

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No. 456 of 2005.

FRIDAY this the 25th day of April, 2008

C O R A M

**HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

Sanjeeb Kumar Patjoshi IPS
D.I.G., Kerala Police Academy
Rama Varmapuram, Trichur-680 631

Applicant

By Advocates Dandapani Associates, TD Road North End,
Kochi-682 035

Vs.

1 State of Kerala represented by its
Chief Secretary to Government
Government Secretariate,
Trivandrum.

2 Chief Secretary to Government
Government Secretariate
Trivandrum.

3 Inspector General of Police
North Zone, Calicut.

4 Dy. Inspector General of Police
Kannur Range

5 Union of India represented by its Secretary
Ministry of Home Affairs, North Block
New Delhi.

Respondents.

By Advocate Mr. R. Premsanker GP for R 1-4
Advocate Mr. TPM Ibrahim Khan, SCGSC for R -5

O R D E R

HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER

The applicant in this OA is an IPS officer of the Kerala Cadre. He joined the service in the year 1991. Vide letter dated 15.12.2003 the respondent No.2

communicated certain adverse remarks in the applicant's ACR for the period 1.4.2002 to 22.3.2003. The applicant represented against the adverse remarks on 12.1.2004. Vide his communication dated 14.6.2004 the second respondent communicated that the Government, after considering the applicant's representation have decided to expunge some of the adverse remarks while retaining the other remarks. Further representations were made by the applicant for expunging the remaining adverse remarks. As there was no response from the respondents, the applicant has filed this OA seeking the following relief:

- (i) To direct the respondents to expunge the adverse entries made against the applicant in his confidential report during the period 1.4.2002 – 22.3.2003
- (ii) Quash Annexure A1 communication by which adverse entries are made in the applicant's confidential report.
- (iii) quash Annexure A4 to the extent it refuses to expunge adverse entries recorded in the applicant's confidential report in its entirety.
- (iv) Direct the respondents to consider and dispose of Annexure A-5 and A-7 representations.
- (v) Such other orders and directions as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.

2 During the pendency of the OA a few more adverse remarks were expunged by the respondents and this was communicated to the applicant by the letter dated 30.8.2005.

3 In support of the relief claimed, the applicant has contended that the entries in the ACR is not an objective assessment of the work done by him during the period. The reporting officer has not complied with the provisions of Rule 8 to 10 of the AIS (CR)Rules, 1970. The adverse entries do not disclose any particular instance or data based on which the adverse assessment could have been made. The applicant has received very good and outstanding assessment prior to the said period and also during the subsequent periods. In the communication dated 14.6.2004 the respondents have not given any reasons why some remarks were retained, while expunging others. A careful reading of the remaining adverse



remarks would show that they are connected with the those remarks which have been expunged. The applicant had given detailed reasons and justifications in his representation dated 12.1.2004. In particular the applicant had highlighted the vindictive approach of the reporting officer. The applicant had maintained close contact with members of the public. He had earned various commendations from superiors during the period. The report made by the applicant directly to the Kerala Human Rights Commission regarding a custodial rape case in the Calicut Medical College Hospital was questioned by the reporting officer. Such a report was required as per the directions of the National Human Rights Commission. The applicant has replied to all the memos issued by the reporting officer. There was no feedback from the reporting officer that the replies were not satisfactory. The reporting officer has a grudge against applicant for reporting the custodial rape case directly to the State Human Rights Commission.

4 The respondents have contested the OA. It is contended on behalf of the respondents No.1 to 4 that the Government had carefully considered the representation submitted by the applicant. Remarks of the reporting officer and reviewing officer were obtained on the representation made by the applicant. Both the reporting officer and the reviewing officer had recommended rejection of the representation against the adverse remarks. The DGP, however recommend expunging some of the sweeping remarks while retaining others. After careful consideration of the representation made by the applicant and the remarks given by the reporting officer, the reviewing officer and the DGP, Government decided to accept the recommendation of the DGP and expunge some of the adverse remarks and retain the others. The subsequent representations made by the applicant were also considered and some more remarks that were similar to the remarks that were already expunged were also expunged by letter dated 30.8.2005. The applicant had concealed in the OA the fact that he has made a representation to the Kerala Human Rights Commission regarding one of the adverse remarks. Letters of appreciation referred to by the applicant are routinely



given in the Police Department. The applicant has not mentioned about the numerous memos given to him by the reporting officer. The applicant has suppressed that in the d.o. letter dated 24.1.2003 the reporting officer had alerted the applicant about the victim of Marad riot case who was active among fundamentalists. The applicant had ignored the warning about this man. Government has considered the applicant's representations and given relief to the extent possible. Further relief by way of complete expunction is not justified.

5 Respondent No.5 also filed a short reply stating that the applicant could have filed a memorial to the President of India against the decision of the State Government. It is contended on behalf of the respondent No.5 that A-8 showing the service profile of the applicant along with the grading of the applicant in various years prior to the disputed period is a confidential document and therefore it should not have been produced as part of the OA.

6 The applicant has filed a rejoinder. It is contended in the rejoinder that on the issue of the memorial to the President he was given to understand that the subject matter concerns only the State Government. In the case of Mr. B. Upadhyaya, the Tribunal had given the relief although he had also not filed a memorial. The representation to the State Human Rights Commission was only on the limited question of the reporting officer finding fault with him for sending a report to the Commission on the incident of a custodial rape case. The reporting officer had given illegal instructions in three specific cases narrated in the rejoinder. The applicant had taken action on the basis of the contents of the do letter dated 24.1.2003. The incident of May 2003 cannot be attributed to the applicant as he had already left charge of Calicut in March 2003.

7 We have heard the senior learned counsel for the applicant Smt. Sumathi Dandapani and the learned counsel for the respondent No.1 to 4 Shri Premshankar and Mr.TPM Ibrahim Khan for R-5. We have also perused the

documents carefully. The counsel for the applicant relied on the following citations:

- (i) Sukhdeo Vs. Commissioner, Amravati Division, Amravati and another (1996(5) SCC, 103)
- (ii) State of UP Vs. Yamuna Shanker Misra & Anr. (JT 1997(4)SC,1)
- (iii) S. Ramachandra Raju Vs. State of Orissa (JT 1994(5) SC 459)

8 The issue for consideration in this OA is whether the adverse remarks made in the ACR of the applicant for the period 1.4.2002 to 22.3.2003 reflects an objective assessment of the performance of the officer.

9 There is a list of 'Instructions' attached to the ACR Format. It is stated in this list of Instructions that:

"2. Performance appraisal through Confidential Reports should be used as a tool for human resources development. Reporting Officers should realise that the objective is to develop an officer so that he/she realises his/her true potential. It is not meant to be fault finding process but a developmental one. The Reporting Officer and the Reviewing Officer should not shy away from reporting short comings in performance, attitudes or overall personality of the officer reported upon."

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"6 Every answer shall be given in narrative form. The space provided indicates the desired length of the answer. Words and phrases should be chosen carefully and should accurately reflect the intention of the authority recording the answer. Please use unambiguous and simple language. Please do not use omnibus expressions like 'outstanding' 'very good' "good" "average" below "average" while giving your comments against any of the attributes".

10 In **Ramchandra Raju v. State of Orissa (JT 1994 (5) SC 459** the Hon'ble Supreme Court had observed that:


"This case would establish as a stark reality that writing confidential reports bears onerous responsibility on the reporting officer to eschew his subjectivity and personal prejudices or proclivity or predilections and to make objective assessment. It is needless to emphasise that the career prospect of a subordinate officer/employee largely depends upon the work and character assessment by the reporting officer. The latter should adopt fair, objective, dispassionate and constructive comments/commends in

estimating or assessing the character, ability, integrity and responsibility displayed by the concerned officer/employee during the relevant period for the above objectives if not strictly adhered to in making an honest assessment, the prospect and career of the subordinate officer being put to great jeopardy.

11 In State of UP Vs. Yamuna Shanker Mishra and another (JT 1997 (4)

SC1) the Hon'ble Supreme Court had observed that:

"It would, thus, be clear that the object of writing the confidential reports and making entries in the character rolls is to give an opportunity to a public servant to improve excellence. Article 51A(j) enjoins upon every citizen the primary duty to constantly endeavour to prove excellence individually and collectively, as a member of the group. Given an opportunity, the individual employee strives to improve excellence and thereby efficiency of administration would be augmented. The officer entrusted with the duty to write confidential reports, has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately while giving, as accurate as possible, the statement of facts on an overall assessment of the performance of the subordinate officer."

12 In Sukhdev Vs. Commissioner Amravati Division (1996 5 SCC 103),

the Apex Court had observed that:

"When an officer makes the remarks he must eschew making vague remarks causing jeopardy to the service of the subordinate officer. He must bestow careful attention to collect all correct and truthful information and give necessary particulars when he seeks to make adverse remarks against the subordinate officer whose career prospect and service were in jeopardy. In this case, the controlling officer has not used due diligence in making remarks. It would be salutary that the controlling officer before writing adverse remarks would give prior sufficient opportunity in writing by informing him of the deficiency he noticed for improvement. In spite of the opportunity given if the officer/employee does not improve then it would be an obvious fact and would form material basis in support of the adverse remarks. It should also be mentioned that he had given prior opportunity in writing for improvement and yet was not availed of so that it would form part of the records. the power exercised by the controlling officer is per se illegal. The Tribunal has not considered this aspect of the matter in dismissing the petition. The appellant is entitled to reinstatement with all consequential benefits. The appeal is accordingly allowed with exemplary costs quantified at rs. 10,000/- recoverable by the State from the officer who made the remarks."

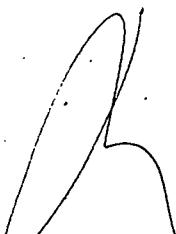
13 The observations of the Apex Court in the above mentioned judgments are relevant to this OA. Basically what the apex Court has emphasised is that the confidential report of an officer shall be an objective account of his performance. It

should not contain vague remarks. Sufficient opportunity should be given to the officer to improve his performance. The comments should be constructive. A perusal of the ACR of the applicant shows that the main grievance of the reporting officer was that the applicant used to attend private functions. This particular aspect has been repeated four times at different places in the report. It is also mentioned in the report that because he attends private functions he has no time for official work. This particular part of the report has been correctly described by the DGP, while giving his observations on the representation of the applicant as sweeping remarks,. It does not necessarily follow that because the applicant has attended some private functions his efficiency has suffered. It may even be argued that inter-action with social groups of good reputation could come in handy in times of law and order situations, and more particularly in dealing with communal disturbances. In any case the reporting officer's conclusion that because he has attended private functions (inaugurations, etc.) he has neglected his work appears to be unwarranted on the basis of the material on record. It is true that the reporting officer has issued several memos to the applicant. The applicant has stated that he has replied to these memos. No further feedback from the reporting officer is available on record. On the other hand the minutes of two conferences of the Police officers of the Kannur Range is on record. One conference is dated 14.8.2002 and the other is dated 10.1.2003. Both the conferences took place during the period of the ACR. The applicant and the reporting officer had attended these conferences. It is recorded in the minutes of the conference dated 14.8.2002 that 'the performance of the field officers in Kannur Range has been excellent and should be maintained'. There were no adverse comments in these meetings about the crime situation or law and order problem in the city of Kozhikode where the applicant was the Police Commissioner. In contrast it is on record that the reporting officer asked the explanation of the applicant regarding the report he directly sent to the State Human Rights Commission on the custodial rape in the local Medical College. The applicant's contention that he is required, as per the instructions of the

National Human Rights Commission, to send such report within 24 hours to the State Human Rights Commission has not been disputed by the respondents in their reply. It cannot be ignored that this incident has perhaps adversely affected the working relationship between the applicant and the reporting officer. The State Human Rights Commission in its report dated 16.6.2006 has taken exception to the issue of the memo on this issue to the applicant.

14 It is mentioned in the list of Instructions attached to the ACR Format that omnibus expressions such as 'good', 'average' should not be used while giving comments on any of the attributes. But a perusal of the ACR shows that in respect of column No.4 dealing with decision-making ability, column No.6 on the ability to inspire and motivate, column No.8 on inter-personal relations, in column No.11 on personnel management, in column No.13 on effectiveness in maintaining communal harmony, column No.14 interest in policemen's welfare, in column no.16 sociability, quickness of response, dedication to duty attention to detail, ability to withstand pressure ability to take principled stand the word 'average' has been used to describe the capacity of the officer. Altogether the word 'average' has been used to describe eleven different attributes of the officer.

15 It is no doubt true that the State Government has given due consideration to the representations submitted by the applicant against the adverse remarks. On two different occasions the State Government at the level of the Chief Secretary has communicated the decision to expunge some of the remarks. The Tribunal has noted with appreciation the seriousness with which the State Government has considered the representations. We also note the concern of the Government in maintaining discipline in the State Police. However on consideration of the whole record we are of the considered opinion that the remarks in the ACR are of a sweeping nature. It has not been written by keeping in mind the very purpose of writing the ACR namely human resource development. As rightly mentioned in the list of Instructions the objective of the



ACR is to develop an officer so that he/she realises her true potential. While the shortcomings in the performance of the officer have to be covered, the overall tone and tenor of the report should be developmental, not one of fault-finding. The impression that one gets from reading of the ACR is that the officer is a thorough failure as the Calicut city Police Commissioner, but this is not coming out from the other material on record. The zonal conferences do not indicate that policing in the city had gone to shambles during the applicant's tenure. The only specific incident of alleged negligence in professional duty brought on record is the reaction of the applicant to the d.o. letter from the reporting office dated 24.1.2003 alerting the applicant about one individual potential trouble-maker. The margin remarks of the applicant that the name of the alleged trouble-maker seems to be different has been taken by the reporting officer to argue that no follow-up action was taken by the applicant. In fact it is seen from the margin remarks of the letter that the applicant has only recorded what was told to him by the Asst. Commissioner (ACP). It is also seen that a similar letter was received from IG Intelligence on 18.1.2003 on the basis of which the applicant had taken action and a report was obtained from the ACP. Besides this one instance no evidence has been produced to support the contention that the performance of the officer deserved such adverse remarks.

16 We have looked at the remarks that have been expunged and compared them to what have not been expunged. The following remarks have been expunged by the State Government:

By letter dated 14.6.2004

"The officer is not at all dedicated to his official work. He was only interested in attending private functions. The officer's ability in handling various situations was not up to the mark. The officer is in the habit of claiming credit for every good thing that happened without actually doing the same. Higher performance standard is required in all aspects of police work".

By letter dated 30.8.2005

"He was always busy in attending the private functions which include inauguration of veg and non-veg cafe, colour labs, marble

gallery etc. He attends private functions even outside his jurisdiction, leaving the jurisdiction without seeking any prior permission from his superior officers."

"The officer attended official works only when there were no private functions to attend. The officer was not dedicated to his official work"

"The officers' capacity in handling the unforeseen situation was average."

17 The unexpunged portion of the ACR reads as follows:

A. Nature and quality of work

1 Please comment on Part II as filled out by the Officer and specifically state whether you agree with the answers relating targets/goals/objectives, achievements and shortfalls-Also specify constraints, if any, in achieving the objectives.

"I do not agree with the answers relating to the achievements. The officer had no time for official work. None of his inspections were indepth. No report including his weekly diaries were received in time. As he was always busy in private functions the officers above him had to carry out a urgent law and order and crime work through middle level officers. The details of memos issued, reports forwarded would show the state of affairs".

4 Decision making ability (Please comment on the quality of decision making and on ability to weigh pros and cons of alternatives)

The ability of the officer in making decisions was average.

6 Ability to inspire and motivate

The ability of the officer to motivate and obtain willing support was average.

8 Inter-personal relations and teamwork

The officer's capacity to promote team spirit was average

11 Personnel Management

The ability of the officer to assume responsibility was average. The organising capacity of the officer was also average

12 Effectiveness in supervising Investigation

The officer instead of effectively supervising the investigation of sensitive cases as per policies procedure, joins others in taking up the work of others, leaving his original work

aside.

13 Effectiveness in maintaining communal harmony

The capacity of the officer in maintaining communal harmony was average.

14 Interest in Policemen's Welfare & their families.

Interest of the officer in policemen's welfare is average.

16 Traits/Special Abilities

(iii)	Dedication to duty	-	Average
(iv)	Appreciation of situations and quickness of response	-	Average
(v)	Attention to detail	-	Average
(vi)	Ability to withstand pressure/stress	-	Average
(vii)	Ability to take a principled stand	-	Average

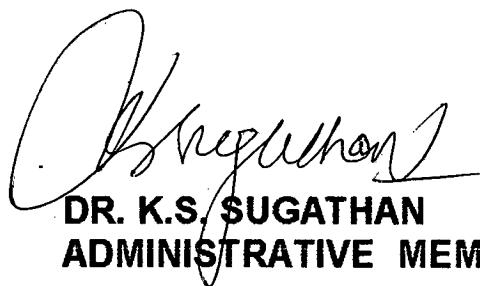
18 It is seen from the above comparison that the remarks now left relate to his 'average' capacity in respect of several attributes and lack of in-depth inspections. As discussed supra the description of an attribute by the word average is contrary to the instructions issued by the Government of India. The remark at column No.A12 regarding investigation of sensitive cases as per procedure is actually vague, though the applicant has connected it to the custodial rape case reported by him directly to the State Human Rights Commission. The applicant has only followed the instructions of the NHRC in making the report to the State Human Rights Commission. Therefore this adverse remark is also not sustainable. What is now left is lack of in-depth inspection and weekly diaries. This portion occurs in the same paragraph in which the reporting officer refers to the applicant's tendency to attend private functions and neglect his office work. The references to his attending private functions have been expunged. Therefore the remaining part of the paragraph cannot be sustained in isolation.

19 On an overall assessment of all the adverse remarks taken together we are of the considered opinion that all the remarks are inter-related. These adverse

remarks also cannot pass the test of objectivity underlined by the judgments of the Hon'ble Supreme Court cited by us in the preceding paragraphs.

20 For the reasons stated above, we have no hesitation in concluding that all the adverse remarks deserve to be expunged. The O.A. is therefore allowed. The respondents are directed to expunge all the remaining adverse remarks communicated by the respondent No.2's letter dated 15.12.2003 within a period of three months from the date of receipt of copy of this order. No costs.

Dated 25th April, 2008



DR. K.S. SUGATHAN
ADMINISTRATIVE MEMBER



DR. K.B.S. RAJAN
JUDICIAL MEMBER

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