse remarks in the C.R.s for 1984-85, 85-86 and 87-88, the representations were rejected for having been filed years after the communication of the adverse entries and the order rejecting the representation was communicated to the petitioner. In this case no such communication has been made to the petitioner. Therefore, the conclusion is inescapable that the representation has not been considered by the State Government. Under these

S. J. M.

circumstances, two courses are open to us, i.e., one course would be to direct the State Government to dispose of the representation dated 27.2.1994 filed by the applicant within a specified period and communicated the result to the applicant giving him liberty to approach the Tribunal in case he is dissatisfied with the orders to be passed on his representation, and the other course is for us to look into the submissions in the Original Application with regard to adverse entries and take a view on the submissions of the applicant. We note that in this case representation dated 27.2.1994 has remained pending for more than 4 years. We also note that the State Government has also taken a stand in the counter about the representation being time barred which is contrary to ^{given to} ~~their~~ direction ~~of~~ the applicant as referred to earlier for filing three more copies of representation for consideration. In view of this it would be only proper for us to consider the submissions of the petitioner with regard to adverse entries.

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"You are an average officer in all respects.

"You were under a cloud owing to enquiries by the Vigilance Department. In view of the pending enquiries your integrity can not be certified. You must not be posted as Head of any Police establishment".

24. Before going into the specific averments made by the petitioner in respect of these adverse entries, two points have to be noted. Firstly, the general submissions of the learned counsel for the petitioner

with regard to lapses in the matter of writing of C.R. entries in time, communication of adverse remarks in time, non-maintenance of ~~ephemeral~~ character roll etc. have already been dealt with by us earlier and therefore, it is not necessary for us to go into those aspects once again in connection with adverse entries of this particular year. The second aspect is that the first remark that the petitioner is an average officer in all respects cannot be strictly taken as adverse, ^{Because} ~~by definition~~ majority of officers in any cadre or rank are average. That is the meaning of the term 'average' and unless a view is taken that the majority of officers' work and conduct is unsatisfactory, an entry that an officer is of average calibre cannot be taken as an adverse remark. No doubt in the matter of advancement in the career, an officer who is ~~recorded~~ outstanding or very good, is preferred over an average officer, but that is only natural where promotion is on the basis of merit. There an outstanding officer is preferred over an average officer. But this action does not mean that ^{a remark that} an officer average in all respects should be taken as an adverse remark. In view of this it is ordered that the State Government should not take this remark in the C.R. of the applicant as an adverse remark and no action adverse to the interest of the applicant should be taken on the basis of this entry except in the matter of his future advancement in his career. The second entry is

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that he was under a cloud owing to ~~vigilance~~ inquiries by the ~~Vigilance~~ Department and in view of the pending enquiries his integrity cannot be certified. The petitioner's stand is that inquiries by the ~~Vigilance~~ Department were initiated in a later period after 1989-90 and these inquiries have nothing to do with his work and conduct for the year 1989-90 and the reference by the officer, who gave those entries of this inquiry shows firstly that he has made the entries much later and secondly that the officer has given the entries after taking into consideration the extraneous matter unconnected with his work for the year 1989-90. All these averments have been made in para 4.9 to 4.11 of the Original Application. The State Government in para-9 of their counter have mentioned that the reporting officer gave his remarks on 3.1.1991 but the date of remarks by the Reviewing Officer has not been ~~mentioned~~ by the State Government. The stand of the State Government is that due to pendency of vigilance inquiries on the integrity of the petitioner, the adverse remarks could not be communicated to him in time. Vigilance Department was requested to submit their report and after receipt of the said report of the vigilance department on 26.5.1993, the adverse remarks were communicated to the petitioner in letter dated 23.9.1993 at Annexure-1 to the O.A. In view of this the State Government have stated that paras 4.9 and 4.10 require no further comment. As regards

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para-4.11 of the O.A., the State Government have mentioned in para - 12 of the counter that the time prescribed for writing confidential report is directory and not mandatory and the adverse remarks are not liable to be expunged merely on the ground that they were recorded late.

25. We have considered the pleadings of the rival submissions of learned counsel for both sides carefully. It is not clear from the counter of the State Government ~~if~~ Vigilance Department gave an adverse report against the petitioner and if so what further action was initiated against the petitioner on the basis of the vigilance report if the same was adverse. In view of this the remark that ^{"You} were under a cloud owing to inquiries by the Vigilance Department" cannot be sustained for two reasons. Mere inquiry by the Vigilance Department does not establish the guilt of the an officer. At the worst it may raise a suspicion about his conduct. But the entries in the C.R. cannot be written on the basis of mere suspicion and in view of this we hold that this entry is liable to be expunged from the C.R. and we order accordingly.


26. As regards the next entry "In view of the pending inquiries your integrity cannot be certified" merely records a factual position that the petitioner's integrity was not certified in his C.R. and the reason for this was the inquiry pending against him. The instructions provide that if inquiries are pending

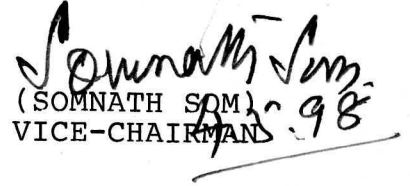
against an officer in respect of matters which impinge on his integrity, this fact should be mentioned in the integrity column of C.R. of the officer concerned and integrity should not be certified. Therefore, as this inquiries were pending against the applicant, this entry cannot be interfered with. The prayer for quashing this entry is, therefore, rejected.

The last entry for the relevant year is "you must not be posted as Head of any Police establishment." This entry cannot be termed in any way a remark on the work and conduct of the officer which has been communicated to him for bringing about improvement. If the conduct of the petitioner in 1989-90 is such that he should not be posted as Head of any Police establishment, the officer who made this remark should have brought his impression to the notice of the superior authorities, who are in charge of giving postings to the petitioner instead of writing this entry in his C.R. Moreover, his overall conduct and performance were assessed as average for the year as we have noted earlier. It is no doubt true that in that year his integrity had not been certified. If that for that reason he is not be posted as Head of any Police establishment, then the proper course is not to write this fact in his C.R., but to take up the matter, as we have noted, with the appropriate authorities to ensure that the petitioner is not posted as head of any Police establishment.

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this

/This entry is, therefore, ordered to be expunged from the C.R. In the result, therefore, O.A.379/95 is partly allowed in terms of the above orders. Parties to bear their own costs.


(S.K.AGARWAL) 4/3/98
MEMBER (JUDICIAL)


(SOMNATH SOM) 4/3/98
VICE-CHAIRMAN

B.K.Sahoo, C.M.