

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

ORIGINAL APPLICATION NO. 301/2004

Date of Order: 21/10/2011

CORAM:

**HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER
HON'BLE MR. SUDHIR KUMAR, ADMINISTRATIVE
MEMBER**

Sanchal Bilgrami S/o Late Shri K.S. Bilgrami Ji, aged about 45 years, R/o Type IV/27, Central Arid Zone Research Institute Campus, Central Arid Zone Research Institute, Jodhpur (Rajasthan).

Presently working on the post of Senior Finance & Accounts Officer in Central Arid Zone Research Institute, Jodhpur (Rajasthan).

...Applicant.

Mr. S.K. Malik, counsel for applicant.

VERSUS

1. The Secretary & Director General, Department of Agricultural Research & Education, Indian Council of Agricultural Research, Govt. of India, Krishi Bhawan, New Delhi - 110001.
2. Dr. Prem Shankar Pathak, Director, Indian Grass Land and Fodder Research Institute, Gwalior Road, Near Pahuj Dam, Jhansi (Uttar Pradesh), Pin Code - 284003.
3. Deputy Secretary (Administration), Indian Council of Agricultural Research, Govt. of India, Krishi Bhawan, New Delhi - 110001.
4. Under Secretary (Administration), Indian Council of Agricultural Research, Govt. of India, Krishi Bhawan, New Delhi - 110001.
5. Shri Radhe Shyam, Deputy Director (Finance), Indian Council of Agricultural Research, Head Quarters, Govt. of India, Krishi Bhawan, New Delhi - 110001.

... Respondents.

Mr. V.S. Gurjar, counsel for respondent nos. 1,3 & 4.
None present for respondent nos. 2 & 5.

[Signature]

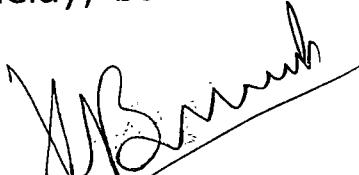
ORDER
(Per Dr. K.B. Suresh, Judicial Member)

Apparent whistle blower crushed without mercy is he, claims the applicant. Cumulative events are stated against the applicant by the respondents whereby apparently the respondent no. 5 is benefited, and according to the applicant he is suffering because of this bias against him. It is submitted at the bar that this had a connected case in O.A. No. 320/2004 wherein serious allegations were apparently raised against the applicant. In that, on 02.09.1988, he was alleged to have been guilty of issuing of one Cheque for a sum of Rs.1,19,775/- in favour of one advocate against his professional bill for one case in the Supreme Court. It also canvassed a case of another employee releasing a further sum of Rs.3,51,000/- when the applicant was apparently on leave. It is also pointed out that he had further paid an amount of Rs.3,71,000/- against one bill of Rs.5,37,000/- to the said lawyer for one case in the Supreme Court. All these payments were made in the year 1988.

2. After 16 years, with an explanation that they had sent this matter to the CBI for enquiry, and therefore it took so much time after 1988, on 22.12.2004 the



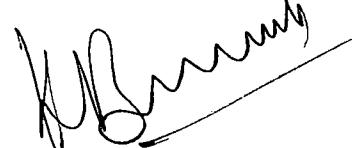
applicant was issued with a charge sheet under Rule 14 of C.C.S. (C.C.A.) Rules, 1965. The charges were in relation to the payments released to the lawyer. They held that payments were not justified and the applicant is guilty of failure to properly verify and check the bills. The Tribunal held vide order dated 30.08.2005 that in view of the decisions of the Hon'ble Apex Court in the case of **State of Punjab and Ors. vs. Chaman Lal Goyal** reported in (1995) 2 SCC 570, **State of Andhra Pradesh vs. N. Radhakrishan** reported in [(1998) 4 SCC 154], **State of Madhya Pradesh vs. Bani Singh and Anr.** reported in [1990 (2) SLR 798] and **A.R. Antulay vs. R.S. Nayak [(1992) 1 SCC 225]** that the charges were vitiated by delay, and quashed the charges against the applicant. Against the decision of the Tribunal, the present respondent No.1 namely the Director General, Indian Council of Agricultural Research, New Delhi, and the superior of the present Respondent No.R/3 & R/4, the Secretary, Indian Council of Agricultural Research, New Delhi, approached the Rajasthan High Court at Jodhpur by filing D.B. Civil Writ Petition No. 6963/2005, and vide judgment dated 14.12.2010, the Hon'ble High Court held that not only there was delay, but also there was



no explanation for the delay. The High Court held that the fact of payment made in the year 1988 was within the knowledge of the ICAR, which is subjected to yearly audit, and therefore must have been subjected to audit 16 times from the date of payment till the issuance of the charge sheet, whether, if at all, the issue had remained relevant. It was held that the investigation by the CBI has nothing to do with the matter so far as commencement of the departmental enquiry was concerned, and that the applicant had every right to take the benefit of the orders passed by the Tribunal, and the High Court recalled all the interim orders, and dismissed the said writ petition. With this the charge and consequent process became irrelevant, claims the applicant.

3. Powers of Judicial Review and Responsibility:

The theory of where there is a right, which is infringed, there is a remedy operates fully in this matrix. In this respect in Biswa Ranjan Sahoo vs. Susan la Kumar Dinda reported in AIR 1996 SC 2552, the Hon'ble Supreme Court has held that even though the judicial review normally is not concerned with the correctness of the decisions, but only of the



decision making process, but held that in case circumstances so warranted, the decisions also will form the matrix of consideration. Significance in this regard is in another decision of the Hon'ble Apex Court

in **Apparel Export Promotion Council vs. A.K.**

Chopra reported in AIR 1999 SC 625, 1999 (1) SCC

759. In **Life Insurance Corporation of India vs.**

Manubhai D Shah reported in AIR 1993 SC 171, the

Hon'ble Apex Court has held that the distinction between the 'legality' and 'merits' is being abandoned, and the burden of proof to justify the restrictions on the constitutional rights lies on the executive. The Hon'ble Apex Court has asserted that a review court can evolve new methods, tools and procedures to enforce fundamental rights and render socio-economic

justice in **Gurdev Jain vs. Union of India** reported in

1997 8 SCC 114. Significance in this regard lies in the decisions of Hon'ble Apex Court in **State of Haryana**

vs. Ram Chander reported in AIR 1997 SC 2468, **Shiv**

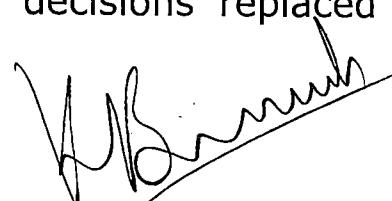
Sagar Tiwari vs. Union of India reported in 1997 1

SCC 444, in **Vishaka vs. State of Rajasthan** reported

in AIR 1997 SC 3011, in **Consumer Education and**

Research Centre vs. Union of India reported in AIR

1995 SC 922 at 940. These decisions replaced the

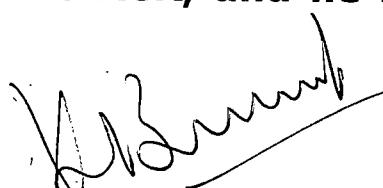


Wednesbury Irrationality principle by the proportionality principle, and the duty of due examination of all issues, which arise in a matter. The fine distinction between 'legality' and 'merits' of an issue seems to have been abandoned in search of better and far reaching exposition of constitutional values. Thus, judicial review is now even more of a responsibility than a power.

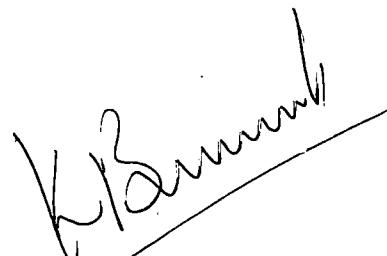
4. In this factual matrix and background, the crucial facts as alleged by the applicant appear to be that he made a complaint against the 2nd respondent to the 1st respondent on 08.01.2002, while the former was his superior officer, when he was working at Jhansi. Almost immediately thereafter, it would appear that even though no action was formulated or initiated by the 1st respondent against the private respondent no.2, the applicant was transferred from Jhansi in Uttar Pradesh to Jodhpur in Rajasthan, vide order dated 23rd April, 2002. He was relieved from Jhansi on 01.05.2002, and joined at Jodhpur on 14.05.2002. It appears that thereafter for three long years, the 2nd respondent did not write the ACR of the applicant for the year 2001-2002. The respondents claiming that the applicant also sat on this technicality. Since he was



working within the same/parallel administrative system and hierarchy at Jodhpur, he also could have easily requested for and obtained a blank ACR form from the Director's office at Jodhpur, filled up his Self Appraisal for the year 2001-2002, and sent it to the respondent No.2 at Jhansi. But he also very conveniently avoided doing so, hoping perhaps to benefit later from the technical mistake committed by the Director's office at Jhansi. But apparently on 16th July, 2004, after a gap of more than two years the applicant received a letter from the respondent no.4, seeking his Self Appraisal Form for the year 2001-2002. It would appear that the very next day, i.e. on 17th July, 2004, the applicant requested the office of the 2nd respondent to send him at Jodhpur a blank ACR Form, and that apparently the applicant received a blank ACR form from Jhansi only on 28.07.2004. On 05.08.2004, the applicant forwarded his Self Appraisal ACR Form to the 2nd respondent. Thereafter, on 16th September 2004 the applicant received a communication about the adverse remarks in his ACR for the year 2001-2002. **On 25th September, 2004, the applicant made a detailed representation to the respondent no. 1 against the adverse remarks in his ACR, and he followed**

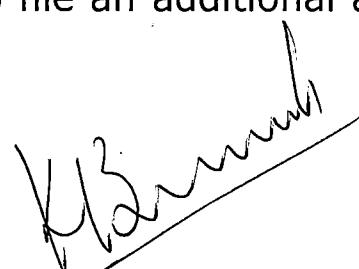


it up with the FAX Message to the respondents on 27.09.2004 requesting for considering his name also in the DPC for promotion to the post of Chief Finance & Accounts Officer. But, disregarding the candidature of the applicant because of that cognizant reason, the applicant thus claims that on 04.11.2004 the respondent no. 5 was promoted to the post of Chief Finance & Accounts Officer, and is now the Deputy Director (Finance), Indian Council of Agricultural Research, New Delhi. The applicant therefore seeks that Annexure A/1 impugned memorandum dated 16th December, 2004, Annexure A/2 impugned order dated 04th December, 2004, and Annexure A/2-A impugned memorandum dated 06th January, 2005, to be quashed and set aside, and seeks for reconvening the DPC to consider his case for promotion to the post of Chief Finance & Accounts Officer / Deputy Director (Finance), and he has claimed retrospective promotion with effect from 21st October, 2004, i.e. the date from which person junior to him had been promoted and appointed, with all consequential benefits. He also seeks a declaration that the downgraded ACR may not have any effect on his career.

A handwritten signature in black ink, appearing to read 'K. Biju', is written over a diagonal line.

5. It would appear that on 13.12.2004, the O.A. was taken up for admission by the Tribunal, and the challenge against Annexure A/1 and Annexure A/2 was entertained, and it was recorded that in consonance with the law laid down by the Bombay Bench of this Tribunal in the case of **K.M. Unnikrishnan vs. Union of India & Ors.**, reported in 2004 (1) ATJ 551, **wherein the Tribunal had observed that when the representation against adverse remarks is pending, the DPC should have deferred consideration of the case for promotion till the disposal of the representation.** Being apprehensive that the respondents would still be going ahead further for undertaking the process of promotion to the post of Chief Finance & Accounts Officer / Deputy Director (Finance), his further claim to be considered for promotion, or in the alternative one post of Chief Finance & Accounts Officer / Deputy Director (Finance) may be kept vacant for the applicant, which was then likely to fall vacant in February, 2005, and the respondents were directed vide interim order to decide the representation of the applicant against the adverse remarks conveyed to him on 16.09.2004 within 15 days from then, and also that **if any promotion is made to**

the post in question, that will be subject to the final outcome of this O.A. In the meanwhile, on 08th September, 2005, reply to the amended O.A. was filed by the respondent nos. 1,3 and 4, and on 15.09.2009 the file relating to the DPC proceedings for the post in question was called for. Vide order dated 15.01.2010, it was recorded that it was found on the examination of the sealed cover that the DPC had actually passed an order which does not explain the reasoning and logic behind the order, and the matter was taken up once again as it was felt that the proceedings of the DPC meeting may have been recorded elsewhere. **It was also noticed that the DPC meeting was held before the reviewing authority had decided on the issue of adverse remarks**, therefore, the hypothetical question which has arisen is that, **if the reviewing authority had held against the reporting officer what would have been the fate of the DPC**, as, then, it would not have had the advantage of help from the reviewing authority. This was held to be a reason suggestive of a cloud of suspicion, therefore, in the interest of justice, the respondents were directed to file an additional affidavit on the following: -



(i). Why the review authority did not choose to go by the printed documentation of the ICAR and rely on it?

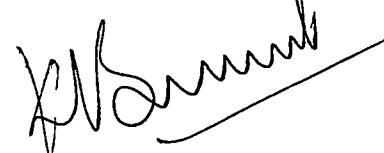
(ii). Why the review authority had not seen it fit to answer the issues raised by the applicant, as it was bound to do so, since, he was sitting in a quasi judicial capacity?

(iii). Why the reporting officer had deemed it fit to only make a bald denial without any specific averments and why this report was accepted?

(iv). The respondents shall also consider and report why the DPC was held even before the reviewing authority had a chance to look into the matter and pass an appropriate order.

6. The annexure A/1 was perused, which is the extract of adverse remarks from the Confidential Report of the applicant for the period 2001-2002, intimated to him on 16th September, 2004, which are reproduced as under:-

1.	Nature and Quality of Work	"I partially agree. This being last year of the plan required sufficient efficiency of delivery which did not come - Lots of savings in catch up grants - Savings in plan allocation."
2.	Quality of output	"The quality of output was



		of average standards. Delays in disposal were apparent."
3.	Ability of work	"He has not shown adequate level of responsibility in disposing the cases but ventured in other area domains to generate problems."
4.	Inter-personal relations and teamwork	"Not upto the mark"
5.	General assessment	"He has been a worker of routine nature and needs improving his initiatives"

On a preliminary reading, the reporting officer acts in agreement that he partially agrees with the self assessment of the concerned officer, but notes that **sufficient efficiency of delivery did not come, leading to lots of savings in catch up grants and savings in plan allocation.** Thus, if there were money to be spent in catch up grants then the indication might be that there is some lacunae on the side of the applicant. But it may not be him, as him not being the implementing officer of grants, and as only being an accounts man, **if there were lacunae in the implementation of the plan whether in plan allocation or catch up grants, the same should have reflected in even more adverse remarks on all the implementing officers in their ACRs.** Such a uniform level playing ground has not been discernable



from the reply filed by the respondents in their pleadings and even in their assertions at hearing and **if such non-discrimination approach had been followed, this factor of reporting would have been relevant, and at least reasonable and valid, and if not for its correctness at least for its universality.**

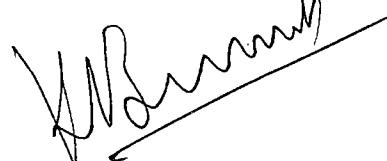
We also note that this report is also extremely vague and granting no opportunity for a person under that adverse gaze in which to reply adequately regarding the quality of his out put. It is stated in the report that delays in disposal were apparent **without specifying what all things were delayed.** It is said in the report that it is not that the applicant has not shown adequate level of responsibility in disposing the cases, but ventured in other area domains to generate problems, meaning thereby that the applicant had ventured into the fields other than accounting and created problems. This comment is not very surprising, in view of the fact that the applicant had made a specific complaint against respondent no. 2 to respondent no. 1 vide letter dated 08.01.2002.

Therefore, that letter dated 08.01.2002 was perused which has six specific complaints, but all of them relate to the applicant's area of operation



and the alleged daily humiliation and mortification, which he had suffered in the domain area of Dr. Pathak, the 2nd respondent.

But this is emphatically denied in the counter affidavit of Dr. Pathak. The complaint was against Dr. Prem Shankar Pathak, Director, IGFRI, Jhansi, respondent No.2, with regard to his indulgence in corrupt practices and vindictive action, even though it is denied by the respondent No.2 in his affidavit. This was a serious allegation, which was made by the applicant as the accounting watchdog, against the Director of his Institute, and was addressed directly to Dr. Panjab Singh, Secretary & Director General, DARE & ICAR, New Delhi, as he was at that time, and **he had a duty cast upon him as a responsible public servant to have the matter enquired into, and if a false complaint had been filed against Dr. Prem Shankar Pathak, to take effective action against the applicant. Even after 9 years had elapsed, no such action has been taken, and therefore it is safely assumed that the 1st respondent had elected to have the matter swept under the carpet.** But it is seen that soon thereafter the applicant was transferred to Jodhpur vide order of 23.04.2002.



7. Relating to inter-personal relations and teamwork, the 2nd respondent had marked 'Not upto the mark'. The Hon'ble Apex Court judgments as well as the rules stipulate that adverse remarks shall be specific and self-explanatory. If the applicant's inter-personal relations and teamwork are not upto the mark, then it should be reflected in the earlier warnings and other office procedures, which are not discernable. After having gone through the record, it would appear to be otherwise, the general assessment of reporting officer made is that he has been a worker of routine nature and needs improving his initiatives. This is also another vague reporting, which is against rules. This, when viewed in the background of the specific complaint raised by the applicant against the 2nd respondent, seems to be a doubtful and coloured exercise, especially in view of the fact that it was exercised on the verge of the promotion of the applicant to deny him an opportunity of being heard in a representation, and therefore to be seen as part of a pre-determined approach, says the applicant, though it is denied by the respondent No.2 in his affidavit. It is also noted that his analytical ability, communication skill, supervisory ability, review performance, attitude towards the SC/ST

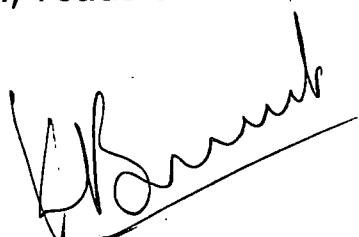


etc. are satisfactory. **If these important factors are satisfactory, then the other relevant issues cannot be but satisfactory, asserts the applicant.**

Relating to the fund utilization, the applicant has produced a copy of the brochure issued by the IGFRI itself, which shows that there was huge amount of beneficial generation achieved, which was more than the specified target, and the fund utilization was thus bound to have been satisfactory, and **therefore the applicant contends that the first portion of the annexure A/1 is false and untenable. Prima facie this appears to be correct as factual verification would have taken place before the brochure was issued.**

8. The records indicate that the applicant is senior to the 5th respondent, who vide annexure A/2 order was promoted on 05.04.2004 but with effect from 21.10.2004.

9. The D.P. & A.R., O.M. No. 21011/1/77-Estt., dated 30th January, 1978, vide Rule 23 reported in Swamy's – Seniority and Promotion compilation, and also Rule 22, 24 of the said compilation, reads as follows:-



"22. To whom representation lies. -

Representation against adverse remarks will lie to the authority immediately superior to the countersigning authority, if any, or to the reporting officer. If the immediate superior authority has already reviewed the confidential report in question and has also expressed his view either agreeing or disagreeing with the adverse remarks recorded and accepted by the countersigning authority the representation should, in that event lie to the next higher authority.

[Rule 174 (12) of P. & T. Manual, Volume III.].

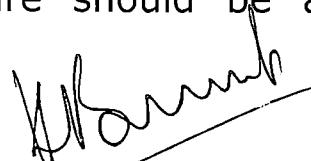
23. Time-limit for disposal of representation and when note to be taken of adverse remarks. -

All representations against adverse remarks should be decided expeditiously by the competent authority and in any case, within three months from the date of submission of the representation. **Adverse remarks should not be deemed to be operative if any representation filed within the prescribed limit is pending.** If no representation is made within the prescribed time, or once this has been finally disposed of, there would be no further bar to take notice of the adverse remarks.

[D.P. & A.R., O.M. No. 21011/1/77-Est., dated the 30th January, 1978.]

24. Manner of disposal of representation. -

The following procedure should be adopted in



dealing with representations from the employees against the adverse remarks communicated to them: -

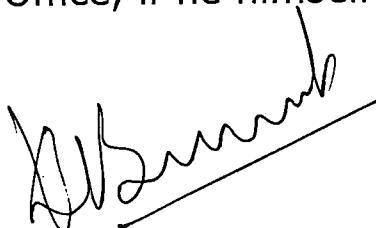
(1). Representations against adverse remarks should be examined by the competent authority in consultation, if necessary, with the reporting officer and countersigning authority, if any.

(2). If it is found that the remarks were justified and that the representation is frivolous, a note may be made in the confidential report of the petitioner that he did not take the correction in good spirit.

(3). If the competent authority feels that there is no sufficient ground for interference, the representation should be rejected and the petitioner informed accordingly.

(4). If, however, it feels that the remarks should be toned down, it should make necessary entry separately with proper attestation at the appropriate place of the report; the correction should not be made in the earlier entries themselves.

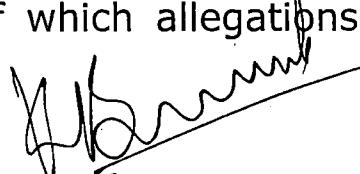
(5). In the rare event of the competent authority coming to the conclusion that the adverse remark was inspired by malice or was entirely incorrect or unfounded, and therefore deserves expunction, it should score through the remarks, paste it over, or otherwise, obliterate it, and also make a dated entry, under his signature, stating that he has done so, under intimation to the concerned Head of the Department or Office, if he himself does not occupy that position.



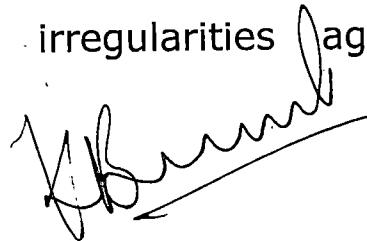
When a representation against adverse remarks is wholly or partially upheld, the particulars of the orders based thereon should be recorded."

Therefore, adverse remarks should not be deemed to be operative if any representation filed within prescribed limit is still pending.

10. The respondent nos. 1, 3 and 4 filed a detailed reply wherein in paragraph '1', they justified Annexure A/1 on the basis of the **peculiar facts, circumstances and material available on record** of the instant case at hand. The order dated 15.01.2010 was passed, thereafter. The case of the official respondents is that the applicant had not placed on record any reliable evidence to substantiate the allegations levelled. They denied the allegations of the applicant against the private respondent no. 2 as misleading and without any factual foundation, but then it is not clear that as to which allegation they mean; whether it be the financial irregularity, or the allegation made by the applicant vide his letter to the respondent no.1, or the allegations of malice and bias raised against the respondent no. 2, all of which allegations have been



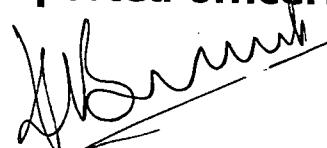
denied by the respondent No.2 himself also, in his affidavit ? It is stated in the rules that adverse remarks given by the reporting officer can be reviewed and overruled by the reviewing authority, but the official respondents have taken a further objection that the allegation that the respondent no.2 deliberately did not write the applicant's ACR for the year 2001-2002 and the allegation was so misleading, as the applicant himself had not submitted his ACR form after filling up his own self appraisal. **But the rules stipulate that if the concerned subordinate officer does not submit the self appraisal in time, the higher authority has to call for it, and thereafter the follow up action must proceed.** But none of the correspondence between authorities indicates any lapse on the part of the applicant till then, and even the first notification inviting self appraisal did not canvass the view that it was for the failure of the applicant that the reporting could not be done. It does not appear to be factually correct. It would appear as a late dawnd wisdom, especially in view of the fact that no action was taken on the letter whereby the applicant was raising serious complaints of financial irregularities against the



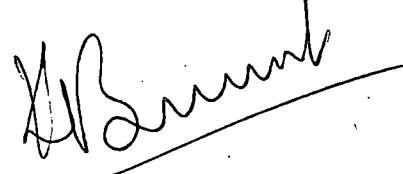
respondent no. 2, specifically addressed to the respondent no. 1, but in answer thereto, the applicant was transferred from Jhansi (Uttar Pradesh) to Jodhpur (Rajasthan). But going by the reporting, the reporting officer respondent No.2 does not seem to have gone by any portion of the self appraisal, and appears to have given vague and inactive comments without any substantiation and proper procedure. Thereafter, the official respondents canvass a view that after the Tribunal's interim order, a reply had been sent vide memo bearing No. 4-CR-2001 (2002) US (fin), dated 26.01.2005.

11. It would appear that that the reviewing authority had called for the comments of the Reporting Officer and the Reporting Officer had stated in his reply that he has no personal or official enmity with anybody including the applicant, and the applicant is only taking support of his own complaint against the 2nd respondent. But the functions of reviewing officer are to examine critically the report of the reporting officer.

He has to sift the evidence available to see whether the reporting officer's report could be correct or not, in view of the representation and explanation given by the reported officer. Firstly a

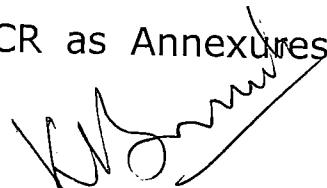


man had to be a super human and an Angel to write dispassionate unbiased report against an officer who had leveled such serious complaints of financial irregularities against him, besides, the **reporting office's report, seems to us, is bereft of any factual exposition and open only views, which are in fact was vague and conflicted by ICAR's printed brochure itself**, therefore the reviewing officer does not appear to have applied his mind and does not disclose as to what was the further estimation of evidence which is forthcoming, as clinching evidence should and would be contained in the reporting officer's report and reply and his explanation and since on the basis of the reporting officer's explanation and the representation of the applicant it says that nothing further is called for under any circumstances unless the records are to be gone into but such an exercise is not seem to be undertaken. But it is also noted that the Financial Advisor, ICAR, being the competent authority for consideration of this and to pass orders, it had to be put up to him, and he was to decide to expunge the adverse entries, or to tone them down, fresh entries were to be made. Apparently it was otherwise done as either the reviewing authority has already left the ICAR

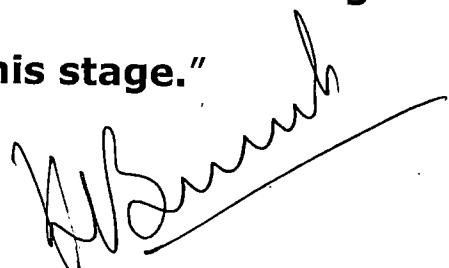


by that time, and he had in the meanwhile become a Secretary to Government of India. He was only later requested to furnish his comments. Hence he also could not contemporaneously review it.

12. The proceedings of the DPC is also an exercise in the extreme when persons are declared to be 'unfit' or 'fit' for promotion, it is trite that there must be transparency in following procedure and process and any person who goes through this, must be able to understand why people were found to be 'fit' and 'unfit'. The bench mark can be a yardstick which must be mentioned earlier as to judge by and such assessment should be transparent and the process of applying a yardstick must be discernable in the minutes of the meeting and especially when seniors are being declared as unfit. **The report of the DPC is extra ordinarily unsatisfactorily.** In this connection, the letter dated October 13/20, 2004 of the 2nd respondent, and the affidavit filed by him are illuminative, wherein he has categorically stated to have no personal or official enmity with anybody including the applicant and that he sticks to his remarks, and has stated that he has already appended the required supporting notes along with the ACR as Annexures, but thereafter no



mention is made anywhere of such annexures. The reviewing authorities reference note is even more surprising as by a letter dated 29th November, 2004, the PPS to Secretary, the original reviewing authority requests for the comments of both the Reporting Officer and the Reviewing Officer, possibly indicating that the review authority merely rode on the Director (Finance's) reference notes alone, and **he without application of mind had just agreed with the comments of the reporting officer on the ground that no further evidence is forthcoming while forgetting that all the evidence that should be forthcoming would be contained in the four communications as aforesaid.** More surprising is that reference note made to the Secretary, who was earlier reviewing officer by the Director (Finance) he says "**No doubt some of the reports are required to be sent to the ICAR Headquarter by the Accounts Officer but these do not reflect anything on the issues already raised in the ACR. Since the original report of the reporting officer has already been agreed to by the reviewing officer, there appears to be no further ground to amend the position at this stage.**"



13. Therefore, it can only mean one thing that the review position as demanded by the Tribunal within 15 days, apparently in view of the reviewing authority has already agreed with the reporting authority, it is not necessary to look at it again, but then the question is it on what ground in it he agreed to if in between he had not received the representation of the applicant as because as at that time he was not aware of it as in the order that he had reported in original that **no further evidence is forthcoming and that must be a reason why the Director (Finance) report that "there is no further ground to amend the position at this stage"**. Therefore a great deal of misadventure had gone into its exercise, contends the applicant, therefore, and, thereafter vide memorandum dated 06.01.2005 a letter was issued to the applicant that competent authority has decided to retain the adverse remarks in his ACR for 2001-2002. **There appears to be a total non-application of mind and relying on the undeserved and unreserved, a truly unhappy state of affairs, indeed.**

14. The Government has prescribed a time-limit of reporting. The relevant stipulations are as follows:

John B. Barnes

"9. Report to be written within one month of the expiry of report period. - The annual report should be recorded within one month of the expiry of the report period and delay in this regard on the part of the Reporting Officer should be adversely commented upon; if the officer to be reported upon delays submission of self-appraisal, this should be adversely commented upon by the Reporting Officer.

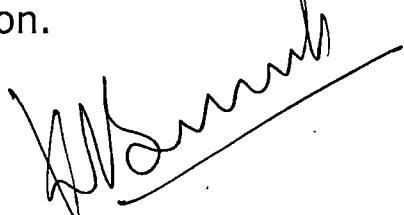
[G.I. D.P.& A.R., O.M. No. 21011/1/77-Estt., dated the 30th January, 1978.]"

But in this case, ACR is seen to be written after almost three years.

15. The methodology of writing ACR is also given. It is as follows:

"16. Principles to be observed by Reporting Officers in writing reports. - The general principles which are required to be observed by the Reporting Officers for writing annual reports are indicated below -

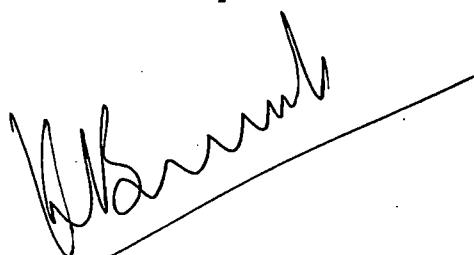
(1) Remarks like "Doubtful Character", "complaints received about his taking illegal gratification", are not permissible. Entries should be based on established facts and not on mere suspicion.



(2) No employee should be adversely affected by prejudicial reports recorded without fullest consideration. At the same time, none should be rewarded by excessively flattering reports which are not based on facts. With a view to checking up such possibilities, the following procedure is prescribed: -

- (a) the memo. of services should invariably be consulted at the time of writing the annual report though the report itself should necessarily be based on the employee's performance during the year as a whole;
- (b) where an adverse remark is recorded in respect of an official having consistently good record, some details regarding the same should invariably be given;
- (c) the report should give a clear opinion on the main points like character, integrity, industry, etc.;
- (d) there should be no hesitation on the part of the Reporting Officers to record adverse remarks in justified cases;
- (e) Reporting Officers should not be in a hurry to write all the reports on one day."

But the report does not appear to be based on any concrete facts as revealed by the files.

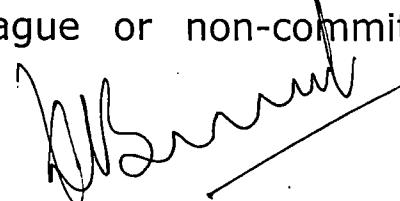
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16. The reviewing officer seems to have relied on the noting of Director (Fin.) whose notes are also bereft of any details. The duties of the Reviewing Officer are as follows: -

"17. Duties of Reviewing/Endorsing Officer. -

The following instructions are brought to the notice of the Ministries / Departments for information, guidance and compliance: -

- (i) Reporting, Reviewing and Endorsing Officers should have been acquainted with the work of the official reported upon for at least three months during the period covered by the confidential report;
- (ii) With a view to enabling the reviewing authority to discharge his responsibility in ensuring the objectivity of the confidential reports, it has been decided that where he is not sufficiently familiar with the work of the officer reported upon so as to be able to arrive at a proper and independent judgment of his own, it should be his responsibility to verify the correctness of the remarks of the Reporting Officer after making such enquiries as he may consider necessary, he should also give a hearing to the person reported upon before recording his remarks.
- (iii) While it is expected that the detailed format with alternative answers now prescribed for confidential reports would go a long way to minimize cryptic, vague or non-committal



remarks being made in the reports, there may be cases where the entries are not sufficiently meaningful. Such reports should be returned to the Reporting Officer for amplification or explanation.

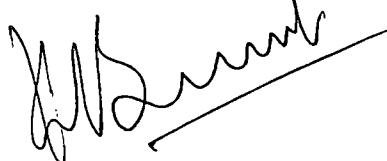
(iv) If the Reporting Officer feels that a prescribed course of training is required by an official in order to equip him better for his duties or to develop his potentialities, he may make a separate recommendation to the Appropriate Authority on this matter. The confidential report would not be a proper place for such a recommendation.

[G.I., D.P. & A.R., O.M. No. 51/3/74-Estt. (A), dated the 22nd May, 1975.]

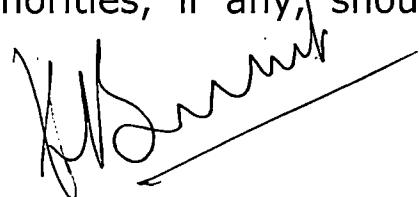
17. The files do not disclose any record being kept on the Accounts Officer despite the fact that periodic reports are available and the records indicate that the reporting cannot be true on the basis of official brochure of ICAR and contemporaneous reporting of others.

"39. Maintenance of memorandum of services serving as basis for writing annual reports. -

With a view to enabling the Reporting Officers to make correct overall assessment of the work and conduct of their subordinates, the Reporting Officers are required to maintain memorandum of services in respect of each officer employed under them. All instances of good and bad work coming



to the notice of the Reporting Officer should be promptly noted in the memo. of services. Impression formed by the officer at the time of visits, inspections, interview, etc., should also be included in that memorandum. This memorandum should not be reduced to a blank book by recording instances of only adverse nature. Instances of good work should also be liberally recorded. The memoranda of service should, invariably, be consulted at the time of writing of annual reports. In case the Reporting Officer is not the immediate superior of the officer to be reported upon, the immediate superior should also maintain a memo of services which should be consulted by the Reporting Officer at the time of writing the report. The memo of services in respect of an officer should be a complete and continuous record of his service and accordingly, it should not be destroyed after the annual report has been written. The entries in the memo of services should be based on facts and documentary evidence. The memo of services may also be consulted on the occasions of making transfer, promotion or writing special reports. For writing the annual report, only those entries in the memo, which pertain to the year of the report should be taken into account. The entries in the memo of services need not necessarily be communicated. As the memo of services is the sole basis for writing the annual reports, the Reporting Officer at the time of submitting reports to the countersigning authorities, if any, should

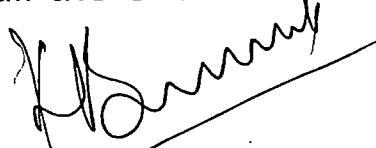


make a specific mention in the forwarding letters that memoranda of services have been maintained and consulted. With a view to checking up that these memoranda are being properly and regularly maintained, the countersigning authorities may call for them and check them up. The negligence on the part of the Reporting Officers in this regard should be duly noticed."

18. The D.P.C. appears to have failed in its duty as is illuminated by the above Government orders.

"49. **Consideration of CRs for** – (a) For promotion. – Confidential Rolls are the basis inputs on the basis of which assessment is to be made by each DPC. The evaluation of CRs should be fair, just and non-discriminatory. Hence –

- (a) The DPC should consider CRs for equal number of years in respect of all officers considered for promotion subject to (c) below.
- (b) The DPC should assess the suitability of the officers for promotion on the basis of their service record and with particular reference to the CRs for 5 preceding years. However, in cases where the required qualifying service is more than 5 years, the DPC should see the record with particular reference to the CRs for the years equal to the required qualifying service. (If more than one CR has been written for a particular year, all the CRs for the relevant



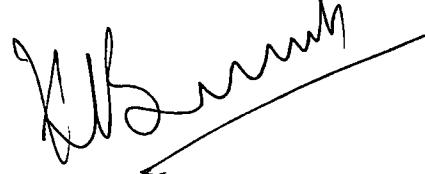
year shall be considered together as the CR for one year).

(c) Where one or more CRs have not been written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question and if in any case even these are not available, the DPC should take the CRs of the lower grade into account to complete the number of CRs required to be considered as per (b) above. If this is also not possible, all the available CRs should be taken into account.

(d) Where an officer is officiating in the next higher grade and has earned CRs in that grade, his CRs in that grade may be considered by the DPC in order to assess his work, conduct and performance, but no extra weightage may be given merely on the ground that he has been officiating in the higher grade.

(e) The DPC should not be guided merely by the overall grading, if any, that may be recorded in the CRs but should make its own assessment on the basis of the entries in the CRs, because it has been noticed that sometimes the overall grading in a CR may be inconsistent with the grading under various parameters or attributes.

(f) If the Reviewing Authority or the Accepting Authority, as the case may be, has overruled the Reporting Officer or the Reviewing Authority, as the case may be, the remarks of the latter authority should be taken as the final remarks for the purposes of assessment,

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provided it is apparent from the relevant entries that the higher authority has come to a different assessment consciously after due application of mind. If the remarks of the Reporting Officer, Reviewing Authority and Accepting Authority are complementary to each other and one does not have the effect of overruling the other, then the remarks should be read together and the final assessment made by the DPC.

[Dept. of Per. & Trg., O.M. No. 22011/5/86-Estt. (D), dated the 10th April, 1989 – Para 6.2.1.]

xxxxx xxxxxx xxxxxx xxxxxx"

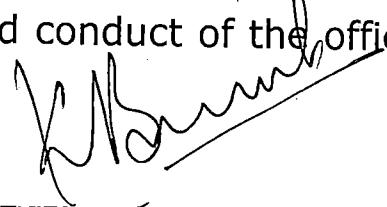
19. There seems to be total failure on the part of the Reporting and Reviewing Officer as is clear from the Government directions as follows:

"52. Time-Schedule for preparation of Confidential Reports.- 1. In spite of the instructions issued by this Department from time to time, confidential reports on Central Government employees are not written expeditiously with the result that complete CR dossiers are not available when employees are considered for confirmation, promotion, deputation to ex cadre posts, etc. This often results in delay in the issue of orders of promotion, etc., and thereby causes hardship to the employees whose cases are due for consideration. To improve this situation and further streamline the procedure for writing the annual CRs of Central Government employees, it has been decided that a



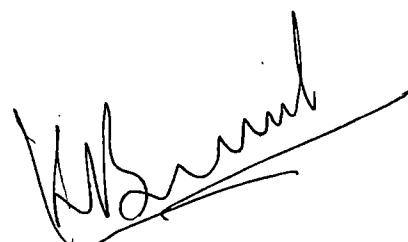
strict time-schedule should be prescribed for various stages in the matter of writing of CRs and this time-schedule should be adhered to by all the authorities concerned. The time-schedule to be followed is given in the enclosed statement and it should be strictly comply with. Any failure on the part of the Reporting/Reviewing Officers to comply with the time-schedule should be viewed seriously and in the absence of proper justification for such delay, the officers superior to the Reporting/Reviewing Officers can issue a written warning for the delay in completing the ACRs and place the warning in the ACR folder of the Reporting/Reviewing Officers concerned. Clarifications in regard to some of the items in the enclosed statement are also given in the succeeding paragraphs for avoidance of doubts.

2. In regard to Item 2 in the time-schedule, it is clarified that a Reporting Officer should not wait till the expiry of the time-limit for self-appraisal of the officer to be reported upon. After the expiry of the first week, if self-appraisal is not received by that time, the Reporting Officer should take it upon himself to remind the officer to be reported upon in writing, asking him to submit the self-appraisal by the stipulated date. It should also be made clear in the reminder that if the officer to be reported upon fails to submit the self-appraisal by the stipulated date, the report will be written without self-appraisal. If no self-appraisal is received by the stipulated date, the Reporting Officer can obtain another blank CR form and proceed to write the report on the basis of his experience of the work and conduct of the officer



reported upon. While doing so, he can also point out the failure of the officer reported upon to submit his self-appraisal within the stipulated time.

3. When the Reporting Officer completes his part of the report and submits the report to the Reviewing Officer for review, he may do so under intimation to the Administration or CR Section/Cell, as the case may be. Thereafter, it shall be the duty of the Administration or CR Section/Cell, as the case maybe, to keep in touch with the Reviewing Officer to secure the timely completion of the CR.
4. The Administration or CR Section/Cell should not wait till the expiry of the time allotted to the Reviewing Officer for the completion of his part of the report. They should remind the Reviewing Officer at least 5 days before the expiry of the stipulated date for completing the CRs, if the completed CRs are not received by that time. If in spite of such reminders, the complete CR is not received by the stipulated time, the fact may be brought to the notice of the officer superior to the Reviewing officer for taken appropriate action.
5. It shall be the duty of the Reviewing Officer to forward the complete CR to the Administration or CR Section/Cell so as to reach them on or before the stipulated date. If, for unavoidable reasons, some delay is expected to occur in forwarding the complete CR, the Administration or CR Section/Cell should be informed suitably and every effort should



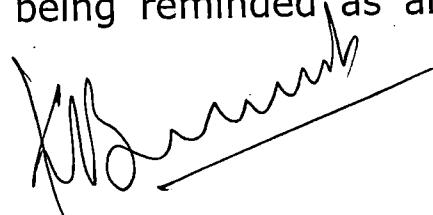
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be made to send the complete CR within one week after the stipulated date.

It may be noted that in Item 3 of the time-schedule attached to this OM, there is a third set of dates. This has been prescribed with a view to giving sufficient time to Reporting Officers who may also be Reviewing Officers for officers two levels below them so that they may have time to keep a watch on the completion of reports by Reporting Officers under them by the due dates prescribed for Reporting Officers. Correspondingly, there is a third set of time-limit in Item 4 also.

6. Where the stipulated dates happen to be holidays or closed days, the working day immediately following the closed day or holiday should be deemed to be the stipulated date.

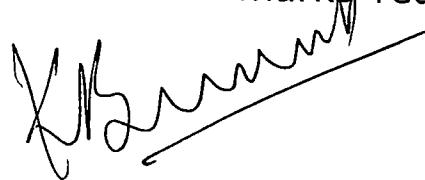
7. It shall be the duty of the Administration or CR Section/Cell to keep a regular watch on the progress in the completion of CRs at different stages. If no intimation is received from the Reporting Officer regarding the submission of the CRs by him to the Reviewing Officer within 5 days after the expiry of the stipulated date for completion of his part of the CR, the matter should be taken up immediately with the Reporting Officer so that the report is submitted by him to Reviewing Officer without any further delay. Similar action should be taken if the complete report is not received from the Reviewing Officer. Any delay on the part of the Reporting/Reviewing Officer, in spite of their being reminded as above,



should be brought to the notice of the Reviewing Officer/officer superior to the Reviewing Officer, as the case may be.

8. Whenever there is a change in the Reporting Officer, it shall be the duty of the Administration or CR Section/Cell to get the report written by the earlier Reporting Officer within 3 weeks of such change, if no self-appraisal by the officer reported upon is required, and within 5 weeks of such change if the self-appraisal by the officer reported upon is required to be given. The reports so written by the earlier Reporting Officer may be got reviewed immediately (without waiting till the end of the calendar year or financial year, as the case may be) within two weeks after the receipt of the report from the earlier Reporting Officer. The successor Reporting Officer writing the report up to the end of the year should adhere to the time-limit specified in the attached statement, provided he has the requisite experience of three months or more of the work and conduct of the officer reported upon."

20. The reply of the official respondents goes on to say that the applicant along with other eligible officers was considered in order of seniority, and on the basis of the performance which is reflected in the ACR and the other aspect's the DPC had recommended the most suitable candidate but it is not clear as to how the ACRs were considered what was the bench marks required,



what other aspects were considered, is neither in the pleadings nor in the files.

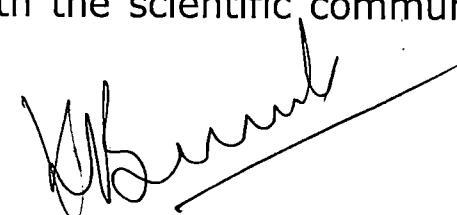
21. So when the applicant laments, "**the question arise whether there is any reservation which exists for yes-men?, is there a project whereby only those who are compliant-fully would be sent up the career ladder?, what is meant by these other aspect?, what is the yardstick adopted by the respondents?, is there any transparent qualificatory bench mark?, how it is assessed and analyzed?, and when he raises these questions, there is deafening silence.**"

22. **No such analysis or even discussion is available in the DPC noting, neither the respondents have cared to explain, nor in the present pleadings, even after repeatedly brought out.**

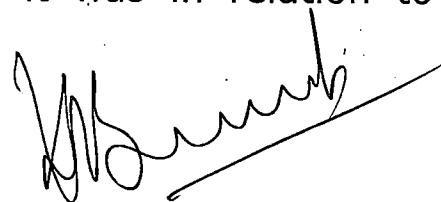
23. Thereafter the respondents go to say that the applicant has not been found fit from vigilance angle. Therefore, it indicates that there must be some vigilance proceeding now pending against the applicant. On being questioned, it could come about that in the same matter, which has been already quashed by the



Tribunal and the quashment now upheld by the Hon'ble High Court of Rajasthan, a matter was pending, therefore, as on its quashment no vigilance angle relating to the matter was available at that time. **The applicant would submit that all these matters were conjured up from nothing, which was only to prevent his promotion to higher ladders as apparently he was found to be not compliant enough with all domains of superior officers.** His objection to the methodology of working of respondent no. 2 was not found favourable, and was considered reflective of disobedience, as he had alleged that the scientific community be dissuaded from holding non-scientific posts, following Minister's assertion. Thus, according to him, it had raised the hackles of the scientific bureaucracy. Following the Hon'ble Minister's assertion in the Parliament that the scientists would be required to manage scientific responsibility alone, and not ordinary administrative responsibility, which would detract them from the original purpose of their employment. This apparent assertion by the Hon'ble Minister and supportive literature were apparently taken at face value by the applicant, and it probably did not find favour with the scientific community, who are

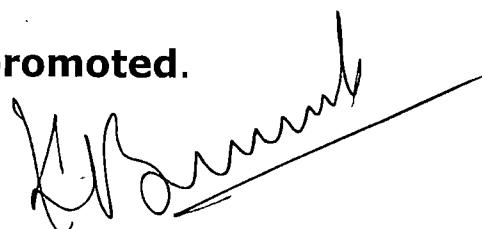


at present the administrative heads of the scientific communities also. The administrative lacunae of the scientific community can be understood but what is more in complexity is the reviewing authority's failure in view of the fact that he is an Administrative Service Officer and should have known things but since he is not a party to this, we are refraining from exposing more than his non-application of mind and virtual abdication of duty. When an issue for resolution appears before a public servant, he is duty bound to consider all the aspects, which are normally arising it in the light of law and rules and analyze properly in the light of natural justice and fairness of the law of the land and pass a fair order. Transparency and in-depth consideration are involved to the Nth degree. **This is more so as specifically the Tribunal had directed the immediate disposal of the representation within 15 days but no regard was apparently given to even this order.** The lengthy reply does not contain anything more expressive than what is already dealt with, other than relying on judicial rulings relating to interim orders vis-à-vis final orders mentioned therein. How it is relevant in the case could not be explained, probably it was in relation to the interim



orders passed by the Tribunal as mentioned earlier but later on vide order dated 15.07.2005, the O.A. had to be amended and a reply to the amended O.A. has also been filed and the Hon'ble High Court had closed that issue.

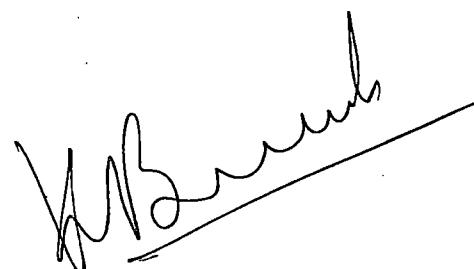
24. The 5th respondent filed a reply basically stating that he was eligible to be considered as per the criteria laid down by the competent authority. But it has been laid down by Supreme Court that DPC has to/can formulate its own procedure, and does not have to give any explanation for the decisions arrived at by it. **What is the criteria which was laid down by the competent authority, if at all there was one, is not available. Whether any criteria was utilized was not discernable in any of the discussion in the DPC. Whether there was any bench mark or whether there was any substance in the vigilance angle to be probed further is also not discernable anywhere, thus the applicant's lament is that he was the meritorious and the next senior available candidate and there cannot be any doubt about that even though merit could not be ascertained he is the next senior most candidate available and hence to be promoted.**



25. Vide order dated 15th January, 2010, the Tribunal had directed the official respondents to file an explanatory affidavit. On April 15, 2010, the said affidavit was filed. The Tribunal had posed certain questions to be answered through the affidavit as it was felt in detailed hearing that the answers on the questions required resolution.

(i). Why the review authority did not choose to go by the printed documentation of the ICAR and rely on it?

It was noted earlier that relating to the qualities of work and fund allocation, an argument raised against the applicant was that funds were not utilized. If funds are not utilized, it is clear that such is the responsibility of the administrative officers, and not the accounts watch dog, but yet in order to find out the correct factual situation involved, this question was posed, especially since the printed brochure of ICAR reported that funds were utilized exceeding the target, thus therefore, **the report was factually wrong and adverse report and adverse comments were factually wrong.**

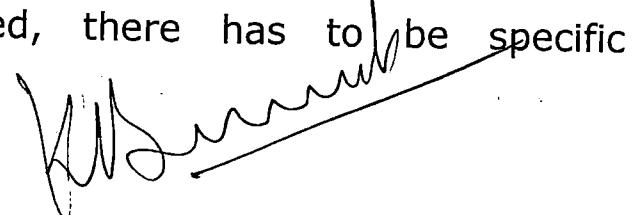
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The answer was that the review authority had gone through all the relevant material and followed the prescribed procedure in disposing the representation of petitioner.

(ii). Why the review authority had not seen it fit to answer the issues raised by the applicant, as it was bound to do so, since, he was sitting in a quasi judicial capacity?

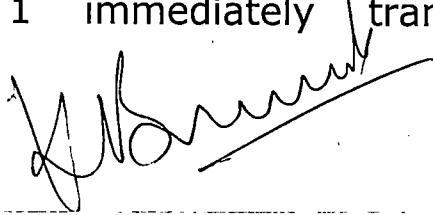
This also elicited a reply that the representation was properly considered and disposed of by the reviewing authority. This question itself was wrong!! The Review Officer of an ACR does not sit in Quasi-Judicial capacity, and this is a purely administrative function. We have already seen that the reviewing authority had not applied his mind to any of the issues raised by the applicant in his representation and the words 'no further evidence is forthcoming' indicate that the reviewing authority may have before itself reached a conclusion before reading the representation, as the evidence to be considered is implicit and explicit in the representation alone and are not extraneous and if at all extraneous explanation is to be considered, there has to be specific



investigation, therefore, this ground also has to be held against the respondents to the effect that the whole procedure is vitiated by non-application of mind and extreme arbitrariness. Whether Judicial or administrative application of mind indicates pervasive fairness and focus?

(iii). Why the reporting officer had deemed it fit to only make a bald denial without any specific averments and why this report was accepted?

When the reporting officer explained in his report the fact of representation filed by the reported officer, it always has to be in line with relevance to the question raised by the reported officer in his representation. The reporting officer respondent No.2 had made a one paragraph denial that he is not having any personal or official enmity with anybody including the applicant and that he had filed a correct report. It is definitely not sufficient, especially, in view of the fact that specific allegations of financial irregularity was made against him and specifically alleging his deep involvement in it by a letter dated 08.01.2002, **which is the time in nexus for the reporting** but the respondent no. 1 immediately transferred the



applicant. This coupled with the fact that the reporting was vague in the extreme and could not be co-related to the reporting made on the implementing officers had made it crystal clear that the reports were contradictory as contained in relation to others equally and parameteria and therefore the bald denial should not have been taken as sufficient. It ought to have been specifically denied and in relation to facts and circumstances which he had noted and observed in the applicant for the year, and be supported by specific correspondence for improving in this regard as provided by the rules. The respondent No.2 has also filed a detailed affidavit supporting the stand taken by him.

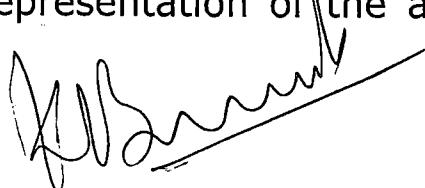
Unfortunately the official respondents had answered that the reporting officer specifically denied any bias or malafide against the petitioner or any other employee of the institute. As if this utterances by the reporting officer was the end of it. **Naturally, he cannot admit his wrong doing. Therefore, the blind acceptance of this denial without any substance is surprising, to say the least.**

John

(iv). **The respondents shall also consider and report why the DPC was held even before the reviewing authority had a chance to look into the matter and pass an appropriate order.**

This also elucidated a bald denial but the official respondents admitted that as per the Rule 8 (ii) in the Swamy's compilation adverse remarks should not be deemed to be operative if any representation is filed within the prescribed time and is pending. **Therefore why is that they proceeded knowingly against the rules?**

It is the admitted case of everybody that the representation was filed within time and it was pending consideration before the DPC was convened and as the DPC was held on 15.10.2004 and the reviewing authority's order was dated 27.12.2004 and its decision was conveyed vide order dated 06.01.2005, therefore even going by the contention of the respondents, while there was a specific stipulation against it, the DPC was held at that point of time against the rules. The question remains as to why the respondents decided to go ahead with the DPC which ought not to have been convened at all. At that time they seem to have admitted that the representation of the applicant was

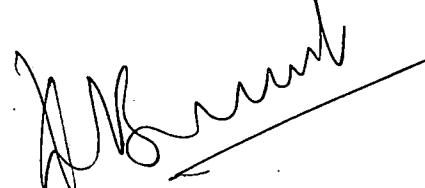


pending. A crucial question also arises as to what would have happened if such a report would not be there before the DPC, then the DPC only had to ignore that year's report and consider other years' reports. Therefore, the answer to all five questions seems to be off the point and a bald and vague denial. **Public authorities being repositories of trust are expected to be more accountable.**

26. The respondent nos. 1,3 & 4 also filed a written submissions / arguments, wherein the crux of the arguments is that the reason for the Director not to write the ACR of the applicant is that the applicant had not submitted his self appraisal in time but this is not disclosed anywhere and even if it is so there are procedures governing that and such has not been undertaken by the respondents. The next ground raised is that the applicant had claimed for plural remedies as the reliefs prayed for by the applicant are not consequential to one another, and as per Rule 10 of CAT (Procedure) Rules, 1987, the Original Application is not maintainable. It is found that all the relief form one stream of exercise and none other. At this stage at the hearing, the respondents would say that the benchmark is prescribed as 'very good' for ensuring element

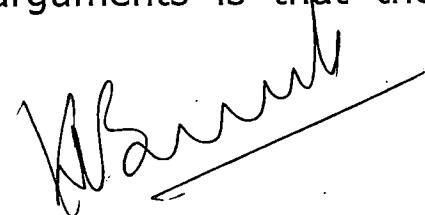


of higher selectivity. Without any doubt a very good bench-mark is a good yardstick to be adopted for higher selectivity, but then there must be a discussion in the DPC proceedings, which would show that which all candidates is at **very good** and where the lacunae obtain. The discussion is not to make an empty formality but a real analysis of the factual matrix. Such findings or such yardsticks or such bench-marks or such application of mind is wholly absent in the DPC discussion so that combined with the methodology of such lack of discussion and not deciding the representation and the disciplinary case as above, earlier mentioned, it raises a cloud of suspicion. Then the respondents go to state in his arguments that the comments of the reporting officer were called for and he denied any bias. Naturally if he was to admit any bias action would have been taken against him but the **reviewing authority ought to have insisted upon his giving reason for the reports on the grounds raised by the applicant in his representation.** Such has not been done. He had not replied or explained the matter even to the smallest degree. Then the respondents go to say that the documents annexed with the representation against the adverse



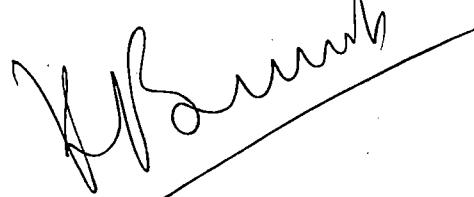
remarks made by the applicant are self-explanatory and which demonstrate and discharge the duties of the applicant and the Institute and his attitude and behaviour towards the head of the Institute i.e. the Director. **Thus, the bias of Director is out of the bay and malafides of the 2nd respondent is now out for all to see from the arguments of the respondents themselves, contends the applicant.**

The challenge raised by the applicant ~~is~~ against the Director is the reason for down grading of the applicant, says he. But then the respondents therefore had a duty, especially when the respondent no. 1 was addressed personally and as a public servant when serious financial irregularities were brought to his notice by the person appointed in that respect specifically he is enjoined to conduct an enquiry into the matter and determine whether the allegations are true or not, and if the allegations are not true, he could have taken action against the applicant, but he chose to transfer the applicant from Jhansi (Uttar Pradesh) to Jodhpur (Rajasthan). Thus, the allegation of the applicant remained unanswered by specific acts of respondent no. 1. The next ground raised by the respondents in their arguments is that the Tribunal



cannot function as an appellate forum in respect of the assessment made by the superior officer about the performance of the applicant working under him. It is trite law that the court of law need not come down to the level of appellate administrative officers, but it must do justice. When the facts disclosed that there are extremely arbitrary actions and Nth degree of non-application of mind and that which extends to a realm of imagination and orders which are passed are against the constitutional mandate and the rules in force, then **it is the duty of any court or tribunal to examine the matter at length and resolve the issues according to the law of the land.**

27. The case of **State of Orissa vs. Jugal Kishore Khatua** report in **1997 SCC (L&S) 1768** was made on the basis of vague allegations, but in this case it is not so. Allegations against the 2nd respondents were specific and in that case there were apparently substantiation of the reports. In this case, unfortunately there is no substantiation of the report by the reporting officer, therefore, the case of **State of Orissa vs. Jugal Kishore Khatua** (^{surpa}) has not even a casual correction in the instant case.



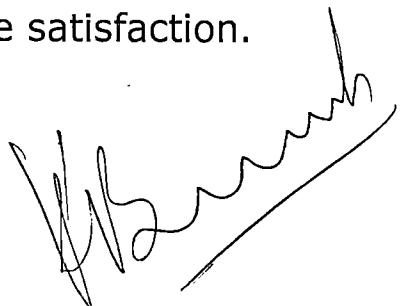
28. Wide discretionary powers, unstructured and unregulated by 'principles', 'standards' or 'guidelines' are likely to be declared unconstitutional being inconsistent with a number of constitutional provisions and in particular Articles 14 and 19. "Principles" involve moral standards by which rules are evaluated 'Policies' are broad statements of general objectives as indicative of intent of such premise whereas legislation involves the transformation of policies into rules. A rule is, thus, a general direction applicable to a number of 'like' situations that may arise in the future. But rules are not primarily tailored to individual circumstances. 'Standards' are more general in direction than rules. Their purpose is to specify policies while obtaining the benefit of flexibility of application. Therefore, when rules are prescribed, the assessment of standards, thus, arising, must be within that parameter. Thus, in **Bachan Singh vs. State of Punjab** reported in AIR 1982 SC 1325, the Hon'ble Apex Court while considering the effect of legislation providing for the death penalty without sufficient guidelines as regards the sentencing policies was condemned as unreasonable and arbitrary and held as unconstitutional. Using the same yardstick, the present

case is that guidelines have been provided but it is apparent that guidelines have been repeatedly breached. Therefore, in that context what is the level of discretion that can be held applicable to executive authorities will be the question. It must be analysed with respect to the quantum and quality of discretion and its exercise.

But then to carry the presumption to the extent of holding that there must be some undisclosed and unknown reason or reasoning for subjecting certain individuals to hostile discrimination is to make the principle of equal protection of laws irrelevant and invalid even without the **Wednesbury Principle** enunciated by Lord Greene, Master of Rolls as reported in 1948 1 Kings Bench 229 'subjective satisfaction' is subject to principles of reasonableness, thus, enunciated in it. The Courts in such a situation would not just accept the plea of the executive of being '**satisfied**' but would look at their record, to see **whether there is any evidence on the basis of which the authority could be so "satisfied"**. Thus, in Biru Mahata vs. District Magistrate, Dhanbad reported in AIR 1982 SC 1539 on a consideration of the affidavit of the authority concluded that the justification

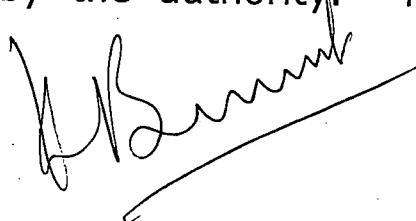
is not borne out by the record. In **Maneka Gandhi vs. Union of India** reported in AIR 1978 SC 597, the Hon'ble Apex Court has held that the 'satisfaction' of the authority must be based on sound material having a nexus with the issue involved. **Here in this case, we have already seen that there could not have been any material available with either reporting or reviewing officer to justify the stand they have taken, and also the printed brochure of the ICAR itself speaks against the conclusion of the reporting officer as well as the reviewing officer.**

In addition, the conclusion, thus, drawn, should have been reflected parimateria in the ACR of the implementing officers; such a question had not been at all answered by the respondents. Thus, as held by the Hon'ble Apex Court in **Bimla Dewan vs. Lt. Governor of Delhi** reported in 1982 2 SCC 470, allegations unsupported by valid reasons cannot be held to be valid and have to be quashed. The Hon'ble Apex Court also held in **Harnek Singh vs. State of Punjab** reported in 1982 1 SCC 116 that a fact relied on which is too distant in point of time cannot be relied on to be the basis of subjective satisfaction.



Thus, 'justiciability' of subjective discretion is a feature of judicial review. In **Maneka Gandhi vs. Union of India** when the Government refused to furnish the reasons; apparently 'in the interest of general public' the Supreme Court has asserted its jurisdiction to scrutinize the claim not to disclose the reasons. The court found that non-disclosure of the reasons was not justified. The Hon'ble Apex Court in **Nandel Khodias Barot vs. Bar Council of Gujarat** reported in AIR 1981 SC 477 has held that when a State Bar Council referred a complaint of misconduct of disciplinary committee without forming its opinion as to whether there was a *prima facie* case, the reference was invalid. Thus, the reviewing authority was bound to consider the representation of the applicant before forming his opinion. Thus, the whole process has become vitiated by not only operating in a vacuum but acting on immaterial considerations such as input from a subordinate officer and non-application of mind. In **Re The Special Courts Bill 1978** reported in 1979 1 SCC 380 it was held that without safeguards against bias even enabling provisions become vitiated and thus held to be contrary to Article 21.

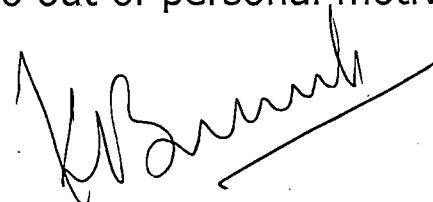
Thus, the requirement of giving reasons for decisions has become the crux of judicial control of subjective discretion, to quote - **Lord Greene MR** he said "**the Court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account or conversely they have refused to take into account or neglected to take into account matters which they ought to take into account.**" This decision is squarely applicable in the present case. Thus, in **Icchu Devi vs. Union of India** reported in AIR 1980 SC 1983, the Hon'ble Supreme Court has held that whenever grounds of exercise of discretion are to be communicated it must be in their entirety. The connected documents must be communicated. The grounds so made known must be seem to be pertinent matters and should comprise of the constituent facts and materials that went in to make up the mind of the statutory functionary and not merely inferential conclusions. Thus, as held by the Hon'ble Apex Court in **Shatini Soni vs. Union of India** reported in AIR 1980 4 SCC 544, the reasons communicated must reveal the whole of the factual material considered by the authority. This kind of



reasoning is totally absent in the present case. The reviewing authority seems to have relied on inputs of another officer. Though the review of an ACR report is not a quasi judicial function, but yet it cannot be delegated, and even to draw the sole input from a subordinate would, thus, vitiate the exercise of such power.

As held by the Hon'ble High Court of Madras in **Mohambaram vs. Jayavelu**, reported in AIR 1970 Madras 63 at page 73 **there is no such thing as absolute or untrammelled discretion, the nursery of despotic power, in a democracy based on the rule of law.** The Hon'ble Apex Court in **S.R. Venkatraman vs. Union of India** reported in AIR 1979 SC 49 held that the compulsory retirement of a civil servant is to be set aside if a discretionary order had been made for an unauthorized purpose, and at such time it is generally unnecessary to infer whether the administrator had also acted in good faith or bad faith. This view is squarely applicable when we consider that on the applicant raising a set of allegations against the Director, he was immediately transferred and the report of the reporting officer had a nexus to this time, therefore, if the rules grant to a

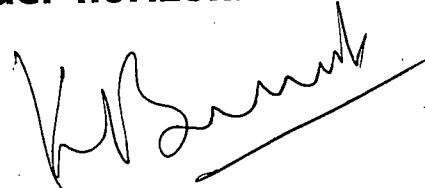
Government department a power it is to be used for such authorized purpose, then power is only validly exercised when it is used by the department genuinely and for that purpose as its dominant purpose, If that purpose is not the main purpose, but is subordinating to some other purpose which are not authorized by law then the department or authority exercises his powers and the action is invalid. The delay of 3-4 years in seeking the self appraisal, the brochure of ICAR being contradictory, etc. reveals the reporting officer's mind. There is no doubt that this report was designed and manipulated. In this context, the Hon'ble Apex Court in **Jagnath Rao vs. State of Orissa** reported in AIR 1969 SC 215 held that the dominant purpose must be identified, therefore, what is the dominant purpose for which after 3 years the blank ACR forms were sent to the applicant when even without it they could have assessed the performance of the applicant is a question which would arise validly. But in this case, the applicant has alleged mala fides against the concerned officers and given the grounds specifically. Malafide literally means in bad faith. Action taken in bad faith is usually action taken with malice in which the person taking the action does so out of personal motives either



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to have revenge against the person against whom action is taken and/or to benefit himself. Action taken in a colourable exercise of powers, that is to say for collateral purposes not authorized by the law under which the action is taken or action taken in fraud of the law are also malafides. ~~This~~ ^u if a person alleging malafide ~~h~~ has shown that action has been motivated by anyone of the considerations above then such action has to be struck down. The pleadings and documents support the view that active malafides exists. It becomes more clear when files are examined.

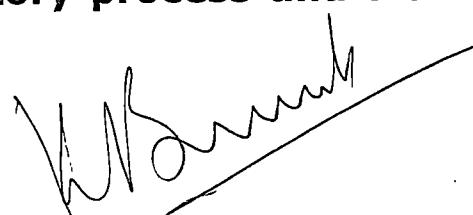
The former **Chief Justice P.B. Gajendragadkar** in his book Law, Liberty and Social Justice (Asia, Publishing House 1965 page 64), said "As soon as the democratic State embarks upon the adventure of achieving the ideals of a welfare state, it inevitably turns to law as its created ally in crusade. The function of the democratic State and its role assume wider proportions and cover a much larger horizon and in assisting the state to achieve these ever expanding objectives, the function of the role of law correspondingly enlarge and cover a wider horizon..... We reach a



stage in the progress of the democratic way of life where law ceases to be passive just as democracy ceases to be passive and the purpose of law like that of democracy becomes dynamic; and that naturally raises the eternal question about the adjustment of the claims of an individual liberty and freedom on the one hand, and the claims of social good on the other. It is a duel which a dynamic democracy has to face and it is in the harmonious and rational settlement of this duel that law has to assist democracy".

Thus, to adjudicate, does not mean to be a passive on looker. Public interest and national interest demands that judicial review to be dynamic, while being responsible and accountable.

29. **Therefore, we find that Annexure A/1 is steeped in malafides, in the realm of imagination and against the concrete facts available on record and the result of malice and bias. The DPC proceedings are devoid of application of mind, a proper foundation, any laying down of transparent bench mark, qualificatory process and discussion**



for the same, and therefore the same is arbitrary and discriminative and illegal.

30. We find that the process adopted by the reviewing authority is devoid of sanction of law, vitiated by non-application of mind and arbitrary. We find that the DPC was convened against the rules in force since it was convened when the applicant's representation was still pending consideration, and therefore devoid of any legal sanctity.

31. Therefore, we declare that the Annexure A/1 dated 16th September, 2004 report submitted by the reporting authority are illegal, unjust, contrary to facts and deserves to be quashed. We declare that the DPC proceedings dated 15.10.2004 to be devoid of legal sanctity as it was convened against the rules in force while the applicant's representation was still pending. We further declare that the respondents have crossed and transgressed the limits of propriety in their actions and inactions, firstly in not responding to the complaint dated 08.01.2002 to not relying on it and to find out the truth, and not taking action against the 2nd respondent for not writing the ACR in time and to take



appropriate proceedings if there was any violation on the part of the applicant at the relevant time. In convening the DPC while the representation of the applicant was still pending and the failure on the part of the competent authority in accepting the proceedings and procedure which exposed total and complete non-application of mind especially in view of the fact that **accounting watch dog is appointed for the purpose of being a watch dog**, and therefore on being the purpose of their appointment itself they are likely to raise angry displeasure of administrative comments. Therefore, the following orders are issued:

(i). Annexure A/1 Memorandum dated 16th

September, 2004, and Annexure A/2 Office Order

dated 04th November, 2004 are hereby quashed

and set aside.

(ii). The respondents are directed to ignore the

ACR of the year 2001-2002 relating to the

applicant, as also the disciplinary proceedings

covered by the Hon'ble Rajasthan High Court at

Jodhpur's judgment as stated above, re-convene a

DPC and objectively consider the applicant's

candidature for the post of Chief Finance &

Accounts Officer / Deputy Director (Finance) in



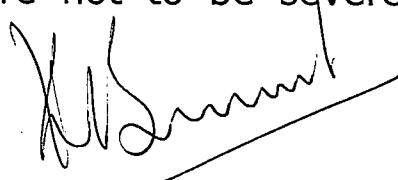
relation to the vacancy which had arisen in 2004, and pass appropriate orders within two months next.

(iii). If the applicant is found eligible to be selected, his promotion shall date back from 21st October 2004 when the vacancy had arisen.

(iv). The Original Application is, thus, allowed as above.

32. Therefore, what are the elements of infraction in this case?

The reporting is seen as contrived and manipulated to achieve an end, as it was tuned to come into fruition at the time of the DPC. The concerned authorities seem to have acted in concert and not the 2nd respondent alone. The multitude of the prejudice, which was apparently heaped on the applicant seems to be totally uncalled for, as the accounting watchdog is employed for being a watchdog. Compliancy in accounting would make the whole process unreal, irrelevant and invalid. It is in the interest of justice to promote dynamism in accounting accountability. Any efforts meant to suppress this are to be eschewed by the society. It is not to say that uncalled for allegations are not to be severely dealt



with. But then, when serious financial allegations were levelled by the applicant against the 2nd respondent, the 1st respondent, without conducting any enquiry, apparently punitively transferred the applicant from Jhansi in UP to Jodhpur in Rajasthan. This punishment has the effect of silencing and making irrelevant the purpose of proper accounting procedures as none would then be daring enough to question improper dealings. All concerned authorities have failed grossly in upholding public interest. The failure of the review authority is most telling.

In order that the public interest shall not fail, a certified copy of this order is to be sent to (1) the Finance Secretary, (2) The Expenditure Secretary and (3) the Comptroller and Auditor General of India, so that these authorities are enabled to have a re-look into the working of such institutions as it is their duty.

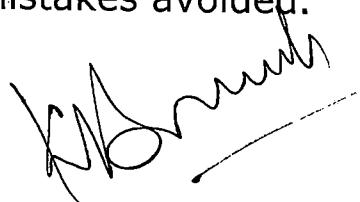
The substance than the form is the criterion to ensure harmony in governance. The Hon'ble Apex Court in **P.C. Wadhwa vs. Union of India and another** reported in AIR 1964 SC 423 has upheld this view and it has held ground all through to even this day.

A handwritten signature in black ink, appearing to read 'V. B.', is written over a diagonal line.

Therefore, relying on vague and technical niceties and propositions, the respondents have collectively prejudiced public interest. They harmed the applicant in the process is just an addition to it. Deliberately and with intent and apparently acting in concert, the accounting procedures have been seen to be suppressed by continued and unabated punitive force. Deriving power from their positions and misinterpretations of rules, a situation was brought about that no accountant will be daring enough to question any irregularity of his superior administrator. This sort of compliance was brought about by the decades long prejudice exerted on the applicant.

In short, all the accounting watchdogs had all their teeth and claws pulled out through fear of reprisal and rendered them obsolete and wanting.

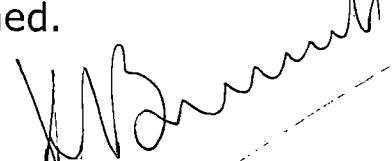
This has caused public treasury and public interest great harm. Unless sufficient restitutive measures are undertaken, the fear of reprisal will continue as an all pervading evil. It is the duty of an adjudicatory body who is also the sentinel of constitutional values and the democratic polity to rise to the occasion and illumine the issues involved so that mistakes be effectively corrected and future mistakes avoided.



33. We have discovered flouting of rules and even basic tenets of justice at every step and unless it is properly contained, administrative arbitrariness of this count, can cause serious lacunae to social order and constitutional mandate, therefore, we impose a cost of Rs.5000/- (Rupees five thousand only) on the respondent no.1 to be paid to the Legal Services Authority of Rajasthan. We also hold that this imposing of cost need not be a burden on the public exchequer and on the shoulder of the common people, the Secretary of Finance is hereby directed to constitute an enquiry to find out the reasons for the failure as illuminated above and the persons who are to be accountable and from whom the said amount is to be recovered. This exercise shall be completed within four months next.

34. The Original Application is, thus, allowed with a cost of Rs.5000/- (Rupees five thousand only). The original files / records are hereby returned.


(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER


(DR. K.B. SURESH)
JUDICIAL MEMBER

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on 9/11/11
See
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Re
Dr
S. Capelito
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