

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

**Original Application No.179/2009
This the 19th day of February 2013**

**Hon'ble Mr. Justice Alok Kumar Singh, Member (J)
Hon'ble Mr. D.C. Lakha, Member (A)**

Amitabh Thakur, aged about 41 years, son of Sri Tapeshwar Narayan Thakur, resident of 5/426, Viram Khand, Gomti Nagar, Lucknow (presently posted and working as Superintendent of Police, Intelligence, Faizabad)

...Applicant.

By Advocate: Applicant in person.

Versus.

1. Union of India, through the Secretary, Ministry of Home Affairs, Central Secretariat, New Delhi.

2. State of U.P., through the Principal Secretary (Home), Civil Secretariat, Lucknow.

3. Director General of Police, Uttar Pradesh, DGP Head Quarters, Lucknow.

4. Sri S.N. Singh, IPS, the then Deputy Inspector General of Police, Gorakhpur Range, Gorakhpur (now c/o Office of the Director General of Police, UP, 1, B.N. Lahiri Marg, Lucknow.

.... Respondents.

By Advocate: Sri Rajendra Singh for Resp.Nos.1 & 4.

Ex-parte against respondents Nos. 2 & 3.

(Reserved on 06.02.2013)

ORDER

By Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

In this O.A. reliefs have been sought in the following manner :-

“(a). issuing/passing of an order or direction setting aside the impugned adverse remarks

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endorsed in the Annual Confidential Report of the applicant for the year 1998-99, as communicated to the applicant on 23.5.2007 by the Deputy Secretary, Government of Uttar Pradesh, Home (Police Services), Lucknow vide DO letter No-1470/VI.Pu.Se.-2-06-507 (20)/06 dated 23.05.2007 and as mechanically and arbitrarily endorsed by the Government OM No-237DG VI.Pu.Se.-2-09-507 (3) 2004 dated 16.03.2009 completely overlooking the valid and logical issues raised by the applicant in his various representations (particularly those dated 5.11.2007 and 27.01.2009) as also by summarily rejecting the instruction given by the Hon'ble Tribunal as regards keeping in view the legal issues raised before the Hon'ble Tribunal and finally again passing a mechanical and cryptic order through the Government OM No-532DG/VI.Pu.Se.-02-2011-507 (3)/2004 dated 26.04.2011.

(b). issuing/passing of an order or direction to the State Government to conduct a detailed enquiry into the abnormal delay in communicating the adverse remarks to the applicant on 23.05.2007 and fixing responsibility for this delay in a case where the matter took nearly 8 years instead of the prescribed period of 7-8 months as per the Confidential Rolls rules.

(c). issuing/ passing of an order or direction to the State Government to conduct a detailed enquiry into the abnormal delay in deciding the representation given by the applicant on 5.11.2007 and fixing responsibility for this delay in a case where the matter took nearly 18 months instead of the prescribed period of 3 months as given under Rule-10 of the AIS (Confidential Rolls) Rules, 1970.

(d). issuing/passing of an order or direction to the State Government to conduct an enquiry into the adverse comments written in the most blatant, obnoxious, flagrant and irresponsible manner by Sri S.N. Singh, the then DIG Range, Gorakhpur completely defeating the purpose of writing an ACR and using it as a tool to settle some kind of "personal scores" and to pour in his bias and malice, if the Hon'ble Tribunal through all the points raised before it feels convinced of such a bias and malice.

(e). issuing/passing of an order or direction to the State Government to conduct a detailed enquiry into how and on what basis the Respondent No.4 wrote that the applicant is a chronic ashtematic patient and hence not fit for field duty and duty punish the concerned officer for his irresponsible remarks.

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(f). issuing/passing of an order or direction to the State Government to conduct a detailed enquiry into how Sri S.N. Singh wrote about rumours of aspersions on the applicant's integrity at the same time certifying it, overlooking and discarding the procedure and provisions prescribed in OM No.51/4/64-Estt (a) dated 21.06.1965 issued by the Ministry of Home Affairs, so clearly mentioned in the Note on this subject in Form I related with the ACR of the IPS officers.

(g). issuing/passing of any other order or direction for making an enquiry against those offices who are responsible for this huge delay in this particular case as per the provisions of rule 4 (3), 4(4) and 7 of the Uttar Pradesh Sarkari Sevak (Pratikul Varshik Gopniya Reporton ke virrudh Pratyavedan aur sahbaddh mamlon ka Niptara) Niyamavali 1995 and to get them punished as per the various provisions of laws prevalent in this regard.

(h). issuing/passing of any other order or direction for making an adequate compensation to the applicant for the long suffering he had to undergo and the extreme mental anguish and department/ service-related torture he had to suffer because of this biased and malafide act of Sri S.N. Singh and the huge delay made in the entire process."

2. At the outset, it may be mentioned that out of the above reliefs, at the time of final arguments, the applicant pressed only Relief-(a). The rest of the reliefs were not pressed and therefore, the relevant averments pertaining to the above relief only are being mentioned here.

3. Briefly stated, the relevant facts pertaining to relief (a) are that the applicant is an officer of Indian Police Service of 1992 Batch, (U.P. Cadre). The ACR in question for the year 1998-99 pertains to the period when the applicant was serving as Superintendent of Police, Deoria. During the period of his posting from 29.03.1998 to 11.07.2000 at Deoria, Sri S.N. Singh was the then Deputy Inspector General of Police, Gorakhpur Range,

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Gorakhpur for the most of the period till the time he got transferred on 23.12.1999. In this capacity as DIG, Range and immediate supervisory officer he (R-4) wrote the aforesaid ACR of the applicant when the applicant presented his ACR for the said period after filling up the relevant portion of the form. He made the following adverse remarks on different counts;

“ The details filled by the officer in Part-II are correct only to the extent that the description of duties and goals/targets/objectives spelt out by him are correct.” But, the achievement level is not true. There have been many shortfalls in the achievements of targets/goals and objectives. The claim of the officer that he placed special emphasis on visiting scenes of crimes is not true. Similarly, his claim making special efforts to reduce tensions in individual cases at village level is superfluous. His knowledge of law is satisfactory but its application in police working is poor. His knowledge of police rules is satisfactory but does not apply them systematically in the police working. He does not take decisions at all and allows the matter to linger or takes favoured decisions. Since, he does not take unbiased decisions, he does not weigh pros and cons of his decisions. Most of his subordinates get demotivated. Many of them feel disgusted but do not express their sentiments publicly because they have to serve under him. His personal conduct is so poor that the subordinate officers at times feel ashamed of serving under him. His skill to communicate is satisfactory. His relations with superiors are very poor. He tries to dominate over his superiors. His relations with his colleagues also are equally poor. He is available to only a handful of

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the society. He worked only for those who mattered to him. He cannot organize things the way they should be organized. He has been totally ineffective in supervising investigations. Effectiveness in maintaining communal harmony -"Very Poor". He has no interest in policemen's welfare. He does not possess any potential or aptitude for any field of work mentioned in the relevant column. He carried a very poor police bearing and personality. Sociability---"average". Dedication to duty, appreciation of situation, attention of details, ability to withstand pressure, ability to take principled stand-"below average". He is very complicated person. He does not work for the department, people or a system. He worked only for persons who matter to him. He does not care for directions from his superiors or department even for rules and procedures. He is self-styled officer who has his own rules regulations and procedures and his way of working. He is a chronic asthenic patient hence not fit for field duties. Several times rumours were afloat casting aspersions on his integrity with regards to posting of the SOs but, they could not be substantiated for lack of substantive evidence. Hence integrity certified. He is an officer, though technically highly qualified but is most unfit for police job. He is a liability on this department. Overall assessment is "below average".

4. Sri Rajeev Gupta, the then Commissioner, Gorakhpur Division wrote; "In my opinion Sri Thakur can be graded as an average police officer."

5. Under Part-V Sri D.K. Sharma, the then IG Zone, Gorakhpur wrote; "I am not satisfied with

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remarks of Reporting Authority. He seems to have expressed his view in extreme disgust rather than in a balanced manner. The Reporting Officer has not cited any specific instances in recording his views of an adverse nature."

6. Sri K.L. Gupta, the then DGP of Uttar Pradesh wrote-"Sri Thakur is a good officer." Sri Amitabh Thakur is a sincere and hardworking officer whose performance as S.P. Deoria remained good. He graded the applicant as -"Good".

7. Sri Rajeev Ratan Shah, the then Principal Secretary (Home) wrote-"Remarks and Grading of Reviewing Authority, the Commissioner Agra Division are accepted". He graded the applicant-"Average".

8. Sri Naresh Dayal, another Principal Secretary (Home) simply wrote, "accepted".

9. These adverse remarks were communicated to the applicant vide D.O. dated 23.05.2007. Thus, according to the applicant there was a delay of more than 8 years and the very purpose of communicating the ACR was defeated. The delayed communication also affected the applicant adversely in the sense that he could not get due redressal through the proper forums as provided under the various rules and regulations. Rule-5 (2) of the AIS (Confidential Rolls) Rules say that ACR shall be written at the time of relinquishment of the charge of the post of the Reporting Officer or ordinarily within one month thereafter. Similarly, according to Rule-6 the Reviewing Authority shall record his

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remarks within one month of the receipt of the ACR. Rule-6 (a) provides that the Accepting Authority shall record his remarks within one month of its review. Similarly, Rule-8 says that adverse comments in the ACR shall be communicated in writing together with a substance within two months of the receipt of the ACR. Lastly, Rule-10 provides that the representation against the adverse remarks shall be considered as far as possible within 3 months. It is said that in the present case the first Reporting Officer Sri S.N. Singh wrote the ACR on 01.06.2000. The second Reporting Officer i.e. Commissioner took 4 months to write his comments on 04.10.2000. The next two officers in the hierarchy took 8 days and 6 months respectively and then DGP took three months to write his comments as Reviewing Authority. Thereafter, the first Accepting Officer i.e. Sri R.R. Shah took 9 months (3.04.2002) to put his one line remark. Finally, the second Accepting Authority Sri Naresh Dayal took a long time of 4 years to record one single word "Accepted" on 03.04.2006. As already said these adverse remarks were communicated to the applicant on 23.5.2007 in utter defiance of Rule-8 of the above rules of 1970. There is no explanation of inordinate delay of 8 years in communicating the remarks.

10. The applicant had submitted a representation dated 5.11.2007 followed by Supplementary representation dated 27.11.2009. The first representation was decided on 16.03.2009 (Annexure-A-2) i.e. after about 16 months whereas, the time period allowed under Rule-10 is only three months. The applicant had also filed an

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O.A.(523/07), which was decided with a direction to the State respondent, through its order-dated 10.09.2008, to consider the representation within three months. The State Government nearly took 6 months to decide the matter. The State Government finally rejected the representation on 26.04.2011 (Annexure-A-22) solely on the basis of the report received from Sri S.N. Singh, on 24.12.2008. While deciding the representation the government overlooked the remarks of DGP, Head of Police saying that "Sri Amitabh Thakur is a sincere and hardworking officer".

11. Meanwhile, a Writ Petition No.8/2011 was also filed before Lucknow Bench of Allahabad High Court, which was decided on 06.01.2011. In furtherance of the direction of the Hon'ble High Court, the applicant presented a representation dated 4.2.2011 before Hon'ble Chief Minister for deletion of adverse remarks of two years 1998-1999 and 1999-2000 (Annexure-A-20). The State Government through its O.M. dated 26.04.2011 decided the matter. In respect of the ACR for the year 1999-2000 the adverse remarks were deleted (Annexure-A-21) But, in respect of entries for the year 1989-1999, it was conveyed that the adverse remarks were not being deleted (Annexure-A-22). The contention of the applicant is that the ACRs of the two successive years, were written by the same Reporting Officer in respect of the same posting of the applicant at same place and were written identically word by word. Therefore, when the adverse entries pertaining to one year were deleted, the adverse entries for another year should have been also deleted. Further contention is that the

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order declining the deletion of impugned entries for the other year is not a speaking and self explanatory order and the relevant portion of the order is of only one line.

13. The Official respondent no.s.2 and 3 have contested the O.A. by filing two Counter Affidavits, the one prior to amendment and the other after the amendment. In its first counter affidavit dated 17.11.2009 in respect of the ACRs in question, it has been said that the applicant had submitted undated Part-II of the Confidential report, which was sent firstly to the first Reporting Officer, the then DIG, for his comments on 01.06.2000 and then to second Reporting Officer Sri Rajeev Gupta the then Commissioner Gorakhpur, who gave his remarks on 04.10.2000. Similarly, the first Reviewing Authority, the then I.G. Police Gorakhpur Range gave his remarks on 14.04.2001 and the second Reviewing Authority that is the then D.G. Police gave his remarks on 24.07.2001. Both the Accepting Authorities gave their remarks on 03.04.2002 and 03.04.2006 respectively. Thereafter, adverse remarks were communicated to the applicant vide letter dated 23.05.07. The applicant thereafter, submitted his representation for the first time on 05.11.2007 and also filed O.A.No.523/2007 for setting aside the impugned adverse remarks for 1998-1999 as communicated vide aforesaid letter dated 23.05.2007. This O.A. was decided on 10.09.2008, directing the State of U.P. through Principal Secretary, Government of U.P. to consider the above representation and also legal issues relating to delay in communicating the ACR (within 3 months). In compliance of the order of this

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Tribunal the representation was considered and decided which was communicated through O.M. dated 16.03.2009 (Annexure-A-2). The allegations of malafide against respondent no.4 were found not tenable. Thus, the above order of Tribunal has been fully complied with. The applicant has not been adversely affected in any manner on account of delay in communicating the ACRs. In the case of **State of Harayana Vs. P.C. Wadhwa** the Hon'ble Supreme Court did not strike down the adverse remarks on the ground of inordinate delay saying that the period laid down in All India Service (Confidential Rolls) Rules, 1970 are only directory. Nevertheless, the Hon'ble Apex Court did not approve the inordinate delay in the said case keeping in view the facts and circumstances of the case. In respect of the case of **Baidyanath Mahapatra**, it has been said that the same is not applicable here as it pertains to compulsory retirement. In respect of case of **Suvrat Tripathi** (decided by Tribunal) as far as it relates to inordinate and unreasonable delay in communicating the adverse remarks, it has been said that this Tribunal cannot modify or overrule the judgment of Hon'ble Apex Court in the case of B.C. Wadhwa. Regarding other judgments mentioned in para-4.65 to 4.115 of the O.A., it has been said that the same are not applicable. In respect of O.A.No.316/2008 filed by this applicant challenging the ACR for the year 1999-2000 as also O.M. dated 05.09.2009, rejecting his representation it has been pointed out that the same has been finally disposed of 09.08.2011 having become infructuous on the ground that adverse remarks have been expunged by the Govt. itself. In respect of

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U.P. Government Servant (Disposal of representations against the ACRs and Allied matter) Rules, 1995, it has been said that the same are available only to the State Government employees and not to those who are governed by Article-311.

14. The applicant has filed Rejoinder Affidavit dated 18.11.2009 against Resp. Nos. 2 and 3 denying most of the aforesaid contentions and reiterating the averments contained in O.A.

15. The official respondent nos. 2 and 3 have also filed a Supplementary Counter Affidavit against the above Rejoinder Affidavit.

16. Respondent No.1 did not file any counter affidavit. The Private Respondent No.4 filed a separate Counter Affidavit on 11.02.2010, denying the allegations of malafides against him and saying that the adverse remarks were recorded in accordance with the rules.

17. The applicant filed Rejoinder reply against it on 21.12.2009.

18. After the amendments the Official Respondent Nos. 2 and 3 have filed another counter affidavit on 06.03.2012 saying that considering his representation moved in furtherance of order of Hon'ble High Court, Hon'ble Chief Minister directed for deletion of adverse entries for the year 1999-2000 but at the same time no ground for deletion of adverse entries for the year 1998-1999 was found and therefore the request in respect of that adverse entries was refused. Lastly, another representation-

dated 25.07.2011 of the applicant has been considered and rejected on 14.12.2011 on the ground that there is no justification to review/ amend the order passed by State on 26.04.2011. In respect of amended paragraphs, it has been said that the grounds added in those paragraphs are not tenable in the eye of law.

19. The applicant has filed a Rejoinder Affidavit against the above on 16.02.2012.

20. Thereafter, a Supplementary Counter Affidavit sworn by Madan Kishore Srivastava, Joint secretary (Home) dated 19.07.2012 has been filed alongwith M.P.No.1490/2012 but, it bears no signatures therefore, it cannot be taken on record.

21. It is worthwhile to mention here that some time in December, 2012, it was informed that the learned counsel, who had been representing the Resp. Nos. 2 and 3 has resigned from the Panel. A letter dated 06.11.2012 to this effect was received by the Deputy Registrar of this Tribunal on 7.12.2012,, which is on record. In this letter one-month's time was sought to engage another counsel. By the time it was taken up on 11.12.2012, one month's time has already been passed. But no counsel appeared for Respondents No. 2 and 3. Therefore there was no alternative but to proceed exparte against Resp. Nos. 2 and 3 and accordingly, therefore, it was so ordered. The Deputy Registrar of this Tribunal was however, directed to inform the State Govt. with reference to their above letter. In compliance of this direction notice/ information has already been sent by Regd. Post to Resp. Nos. 2 and

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3 but nobody turned up on the next date also i.e. 17.01.2013. Then, it was adjourned for 05.02.2013 for final arguments. On that date also none appeared for R.No. 2 and 3. Finally, the arguments on behalf of the applicant and Respondent Nos.1 and 4 were heard and the O.A. was reserved for order on 06.02.2013.

22. The applicant has placed reliance on the following case laws:-

i) **State of Haryana Vs. Shri P.C. Wadhwa, IPS, Inspector General of Police and Another reported in (1987 AIR 1201 : 1987 SCR (2) 1030).**- In this case it was laid down that Rules 5,6, 6A and 7 of the All India Services (Confidential Rolls) Rules require that the whole process from the writing of the confidential reports assessing the performance, character, conduct and qualities of every member of the service, to the communication of adverse remarks should be completed within a period of 7 months. But in that case, adverse remarks were communicated after 27 months. It was observed that the whole object of making and communication of adverse remarks is to give to the officer concerned an opportunity to improve his performance, conduct or character, as the case may be, and this object would be lost if they are communicated to the officer concerned after an inordinate delay. Adverse remarks should not be

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understood in terms of punishment. It should be taken as an advice to the officer concerned, so that he can act in accordance with the advice and improve his service career. Though, the Rule 5,6,6A and 7 are directory and not mandatory, but that does not mean that the directory provisions need not be complied with even substantially. It was also observed that the period of 7 months cannot be stretched to more than two years and 3 months, i.e. 27 months simply because these Rules are directory without serving any purpose consistent with the spirit and objective of these Rules.

ii) **Baidyanath Mahapatra Vs. State of Orissa and Another reported in (1989 AIR 2218 : 1989**

SCR (3) 803)- This case pertains to compulsory retirement. However, in respect of certain adverse entries, which were communicated very late, it was observed that if the adverse remarks are communicated after several years, object of communicating entries is defeated. It is therefore, imperative that the adverse remarks should be communicated within a reasonable period to afford the officer to improve his work and conduct and also to make representation in the event of the entry being unjustified. In that case, adverse remarks of several years were communicated with

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an inordinate delay and his representation was rejected on the ground that the same is barred by time. Some of the adverse remarks were taken into consideration by the Review Committee in formulating its opinion against the retention of the officer concerned in service. Finally, therefore, considering the entire facts and circumstances, the order of pre-mature retirement was set aside and the applicant was directed to be reinstated with all consequential benefits.

iii) **State Bank of India etc. Vs. Kashinath Kher and others reported in (1996 AIR 1328 and 1996 SCC (7) 470)** - The applicant relied upon the following portion of the judgment:-

“Confidential and character reports should , therefore, be written by superior officers higher in the cader. The officer should show objective, impartiality and fair assessment without any prejudice whatsoever with highest sense of responsibility, to include devotion to duty, honesty and integrity to improve excellence of the individual officer. Lest the officers get demoralized which would be deleterious to the efficacy and efficiency of public service. Therefore, they should be written by superior officer of high rank, who are such high rank officers is for the appellant to decide.”

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iv) **S. Ramachandra Raju Vs. State of Orissa**
(Appeal (civil) 5815 of 1994 decided on
31.8.1994- In this case, the appellant was a Lecturer in a private college which was taken over by the Govt. and was transferred from one place to another. The principal made some adverse remarks for a particular period. The appellant submitted a representation alleging that remarks were made by the Principal due to malafide and personal vendetta. Meanwhile, appellant was promoted as Reader. But ultimately in 1991, he was compulsorily retired from service and representation was rejected. He challenged the order before the CAT which dismissed the petition. This appeal was filed which was allowed and the order of compulsory retirement was set aside. The applicant has placed reliance on the following portion of the judgment:-

“It is needless to emphasize that the career aspect of a subordinate officer/employee largely depends upon the work and character assessed by the reporting officer. The latter should adopt fair, objective, disproportionate and constructive comments in estimating or assessing the character, ability, integrity and responsibility displayed by concerned officer/employee during the relevant period for the above objectives if not strictly

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adhered to in making an honest assessment, the prospect and career of the subordinate officer being put to great jeopardy. The reporting officer is bound to lose his credibility in the eyes of his subordinate and fail to command respect and work from them.”

v) **Bishwanath Prasad Singh Vs. State of Bihar and others (Writ Petition (Civil) 419/2000 decided on 15.12.2000** - In this case, the District Judge, Giridih was not allowed the benefit of retirement age from 58 years to 60 years. Along with this case, another petitioner namely Swaroop Lal filed a Writ Petition No. 505/2000 which was also taken with this petition. Both the petitions were dismissed. But before parting with the judgment, the Hon'ble Apex Court noted certain disturbing features. The applicant has placed reliance on the following portion of the judgment:-

“An assessment of quality and quantity of performance and progress of the judicial officers should be an on going process continued round the year and then to make a record in an objective manner of the impressions formulated by such assessment. An annual entry is not an instrument to be wielded like a teachers cane or to be cracked like a whip. The High Court has to act and guide the subordinate officers like a guardian or

elder in the judicial family. The entry in the confidential rolls should not be a reflection of personal whims, fancies or prejudices, likes or dislikes of a superior. The entry must reflect the result of an objective assessment coupled with an effort at guiding the judicial officers to secure an improvement in his performance where need be to admonish him with the object or removing for future, the short comings found and expressing an appreciation with an idea of toning up the maintaining the imitable qualities by affectionately patting on the back of meritorious and deserving."

23. Besides the aforesaid case laws, the applicant also placed reliance on the following order/judgment of this Tribunal rendered in O.A. No. 24/95 decided on 2.2.2001 along with O.A. No. 207/95 in the case of Suvrat Tripathi, the then DIG, Police, U.P. Vs. Union of India and others (Annexure A-7). In these OAs, ACRs for the years 1988-89 and 1992-93 were challenged and request for quashing was sought, on the ground that if the remarks were adverse, the same should have been communicated within a reasonable period. These remarks were communicated after more than six years, depriving the applicant from making effective representation. In support of the contention, the

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applicant of that O.A. placed reliance on the following case laws:-

- i) **State of Haryana Vs.P.C. Wadhwa (AIR 1987 SC 1201)**
- ii) **B.N. Mahapatra Vs.State of Orissa and others reported in (1989) 4 SCC 664.**
- iii) **Gurdial Singh Fijji Vs. State of Punjab and other reported in (1979) 2 SCC 368.**

Out of the above, the case of P.C. Wadhwa (supra) and B.N. Mahapatra (supra) have already been referred hereinabove. The relevant portion of the case law of Gurdial Singh Fijji (supra) as mentioned in the aforesaid order of this Tribunal is as under:-

“the principle is well settled that in accordance with rules of natural justice, the 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 authority to decide on a consideration of the explanation offered by the person

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concerned, whether the adverse report is justified."

After making an elaborate discussion, this Tribunal allowed O.A.No.24/95. The adverse entries recorded for the year 1988-89 were directed to be expunged and the order of rejection of the representation of the applicant against the adverse remarks was quashed. It was informed that this order/judgment was not disturbed by Hon'ble High Court and it was also implemented by the State.

24. Now, we come to the merit of the O.A. in hand. As already mentioned, the pleadings of malafides against the then reporting officer (R.No.4) were not pressed at the time of arguments. In the back drop of the aforesaid case laws, the applicant confined his arguments only on the following two points:-

- i) In the back drop of the proposition of law laid down in the aforesaid cases, the adverse remarks in question should be expunged or quashed, on the ground that the same were communicated after an unexplained delay of 7 years and the representation was also decided much beyond the prescribed time.
- ii) That in furtherance of the order of the Hon'ble High Court dated 6.1.2011 in writ petition No. 8/2011, the applicant made a representation to the State Govt. to delete the adverse remarks of two

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years i.e. 1998-99 (impugned) and 1999-2000. The State Govt. deleted the adverse remarks for the year 1999-2000 (vide order dated 26.4.2011) (Annexure A-21) but rejected the same request in respect of ACR for 1998-99 vide order of the same date passed separately (Annexure A-22), though, the ACR of the two successive years were written by the same officer about the same applicant in respect of same posting at the same place and were written identically word by word.

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In view of the proposition of law laid down in the case laws cited and discussed hereinabove, it is not necessary to examine the adverse remarks as the request is to quash or expunge the same on the ground of inordinate delayed communication. In the case of P.C.Wadhwa (supra), it has been categorically laid down that whole object of making adverse remarks would be lost if they are communicated after an inordinate delay. It is true that in the above case of P.C. Wadhwa, adverse remarks were not quashed as pointed out by the learned counsel from the other side. It was so because in that case, the only point involved was whether the State Govt. was justified in specifically empowering the Home Secretary as the reporting

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officer for the purpose of writing a confidential report in respect of I.G. , Police. Nevertheless, the Hon'ble Apex Court elaborately discussed in the last two paragraphs about the contention of inordinate delay of two years three months i.e. 27 months which was committed in that case and in the last, the Hon'ble Court concluded that "suffice is to say that we do not approve of the inordinate delay made in communicating the adverse remarks to the respondents." The relevant paragraph Nos. 13 and 14 are as under:-

"13. Before we part with this appeal, we may dispose of another contention of the respondent about the delay in communicating to him the impugned adverse remarks, Under Rule 5 of the Rules, 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 Govern- ment, ordinarily within two months of the close of the said year. Rule 6 provides that the confidential report shall be reviewed by the reviewing authority ordinarily within one month of its being

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written. Under Rule 6A, the confidential report, after review, shall be accepted with such modifications as may be considered necessary, and countersigned by the accepting authority, ordinarily within one month of its review. Thus, the whole process from the writing of the confidential report to the acceptance thereof has to be completed ordinarily within a maximum period of four months. Further, under Rule 7 the adverse remarks, if any, in a confidential report shall be communicated to the officer concerned within three months of the receipt of the confidential report. Thus, a total period of seven months has been laid down as the maximum period within which adverse remarks, if any, has to be communicated to the officer concerned. It has been already noticed that the adverse remarks were sent to the respondent after two years three months, that is, after twenty seven months of the close of the year. It is submitted by the respondent that in view of the delayed communication. the adverse remarks lost

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all importance and should be struk down on that ground. 1041

14. The whole object of the making and communication of adverse remarks is to give to the officer concerned an opportunity to improve his performance, conduct or character, as the case may. The adverse remarks should not be understood in terms of punishment, but really it should be taken as an advice to the officer concerned, so that he can act in accordance with the advice and improve his service career. The whole object of the making of adverse remarks would be lost if they are communicated to the officer concerned after an inordinate delay. In the instant case, it was communicated to the respondent after twenty seven months. It is true that the provisions of Rules 5, 6, 6A and 7 are directory and not mandatory, but that does not mean that the directory provisions need not be complied with even substantially. Such provisions may not be complied with strictly, and substantial compliance will be sufficient. But, where compliance after an inordinate delay would

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be against the spirit and object of the directory provision, such compliance would not be substantial compliance. In the instant case, while the provisions of Rules 5, 6, 6A and 7 require that everything including the communication of the adverse remarks should be completed within a period of seven months, this period cannot be stretched to twenty seven months, simply because these Rules are directory, without serving any purpose consistent with the spirit and objectives of these Rules. We need not, however, dilate upon the question any more and consider whether on the ground of inordinate and unreasonable delay, the adverse remarks against the respondent should be struck down or not, and suffice it to say that we do not approve of the inordinate delay made in communicating the adverse remarks to the respondent."

Now, coming to the case in hand, it is noticed that there is an unexplained inordinate delay of about 7 years in communicating the impugned adverse remarks. The representation dated 5.11.2007 was also decided after sixteen months i.e. on 16.3.09 as

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against the time frame of three months prescribed by the relevant Rule 10 of the "Rules". There is no dispute that the stipulated time frame for the entire exercise is only 7 months as already observed in the case of State of Haryana Vs. P.C. Wadhwa (supra). As against which, the details of the actual periods consumed by the respondents in the present case have been mentioned in para 9 of this order/judgment. As against this prescribed period of 7 months for the entire exercise, in the present case, admittedly, the respondents consumed about more than 7 years. The adverse remarks for the year 1998-99 were conveyed on 23.5.2007. In the case of P.C. Wadhwa (supra), it has been categorically observed that period of 7 months cannot be stretched to 27 months i.e. 2 years 3 months simply because these Rules are directory, without serving any purpose consistent with the spirit and objective of these Rules. In the present case, this delay is about 3 times more. Therefore, in the light of the ratio decidendi and the proposition of law laid down in the above case laws (supra) as also the order/judgment of this Tribunal in the above O.A. 24/95 decided on 2.2.2001 (Sri Suvarat Tripathi Vs. UOI and others), we have no other alternative but to direct for the expunging of the

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impugned annual remarks for the year 1998-99 as communicated to the applicant on 23.5.2007.

POINT NO.2.

The applicant has specifically averred in para 4.290 as under:-

“4.290. That thus a very strange thing happened that the State government deleted the adverse entries in the ACR of one year while decided not to delete adverse entries in the ACR of another year while the ACRs of the two successive years were written about the same officer, were written by the same officer, were for the same posting at the same place and were written identically word by word. Hence, if adverse entries of ACR of one year were considered fit to be deleted, how come were the adverse entries of another year not considered to get deleted? Thus, if the State Govt. found that the adverse entries of one year shall be deleted, the adverse entries of the previous year need certainly have been deleted because of the above mentioned reasons.”

In the Counter Reply filed on behalf of the State (R. No. 2 and 3), this paragraph has been replied in para 7 of the Supple. Counter Affidavit, which we

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have thoroughly gone through. No where this averment has been specifically controverted that the adverse remarks for the two successive years of 1998-99 and 1999-2000 were written about the same officer i.e. the applicant and these remarks were recorded by the same officer, were for the same posting at the same place and were written identically word by word. Consequently, therefore, we have no option but to presume it as admitted and proved. We also could not find any convincing and satisfactory explanation in the above Supple. C.A. that when both the adverse remarks pertaining to the above two successive years were written about the same officer, were recorded by the same officer, were for the same posting and the same place and were written identically word by word and the adverse remarks for the year i.e. 1999-2000 were deleted by the State, then why the same prayer in respect of the adverse remarks of the previous year i.e. 1998-99 was declined. We could not find any convincing reason whatsoever for arriving at such a contradictory decision. In fact, the perusal of the relevant order passed by the State Govt. on 26.4.2011 (Annexure A-22) refusing to delete the impugned adverse remarks reveals that in the last paragraph of the order consisting of


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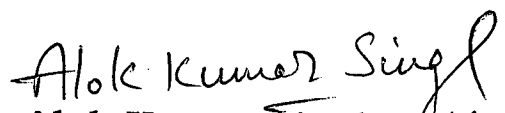
only six lines, it has been merely said that after due consideration, a decision has been taken not to delete the adverse remarks pertaining to the year 1998-99. In the absence of any reasoning, we are feeling handicapped to agree with the above decision of the respondent/State Govt. Two identical and similar things should have been dealt with similarly. Otherwise it amounts to an arbitrariness. It is also against the principle of natural justice and fair play. In fact, the Principle of Natural Justice and Fair Play is an ante-thesis to arbitrariness. Similarly, giving out proper reasons in an order, ensures application of mind which is lacking in the aforesaid decision of the respondent/State Govt. If proper reasons are given in an administrative order, it not only shows proper and due application of mind but also prevents unnecessarily litigations. Presently, we are living in the age of transparency. The transparency is supposed to be one of the significant component of real justice. Therefore, in view of the above discussion, this point is also decided in favour of the applicant. Since the respondent State Govt. itself has deleted similar adverse remarks for the successive year, about the same officer, recorded by the same officer for the same posting at the same place written identically

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word by word, the adverse remarks in question also deserves to be expunged and deleted.

25. In view of the discussion made hereinabove, this O.A. is therefore, partly allowed. The impugned adverse remarks for the year 1998-99 as communicated to the applicant on 23.5.2007 and endorsed by the Govt. O.M. dated 16.3.2009 and further endorsed by the State Govt. vide order dated 26.4.2011 deserves to be deleted and both the above orders upholding the same are required to be set aside and accordingly it is so ordered. The remaining reliefs are hereby declined having been not pressed by the applicant. No costs.


D.C. Lakha)
Member (A)


(Justice Alok Kumar Singh) 19.2.13
Member (J)

HLS/-