

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 363 OF 1990
T.A. No.

DATE OF DECISION 26-3-1991

Alphonse Louis Earayil Applicant (s)
M/s CP Sudhakara Prasad, Babu Mathew,
P Joseph & Raghuraj Advocate for the Applicant (s)

Versus

Secretary to Govt. of India Respondent (s)
M/o Home Affairs, Central Secretariat,
South Block, New Delhi & another

Mr K Prabhakaran, ACGSC Advocate for the Respondent (s)-1
Mr PV Mohanana- Government Pleader for respondent-2

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? Y
4. To be circulated to all Benches of the Tribunal? Y

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

Shri Alphonse Louis Earayil, a senior member of the Indian Police Service of the Kerala cadre has filed this application under Section 19 of the Administrative Tribunals Act praying that the adverse entries made in his confidential report for the period between 1.4.1983 to 4.6.1983 and 5.6.1983 to 11.11.1983 communicated to him by Annexure-A1 dated 2.2.1985 by the second respondent may be expunged and that the Annexure-A2 order dated 26.6.1986 rejecting his representation against the above said adverse entry and Annexure-A3 dated 3.5.1989 turning down the memorial submitted by him to the President may be quashed. The facts of the case as averred in the application can be briefly stated as follows.

2. The applicant who belongs to the 1974 batch of the Indian Police Service allotted to the Kerala cadre was working as Commissioner of Police, Trivandrum City from 30.1.1983 to 11.11.1983. During this period he had been putting in his best efforts to maintain law and order, to unearth undetected crimes, to bring about better Police-public relations and to implement welfare measures for the members of the Police force. By his utmost devotion to duty he was able to bring about overall improvement in the law and order situation in the City, to better the relationship between the Police and the public, to improve the method of regulation of traffic and the welfare measures for the Police force. The successful efforts of the applicant in settling the dispute regarding seniority of Constables, Head Constables and Havildars was highly appreciated by the Director General of Police who had congratulated the applicant for having solved the issue of interse seniority and having settled the matter within a short time. The weekly diaries of the applicant for the period from 1.4.1983 to 11.11.1983, copy of which is annexed as Annexure-A5 would show that the applicant has been strenuously working from morning till late in the night and that his superior officers had no occasion to point out any defect in the manner of the execution of the work by the applicant. He had been implementing the orders of his superiors earnestly and promptly. The only instance where the Director General of Police had called for the explanation of the applicant was when vide D.O. letter No.K1-51068/83 dated 19.10.1983 he was asked to explain why

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Police protection for the eviction of certain shop keepers within the Medical College Police Station limits was withdrawn on 14.10.1983. The Police protection was withdrawn at the direction of the Hon'ble Home Minister and the Deputy Inspector General of Police. This fact was explained by the applicant to the D.G. of Police in his reply dated 8.11.1983 at Annexure-A7. But the applicant received another D.O. letter at Annexure-A8 regarding the very same matter. The applicant has submitted his explanation at Annexure-A9 on 10.11.1983. Apart from these two communications ~~expressing displeasure over his work and conduct during the term when he was functioning as Commissioner of Police, Trivandrum City.~~ there had been no occasion for the superior officers of the applicant to express displeasure over his work and conduct during the term when he was functioning as Commissioner of Police, Trivandrum City. Though the applicant had functioned as Commissioner of Police, Trivandrum City in a very effective manner without giving any room for complaints or without incurring any displeasure of his superiors, he received Annexure-A1 communication dated 2.2.1985 issued by the second respondent which reads as follows:

"Observations have been made in your Confidential Reports for the period from 1.4.1983 to 4.6.1983 and from 5.6.1983 to 11.11.1983 that you are a good officer who had discharged your duties extremely well, that you take interest in crime and law and order work, that you were always available for all important duties and that you keep an excellent relationship with the public and have good control over your subordinates. It has also been observed in the reports that you were not as active as you should be and the quality of your executive work leaves much to be desired and that you were a failure as Commissioner of Police, Trivandrum.

This is communicated to you as required under Rule 8 of the All India Services (C.R) Rules, 1970.

The receipt of this letter may be acknowledged in the duplicate copy enclosed herewith and the same returned to me at the earliest."

On receipt of the above communication, the applicant submitted a representation at Annexure-A4 dated 21.2.1985 to the second respondent. In this representation the applicant had brought to the notice of the second respondent the good work done by him as Commissioner of Police, Trivandrum City during the period in question with a view to demonstrate that the adverse entry in his confidential report was really not warranted and requested that the above entry may be expunged. He had also requested that as he was not aware of any instances which prompted the authorities to make adverse entry in his confidential report he may be informed of the facts or instances on which the adverse comments were offered by the authorities. This representation was rejected by the second respondent by Annexure-A2 order which reads as follows:

"My dear Alphones,

Please refer to your D.O. letter No.1/Confidential /85 dated 22.2.1985 regarding the adverse remarks in your Confidential Reports for the period from 1.4.1983 to 4.6.1983 and from 5.6.1983 to 11.11.1983. Government have considered your representation under rule 10 of the All India Services(C.R) Rules, 1970 and decided not to interfere with the remarks already recorded in your Confidential Reports. Your representation in the matter stands rejected.

Yours sincerely,"

Dissatisfied with the above order which was passed ^{ing} ~~without consider~~ according to the applicant ^{the} points raised in his representation, the applicant submitted a memorial dated 17.10.1988 at Annexure-A10 to the President of India. The Home Department of the Government of India has rejected this memorial by the

impugned order at Annexure-A3 which reads as follows:

"Sir,

I am directed to refer to State Government's letter No.108/88-GA(SC) dated 7.11.1988 on the above subject.

2. This Ministry has considered the Memorial of Shri Alphonse Louis Earayil, IPS (Ker:74) for expunction of adverse remarks in his ACR for the period 1.4.83 to 4.6.83 and from 5.6.83 to 11.11.83 but it has not been found possible to accede to same.

3. The officer may please be informed accordingly.

Yours faithfully,"

Dissatisfied with this rejection of his memorial and the Annexure-A1 and A2 orders, the applicant has filed this application for having these orders set aside saying that the impugned entry in his ACR may be ordered to be expunged. It has been averred in the application that a reading of Annexure-A1 shows that the comments made in the ACR of the applicant are mutually contradictory, that the adverse entry has no factual foundation, that no specific instances of shortfall has been mentioned, that the communication of the adverse entry has been made long after the applicant ceased to be the Commissioner of Police, Trivandrum City and that the second respondent has rejected his representation with a cryptic order without paying heed to his request to be informed of the facts on which the adverse entry was founded and that the Annexure-A3 order issued by the Home Ministry is without jurisdiction.

3. A reply affidavit was filed on behalf of the first respondent, the Secretary to the Government of India, Ministry of Home Affairs. Though the second respondent, the Chief Secretary to Government of Kerala was notified and though

Shri PV Mohanan, Government Pleader filed Vakkalat for the second respondent, no statement was filed on behalf of the second respondent. In the reply statement filed on behalf of the first respondent, it has been stated that the adverse remark in the ACR of the applicant was recorded on an objective assessment of his performance during the relevant period, that the representation submitted by him has been properly considered by the State Government and that the memorial submitted by the applicant had been disposed of by the Ministry of Home Affairs who is the competent authority under the delegated powers as provided under Article 77 of the Constitution of India and that therefore the applicant is not entitled to the relief claimed in this application.

4. We have heard the arguments of the learned counsel on either side and have carefully gone through the documents produced. The Annexure-A1 by which the adverse entry in the ACRs of the applicant for the relevant period has communicated ^{reads} /as follows:

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"Observations have been made in your Confidential Reports for the period from 1.4.1983 to 4.6.1983 and from 5.6.1983 to 11.11.1983 that you are a good officer who had discharged your duties extremely well, that you take interest in crime and law and order work, that you were always available for all important duties and that you keep an excellent relationship with the public and have good control over your subordinates. It has also been observed in the report that you were not as active as you should be and the quality of your executive work leaves much to be desired and that you were a failure as Commissioner of Police, Trivandrum."

The learned counsel for the applicant inviting our attention to the above referred communication argued that the former

part of the communication is directly in conflict with the latter part and if the former part is believed, the latter part cannot be true. We are inclined to accept the argument of the learned counsel. In the former part of Annexure-A1 it has been stated that the applicant had been discharging his duties extremely well, that he had been taking interest in crime and law and order work that he was always available for all important duties and that his relationship with public and control over staff had been amply good, excellent and respectfully. In the wake of the above observation the latter comment that he has not been effective as Commissioner of Police does not appear to be sound as it is inconsistent with former part. Entries in a confidential report have got far reaching consequences in making or marring the career of an officer. The Reporting and Reviewing Officers have a solemn duty to evaluate the work and conduct of the officer unambiguous reported upon in an objective/and dispassionate way. The very object of writing confidential report is to have a correct assessment of the qualities of the officer, his work and conduct. If the report is written in a mutually inconsistent and ambivalent manner, it will not give a correct picture regarding the work and conduct of the officer. The applicant has been submitting weekly diaries of his work during the period he has been working as Commissioner of Police and the copies of the reports for the period in question have been produced by the applicant at Annexure-A5. The superior officers of the

applicant had been in receipt of these reports. The second respondent has not filed a reply statement soas to enable us to understand whether there has been any instance which damaging of the applicant justified the/remark in the ACR₄ that the quality of his executive work had left much to be desired and that he was a failure as a Commissioner of Police, Trivandrum City which observation is as observed by us absolutely inconsistent with the observation that he had been discharging his duties extremely well. For this reason alone, the adverse entry in the ACR of the applicant for the period in question communicated under Annexure-A1 is liable to be quashed. The object of communicating adverse entry is to give an opportunity to the officer reported upon to understand his shortfalls and to correct himself. So it is necessary that the adverse entry should be communicated without delay. Rule 5 of the All India Services(Confidential Rolls)Rules, 1970 reads as follows:

"5. Confidential reports-(1) A confidential report assessing the performances, character, conduct and qualities of every member of the Service shall be written for each financial year, or calendar year, as may be specified by the Government(ordinarily within two months of) the close of the said year."

Rule 8 reads as follows:

"Communication of adverse remarks-(1) Where the confidential report of a member of the service contains an adverse remark, it shall be communicated to him in writing together with a substance of the entire confidential report by the Government or such other authority as may be specified by the Government ordinarily within two months of the receipt of the confidential report and a certificate to this effect shall be recorded in the confidential report."

In this case the confidential report mentioned in Annexure-A1

was for the period commencing from 1.4.1983 to 11.11.1983.

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This report should have been written within 2 months from 1.4.1984 and should have been communicated within two months after it was received by the second respondent. But we see that the impugned communication Annexure-A1 was sent only on 2.2.1985 long after the applicant ceased to be Commissioner of Police, Trivandrum City. So if the object of communication of the adverse entry was to give an opportunity to the applicant to note his shortfalls and to correct himself then a communication of the same after he ceased to be a Commissioner of Police Trivandrum City is not achieved. This aspect gives rise to an inference as pointed out by the learned counsel for the applicant that the adverse entry and the communication thereof have not been made for the purpose and with the intention of improving the work and quality of the applicant.

5. The applicant in his representation against the impugned adverse remark in his ACR had pointed out that the adverse entry is in conflict with the other entries in the report, and that a proper evaluation of his work the details of which are given in Annexure-A4 does not warrant the impugned remark and had also requested the second respondent to inform him of the factual basis, if any, for making the adverse comments. From Annexure-A2 it is seen that the points raised by the applicant and that in his representation at Annexure-A4 have not been adverted to/ the applicant had not been informed of the instances or facts which prompted the Reporting Officer to make the adverse comments order as requested by him. Annexure-A2/is a cryptic one which does not disclose any application of mind at all.

6. In disposing of the representation submitted by the applicant against the entry in the ACR, the second respondent was discharging a quasi-judicial function. As a statutory authority he is expected to consider the facts mentioned in the representation call for the records. It is necessary, to verify the correctness of the averments made therein and to give a personal hearing to the applicant if in order he felt it necessary/to take a just and proper decision as to whether the adverse entries should stand or should be deleted. Further, after considering the representation and the facts borne out by records, he is expected to give a decision reason for the/ stating explicitly the ground on which the conclusion was arrived at. The Supreme Court has held in Gurdial Singh Fijji V. the State of Punjab & others, 1979(1) SLR, 804 as follows:

"The principle is well-settled that in accordance with the rules of natural justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified....."

In his representation at Annexure-A4 the applicant had given an account of the good work performed by him as a Commissioner of Police, Trivandrum City and stated/that there has been no occasion for him to incur the displeasure of his superiors or to receive any adverse criticism. He has also stated in the representation that his superior officers had been closely

assessing his work constantly as they were being informed of the day today work by his weekly diaries. He had requested the second respondent that he may be informed of the facts or instances on which the adverse comments have been entered in the ACR by the authorities. In disposing of such a representation, in our view, the second respondent should have informed the applicant of the material, if any, relied on for the purpose of making adverse entry in the ACR and given him an opportunity to explain the circumstances. Not only that the applicant was not informed of the materials relied on for making the adverse entry, the second respondent has not given any reason for rejecting the representation submitted by the applicant in the impugned order at Annexure-
A2. It is well settled law that an authority/makes an order in exercise of quasi-judicial function it should give the reasons to support the order. The Supreme Court has in Siemens Engineering & Manufacturing Co. of India Limited case(AIR 1976 SC 1785) observed as follows:

"If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative Law they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders by them. Then alone administrative authorities and tribunals, exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law."

In AK Kraipak V. Union of India, AIR 1970 SC, 150, the Supreme Court has observed as follows:

"The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely (i) no one shall be a Judge in his own cause (nemo debet esse judex propria causa) and (ii) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice."

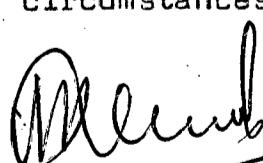
To prevent miscarriage of justice and to secure fair play are the objects underlining the rules of natural justice. The requirement of recording reason for its decision by an administrative authority exercising quasi-judicial function is to achieve the object of avoiding chances of arbitrariness and securing fairness in adjudication. In this case we are of the view that in rejecting the representation Annexure-A4 by the impugned order at Annexure-A2, without considering the facts mentioned by the applicant in the representation, without informing him the basis on which the adverse comments have been offered and without giving the reasons for his decision to reject the representation, the second respondent acted arbitrarily, capriciously and in total disregard of the principles of natural justice. Though the second respondent was notified and the learned counsel had filed a Vakkalat on his behalf, it is curious to note that no reply statement was filed on behalf of the second respondent controverting the averments in the application that the representation was not properly considered and that the impugned order at Annexure-A2 was unsustainable. If as a matter of fact the

second respondent had given due consideration to the facts mentioned in the representation, one would expect the second respondent to file a statement as to how the representation was considered and what ^{was} the basis for the decision. Though the applicant had averred in the application that there is absolutely no factual basis for making the impugned adverse entry in the ACR, the second respondent who has decided to reject the representation and to allow the adverse entry to even at this stage before us, stand has not come up/with the material which justified such a decision atleast before this Tribunal. The impugned order at Annexure-A2 therefore is unsustainable in law.

7. The applicant had submitted a memorial to the President. Annexure-A10 is a copy of the said memorial. This memorial was disposed of by the Ministry of Home Affairs and the information was conveyed to the applicant through the second respondent by order dated 3.5.1989 at Annexure-A3. The learned counsel for the applicant argued that the Ministry of Home Affairs had no jurisdiction to dispose of the memorial submitted to the President. The learned counsel argued that, to dispose of a memorial submitted to the President by a Member of the All India Service under Rule 25 of the All India Services (Discipline and Appeal) Rules is a statutory function of the President and that the Ministry of Home Affairs has no authority to take a decision on such memorial. The learned counsel for the first respondent argued that under Article 77 of the Constitution, the Ministry has got delegated powers to

dispose of the memorial addressed to the President. But since the memorial was addressed to the President, the disposal thereof should have been in the name of the President. Even if under delegated powers, a subordinate authority has considered the memorial the order should have been issued in the name of the President. As such, Annexure-A3 does not disclose that the memorial was considered and disposed of by the Ministry for the President. Therefore the case of the applicant that the disposal of the memorial is not valid and proper has to be accepted.

8. On the basis of the above discussion we hold that the adverse remarks made against the applicant in Annexure-A1 is uncalled for and unsustainable, that the Annexure-A2 order rejecting the applicant's representation is null and void since it was passed arbitrarily without observing the principles of natural justice and that the disposal of the memorial by the Ministry of Home Affairs is without authority. In the result, we quash Annexure-A1, A2 and A3 orders and order that the adverse entry in the ACR of the applicant for the period between 1.4.1983 to 4.6.1983 and from 5.6.1983 to 11.11.1983 communicated to him under Annexure-A1 should be expunged. In the circumstances of the case, we make no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER

26/3/91


(SP MUKERJI)
VICE CHAIRMAN

26-3-1991

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