

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:1232/92

DATE OF DECISION:

15th January 2001.

Shri R.B. Sharma Applicant.

Shri M.S. Ramamurthy Advocate for
Applicant.

Versus

Union of India and others Respondents.

Shri M.I. Sehtna Advocate for
Respondents

CORAM

Hon'ble Shri B.N. Bahadur, Member (A)

Hon'ble Shri S.L. Jain, Member (A)

(1) To be referred to the Reporter or not? *yes*

(2) Whether it needs to be circulated to the
other Benches of the Tribunal?

(3) Library.

yes

S.L. Jain
(S.L. Jain)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.1232/92

Mon-Day the 15th day of JANUARY 2001

CORAM: Hon'ble Shri B.N. Bagadur, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

R.B. Sharma
Commandant,
S.R.P.F. Group II
Pune, Maharashtra.

...Applicant.

By Advocate Shri M.S. Ramamurthy.

1. Union of India through
Home Secretary,
Ministry of Home Affairs,
North Block, New Delhi.

By Advocate Shri R.K. Shetty..

2. State of Maharashtra
Through Chief Secretary
Mantralaya, Bombay.
3. Shri S.S. Jog,
Director General of Police
(Retired)
C/o D.G.P. (M.S.)
Police Head quarters
Bombay.

...Respondents

By Advocate Shri M.I. Sethna.

O R D E R

{Per Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act 1985 to expunge the adverse remarks in the Annual Confidential Report of the applicant in the year 1986 - 87, conveyed vide letter dated 21.10.1988 which were partially modified, after representation of the applicant, vide letter dated 18.6.1991 with consequential benefits.

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2. The applicant after expiry of term of Emergency Commissioned officer, was appointed in Indian Police Service on 3.7.1968, being successful in Civil Services Examination held in the year 1967. He continued in service, by an order dated 23.4.1973, he was discharged from the service. He filed a writ petition before the Hon'ble High Court of Delhi No. 136/74 which was allowed by the Single Judge and the order of discharge was set aside. A Letters patent appeal 63/79 was preferred by the respondents, which was also dismissed by a Division Bench of High Court of Delhi on 24.7.1981. The applicant was reinstated in service vide order dated 7.1.1982 and joined the same on 20.2.1982. Vide letter dated 21.10.1988 the Adverse Remarks recorded by the respondent No.3 in the Confidential Report for the year 1986 -87 were conveyed to the applicant, against which the applicant represented vide letter dated 28.11.1988, and his representation was partially rejected vide order dated 18.6.1991.

3. During the pendency of the OA the applicant has amended his OA bringing on record, as subsequent event to the effect that by the G.R. dated 7.12.1993, The applicant was granted promotion from the post of Superintendent of police to higher rank i.e. Selection Grade of Rs. 4500 - 5700 with effect from 1.1.1978 and on 5.9.1981 to the rank of Deputy Inspector General of Police.

4. The grievance of the applicant is two fold, firstly based on facts that such entries in the Annual Confidential Report, recorded by the respondent are based on no facts and secondly, the officials who have recorded such entries in Annual

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Confidential Report were not competent to record the same, in view of his promotion granted as stated above in para 3 of this order with retrospective effect.

5. The learned counsel for the applicant relied on an order passed in his OA 335/92 decided by Principal Bench New Delhi which is as under:

It is also to be remembered that in spite of the fact that the Delhi High Court in its order directed reinstatement of the applicant with consequential benefits, he was reinstated only as Superintendent of Police and that it is only by order dated 7.12.1993 (Annexure I(1) produced by the applicant alongwith M.A. 786/99 issued by the Govt. of Maharashtra that the applicant was promoted to the Selection Grade of Rs. 4500 - 5700 with effect from 1.1.78, the date on which his immediate junior Shri Gyan Chand Verma was promoted and to the rank of Dy. Inspector General of Police with effect from 5.9.1981 on the date on which Shri Gyan Chand Verma was promoted as such with retrospective effect and consequential benefits. This order was issued consequent on the decision of the Delhi High Court on the Civil Writ Petition No. 136/74. Though the L.P.A. against the single judge's order of Delhi High Court setting aside the discharge of the applicant was dismissed by the Division Bench as early as on 24.7.1981 the applicant was reinstated only as a Superintendent of Police in Senior Scale while he should have been immediately considered for promotion to Selection Grade and for a further promotion as Dy. Inspector General of Police without delay. The order Annexure I(1) of the second respondent promoting the applicant with retrospective effect was passed more than after twelve years of his reinstatement and after a contempt petition was filed by the applicant before the Delhi High Court alleging defiance of the High Court's order. Had the second respondent considered the applicant for promotion at the appropriate time immediately on his reinstatement, Shri Narayana Swamy could not have been the reporting officer in regard to the ACR of the applicant for the relevant period. The applicant argued that by the inaction on the part of the second respondent, which was wilful, the applicant has

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been made to work under his juniors by atleast three years and suffered the humiliation of his ACR being written by him. Referring to the notification issued by the State of Maharashtra on 20.2.1980 (Annexure J) the applicant stated that his ACR for the relevant period would have initiated by the Inspector General of Police, reviewed by the Home Secretary and accepted by the Chief Secretary. The writing of the ACR of the applicant for the period in question by respondents 5 to 7 being the direct result of the inaction on the part of the second respondent in giving the applicant the two promotions at the appropriate time, the applicant submits that the impugned adverse remarks in the ACR may not be permitted to stand. We find considerable force in this argument of the applicant.

6. In reply to the argument of respondent the learned counsel for^y the applicant relied on the decision of his OA 335/92 decided by the Principle Bench, New Delhi which is as under:

The argument of the learned counsel for respondent No. 2 to 7 that as the Mumbai Bench of the Central Administrative Tribunal considered the entire service records of the applicant including the ACE which is the subject matter of this application, has dismissed the application challenging his compulsory retirement, the application has become infructuous and as the ACR has stood the judicial scrutiny the application may be dismissed, has no force at all. The Mumbai Bench of the Tribunal in the case referred to by the learned counsel was considering whether there was scope for interference with the order of compulsory retirement of the applicant made on the basis of the service records of the applicant as they then stood. The Bench had no occasion to consider whether the adverse entries in the ACR would stand and whether the representations and memorial have been properly considered and disposed of.

7. On facts it is stated that the adverse remark communicated were as under:

a) Has good physique and personality. Has completed all the targets set up by him. Though he is amenable to advice from above.

b) he likes to have his own way and prevail upon others at times (underlining supplied) disconcertingly to prove his point. In discussion he is quite often off the mark and so also in his knowledge.

c) An average officer.

8. After the representation by the applicant and consideration of the same, the adverse remarks as now stands is as under:

Original Remarks

Though he is amenable to advice from above, he likes to have his own way and prevail upon others at times disconcertingly to prove his point.

Remarks as modified

Although amenable to advice from above, he should curb his tendency to pursue his view point fruitlessly which is not helpful for team work.

9. The respondent No.2 in reply to the OA in para 2 and 7 has stated as under:

In fact, the perusal of the remarks communicated to the applicant, show that they are more in the nature of advice to the officer.

The applicant was also informed by the said letter dated 18.6.1991 that the above modified remarks are of advisory nature.

10. On perusal of the OA particularly para 4.3 at page 7 it is clear that the applicant alleges malice and prejudice against Shri S.M. Jog the then Director General of Police, who is also a party Respondent No.3 in the present case and has not filed any written statement in his personal capacity.

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11. The Respondent No. 2 has stated in para 7 of his written statement as under:

As regards the contention of the applicant that he has recorded 100% sheet remarks of the entire force, I say that the same being not correct, is not acceptable. The Reporting Officer, Shri R.S. Negi, the then Dy. Inspector General of Police, Training and Special Unit, Bombay, has stated in his letter dated 19.4.89 that only 25% of the men had been seen by the applicant for the sheet remarks. Shri Negi, Reporting Officer, has also stated that the applicant took over as Commandant, S.R.P.F., Group VII, Daund, in January '86 and he had the opportunity to observe the work of the applicant closely during the entire year and he had also carried out detailed inspection of S.R.P.F. group. He had also an opportunity to observe the applicant on several occasions like official work, social meetings, etc. and as a Reporting Officer, he has given the remarks after careful thought and consideration. Shri Negi has further stated that the purpose of giving remarks is of advisory sort and conveys a trait of his character and his action to situations in the context of inter-action with others. As regards achievements and targets which have been mentioned by the applicant in his representation for expunction of adverse remarks, Shri Negi has stated that the activities mentioned in the representation are of general routine nature and during the inspection it was found that the service sheets were not up-dated, entries were missing and leave accounts were not completed, darbars and route marches were not taken regularly. Shri Negi has further stated that annual classification file was far from complete and the contention of the applicant that he should be graded as an outstanding officer, does not hold water.

As regards inspection carried out by Shri Sudhakar Deo, the then Spl. I.G.P. (Admn.) and the contention of the applicant that Shri Deo has appreciated and praised his work and performance during annual inspection of S.R.P.F., Group VII, I say that Shri Deo, in fact, has recorded the note in the following terms on the parade and training inspection.

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" Four companies in the parade and the band were led by Commandant Shri R.B. Sharma, Orders given by Shri Sharma during the parade as also his individual leadership of the parade were of high order. However, the performance of the subordinate officers and the constabulary was most unsatisfactory. The standard of the parade, from march past of officers' squad to uniform of constables in the company, was low. The commandant should personally supervise the performance of officers and the constabulary in order to ensure that the standard of parade is raised. When Company Commanders and Assistant Commanders were tested in regard to conduct of drill, it was noticed that due importance was not given to marching and drill of the constabulary. The performance of all officers was unsatisfactory. Particularly, when 'B' Company Commander and his Company were tested for drill, their standard was found to be of very low order. I would request that the Commander should pay particular attention to training. Regarding demonstration of P.T., Horse work, Medicine, Throw Ball, Rifle Drill, Musketry, Rifle P.T. and handling of stens and LMG weapons, it is regretfully mentioned that change of an instructor or a squad resulted in chaos. Removal of a single participant had an adverse effect on the performance. Mob control and night observation demonstration alone were satisfactory. The performance of the instructor for night observation was good. He may be suitably rewarded. It is absolutely necessary for the Commandant and his officers to pay attention to all aspects of performance of the Constabulary." I say however that inspection note on S.R.P.F., Gr. VII, Daund is irrelevant to the issue of Shri Sharma's request for expunction of adverse remarks in his A.C.R. for 1986 - 87.

Shri S.S. Jog, the then Director General of Police, was the accepting authority on the A.C.R. of the applicant for the relevant year. Shri Jog has stated in his letter while giving remarks on the representation that it is totally incorrect to accept that it was on the applicant's suggestion and initiative that various training items were introduced in S.R.P.F. group. He has further stated that it will be incorrect to accept that as the D.G.P., he had no opportunity to observe the work and performance of various officers under his command. There was no necessity for him to conduct an inspection of a unit to judge the work of his subordinate officers and he had occasions to observe the applicant in various conferences and that the applicant was given opportunities to

J.S. Jog

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express his opinions. It is thereafter that Shri Jog had come to the conclusion that the applicant was off the mark more often. Shri Jog has further observed that the performance of the applicant had been found to be lacklustre and far below average throughout his career and it will be therefore preposterous to accept that the applicant should be graded as an outstanding officer. Shri Jog has further observed that the applicant was more favourably judged by the Reporting and Reviewing Officers. Shri Jog had, therefore, stated that the representation of the applicant needs to be rejected.

12. The Apex Court has held that Court should not interfere to dilute or quash adverse remarks in the ACRs of employee unless a clear cut case of malice is made out. The applicant has not alleged any malice against Shri R.S. Negi the then Dy. Inspector General of Police, Shri S.Deo the reporting and reviewing officers. No fact is mentioned to arrive to a finding that Shri Jog was biased on account of same fact. Hence we are of the considered opinion that on the basis of facts, we are not inclined to interfere in the remarks as it stands now.

13. The learned counsel for the applicant relied on 1998 (3) All India Service Law Journal 76 Chairman Railway Board and others Vs C.R. Rangadhamaiah and others which is not relevant one.

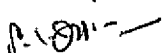
14. As the remarks, as stated in para 9 of this order, are of advisory nature, as contended by the Respondent No.2, such remarks do not come in the way of the applicant either for promotion or for any other purpose relevant to his service

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career, hence question of considering the point that the remarks are based on the report of the officers who were not competent to record the ACRs, in view of the promotion of the applicant with retrospective effect does not arise, as the applicant cannot be said to be aggrieved by such remarks. Hence OA does not lie.

15. In the result, OA. is disposed of with no order as to costs.


(S.L.JAIN)

MEMBER (J)


(B.N.BAHADUR)

15/01/01
MEMBER (A)

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