

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560 038.

Dated:- 5 MAY 1994

APPLICATION NUMBER: 619 of 1993.

APPLICANTS:

Dr.S.Krishnamurthy, IPS.,
To.

RESPONDENTS:

v/s. Chief Secretary, Govt. of Karnataka,
Bangalore-1.

1. Sri.N.B.Bhat, Advocate,
No.545,16th-A-~~xxxx~~Main,
Third Block, Koramangala,
Bangalore-560034.
2. The Chief Secretary,
Government of Karnataka,
Vidhana Soudha, Bangalore-1.
3. Sri.M.H.Motigi, Government Pleader,
Advocate General's Office,
KAT Unit, Comm.Complex(BDA),
Indiranagar, Bangalore-38.

Subject:- Forwarding of copies of the Orders passed by the
Central administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/, passed by this Tribunal in the above
mentioned application(s) on 22nd April, 1994.

*Issued on
6/5/94
R.*

c/c

for *Se Shauvery*
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

ORIGINAL APPLICATION NO.619/1993

FRIDAY THIS THE TWENTY SECOND DAY OF APRIL, 1994

MR.JUSTICE P.K. SHYAMSUNDAR VICE CHAIRMAN

MR. V. RAMAKRISHNAN MEMBER (A)

Dr.S. Krishnamurthy, IPS,
Managing Director,
Karnataka State Tourism
Development Corporation,
No.10/4, Kasturba Road,
Queen's Circle,
Bangalore - 560 001

Applicant

(By Advocate Shri N.B. Bhat)

v.

State of Karnataka
by Chief Secretary to Government,
Vidhana Soudha,
Bangalore - 560 001

Respondent

(By learned Government Pleader)
Shri M.H. Motigi,

O R D E R

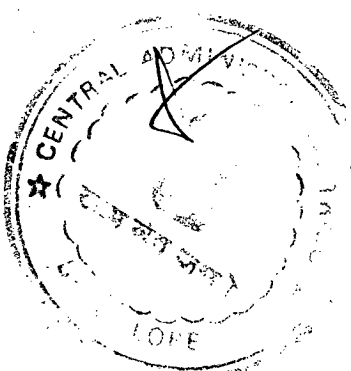
MR. JUSTICE P.K. SHYAMSUNDAR, VICE CHAIRMAN

Heard.

2. Admit.

3. The applicant herein Dr. Krishnamurthy is an IPS officer of 1967 batch who, after more than two decades of regular stint as a police officer, came to be posted as Director of Information and Publicity, Karnataka State from January, 1986 to June, 1990.

4. It transpires that during this period his work as Director was being directly monitored by



the Secretary, Information, Tourism and Youth Services (ITYS for short) of the State of Karnataka, an office generally held by an I.A.S. officer. During the period Dr. Krishnamurthy worked as Director of Information and Publicity, two different persons, both IAS, officers held charge of the office of Secretary, ITYS, the first one was Shri Chiranjiv Singh succeeded later by Shri S.R. Vijay. It was Shri Vijay who wrote the ACRs of Dr. Krishnamurthy for the year 1987-88. The ACRs recorded by Shri Vijay being to some extent uncomplimentary to Dr. Krishnamurthy, were communicated by the then Chief Secretary to Dr. Krishnamurthy as is generally done in the case of adverse remarks. The Chief Secretary's communication in that behalf is at Annexure A-1 and is dated 29.2.89 but, surprisingly the date 29.2.89 which probably is a mistake because the month of February in 1989 had only 28 days. Be that as it may, we think it appropriate to extract the said communication. It reads:

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"In the Annual Confidential Report on your work as Director of Information & Publicity, for the year 1987-88, the following adverse remarks have been recorded:

1. Appraising ability

Generally satisfactory. "However, he sometimes gives the impression that he is a little too lenient to his subordinates."

2. General Assessment:

He is a very sharp and intelligent officer. "He sometimes tends to cut procedures and to ignore his immediate superior officers."

Please acknowledge."

5. Dr. Krishnamurthy says that after receipt of these adverse remarks he was quite shocked and dumbfounded by the adverse entries communicated to him and taking strong exception to it told the State Government that he did not deserve the uncomplimentary references made regarding formal quality of his work by the Secretary and therefore moved the Chief Secretary for expunging the adverse remarks. However, that endeavour did not succeed, the State Government as a belated consideration of Dr. Krishnamurthy's representation for expunction of the adverse remarks came out with a rejection order at Annexure A-4 dated 30th March, 1993. It reads:

"The following adverse remarks recorded in the C.R. of Dr. S. Krishna Murthy, IPS, for the year 1987-88 on his work as Director of Information and Publicity, Bangalore, were communicated to him vide D.O. letter dated 29.2.89 cited at (1) above.

1. Appraising ability: Generally satisfactory. However, he some times gives the impression that he is a little too lenient to his subordinates.
2. General Assessment: He is a very sharp and intelligent officer. "He sometimes tends to cut procedures and to ignore his immediate superior officers."

Dr. S. Krishna Murthy, IPS, in his representation dated 23.3.89 read at (2) above has requested Government to expunge the adverse remarks recorded in his C.R. for the year 1987-88 for the reasons mentioned therein. Government has examined and found that there is no justification for expunction of these remarks. Hence the following orders:

ORDER NO.DPAR 102 SPS 89 BANGALORE DT.30.3.93

"In the circumstances explained above, the request of Dr. S. Krishna Murthy, IPS for expunction of adverse remarks recorded in his C.R. for the year 1987-88 is hereby rejected."

- 4 -

6. We do not know why it took so long for the State Government to make the above order 4 years after the officer had solicited expunction of the adverse remarks. We wonder why it took such a long time. But nothing, however, turns on the belated disposal of the applicant's representation. We have simply referred to it since the delay appears to be somewhat telling.

7. In this application Dr. Krishnamurthy assails the two orders at Annexures A-1 and A-4 - one conveying the adverse remarks and the other, refusal to expunge adverse remarks. The applicant strongly denounces both the orders and maintains that they are both capricious unjust and not merely that, they are wholly untenable. He says that he is an officer of exceptional merit apart from the high academic distinction which he enjoys with a Doctorate in Criminology, most appropriate for a police officer. Naturally, he laments with the turn of his fortune being belittled by the Government whom he was serving, according to him, with exceptional devotion and integrity. We have gone through the relevant file. What catches our eye is really a question of law raising the legitimacy of the right of the Reporting Officer Shri Vijay who had recorded his confidential report touching on his work and ability for the year 1987-88. This aspect has been brought out in the rejoinder placed on record by the applicant following the objection statement filed by the State Government supporting

the action of its officer.

8. Normally, we do not accept a rejoinder unless leave is granted. In this case, we granted leave to the applicant's counsel and permitted placing on record a rejoinder. It does raise an intricate question of law touching the competence of the Reporting Officer based on the amendment of the All India Service (Confidential Rolls) Rules, 1970, brought into effect with effect from 8.12.1987. We gave abundant opportunity to the State Government either to satisfy us that the amended rule does not affect the case of the applicant or to convince us that rule as amended, has been taken note of by issuing a necessary order by the State Government.

9. This matter had been hanging fire for quite a long time and more than six months have elapsed in waiting for a response from the State Government. Finally, today the learned Government Pleader Shri Rajasekharappa quite frankly told us that there ~~was~~ no doubting the applicability of the amended rule to the case of the applicant, a requirement enjoined by the rule was not complied with by the State Government but the learned Govt. Pleader supports his case by urging that the rule in question being an enabling one, its infraction if any, need not be taken seriously at all and asked us to hold that the remarks of the Reporting Officer is without blemish. Before we advert to the submission of the Govt. Pleader, we take this opportunity to extract the relevant rule i.e. 2(e)



which has undergone a sea-change. We extract Rule 2(e) as it now stands:

"'reporting authority' means such authority or authorities supervising the performance of the member of the Service reported upon as may be specifically empowered in this behalf by the Government."

As mentioned earlier, this rule came into effect w.e.f. 8.12.1987 and prior to that, the rule read as follows:

"'reporting authority' means the authority who was, during the period for which the confidential report is written, immediately superior to the member of the service and such other authority as may be specifically empowered in this behalf by the Government."

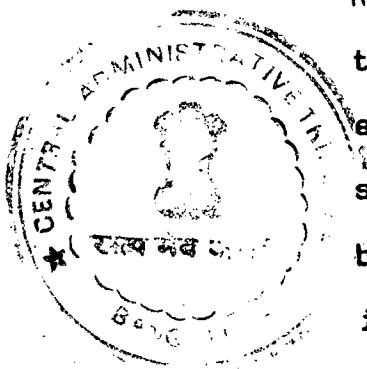
10. Now that there is no dispute that the reporting authority in this case has to conform to the amended rules, one further question arises and that really is the crux of the matter i.e. whether the Reporting Officer referred to under Rule 2(e) has been specifically empowered as enjoined by that rule to make the necessary report particularly when the ACR to be recorded related to the period following the coming into force of the amended rules. The rule after its amendment vis-a-vis the earlier one reflects a sea-change. Earlier, the Reporting Authority was one who was, during the period for which the confidential report is written, the immediate superior to the member of the Service and any member who may be specifically empowered by the Government. In other words, prior to amendment any authority who was superior to the officer reported upon or

anybody who was empowered by the Government to write a report could record a report.

This is the purport of the rule as can be seen from letter dated 8.7.1977. It reads:

"I am directed to say that there is an impression in some quarters that according to clause (e) of Rule 2 of the All India Services (Confidential Rolls) Rules, 1970, the Reporting Authority can be either the authority immediately superior to the member of the Service reported upon or such other authority as may be specifically empowered in that behalf by the Government. It is hereby clarified that subject to the provision of sub-rule (6) of Rule 5 of the said Rules, the authority who was, during, the period for which the confidential reports is written, immediately superior to the member of the Service, has necessarily to record his report on the performance of the member of the Service. In addition, any other authority may be specially empowered by the Government to act as the Reporting Authority. The use of the conjunction "and" to join two sub-clauses in clause (e), *ibid* makes the above position abundantly clear."

11. But, after the amendment, the position has changed considerably in that the Reporting authority is defined to be the authority or authorities supervising the performance of the member of the Service reported upon as may be specifically empowered in this behalf by the Government. In other words, the amended rule requires two necessary in-puts. First is the Reporting authority must be one who was supervising the work of the officer reported upon and secondly even in order to make such a report he must be specifically empowered by the Government in that behalf. In other words, what the rule requires is the Reporting Officer must be one who regularly monitored the work of the officer reported upon



and who was also empowered by the Government to make the necessary report in that behalf. Shri Vijay, the reporting authority in this case satisfies but only one requirement of the rule in that he appears to be a person regularly monitoring and supervising the work of the Director, Information and Publicity in his capacity as Secretary to ITYS. Learned Government Pleader tells us that there is no chart detailing the work of the Secretary as such but it really does not matter. We take it that the Secretary has the power to supervise the work of the Director, Information and Publicity. The crucial and vital question is, ~~was~~ he actually empowered by Government to make any such report. The rule as we have seen is a composite one requiring twin in-puts - one being supervision and the other the power to report about the result of the supervision done. It is touching the latter requisite Shri S.R. Vijay^{was} found to be wanting. It is not denied that he had not been specifically empowered by Government to make a report touching the work and ability etc. of the Director of Information and Publicity. As a matter of fact, following the amended rule 2(e), the Government of India had issued to all Chief Secretaries of State Governments a circular as follows:

"I am directed to invite a reference to this Department's letter of even number dated 29.7.1987 regarding amendment to AIS(CR) Rules, 1970 and to say that the comments received from various State Governments have been taken duly into consideration and the AIS(CR) rules, 1970 have been amended. A copy of the notification amending the said rules is enclosed.

2. The State Governments have been given full authority as before, for prescribing

the reporting authority, reviewing authority and the accepting authority for the All India Services. However, it would be necessary to maintain a certain degree of uniformity in prescribing the authorities for reviewing the work of senior All India Service Officers. The following is therefore suggested for your consideration and adoption:

- i) In the case of the DGP the Chief Secretary should be the Reporting authority, the Home Minister should be the Reviewing Authority and the Chief Minister the Accepting authority;
- ii) In the case of the IGP, the DAG² and Home Secretary should both initiate the CR which should be reviewed by the Chief Secretary and Accepted by the Home Minister.

3. We appreciate that the situation may vary from State to State and officers of the IPS may also be working in departments other than the Home Department. In such cases, the Reporting, Reviewing and the Accepting authorities would be different depending on the specific situations."

12. The above makes it clear that although in a given case the reporting authority and the reviewing authority may belong to different cadres, adherence to the rule is a pre-requisite in that whoever be the reporting officer or the reviewing officer, they have to be empowered by the Government in the matter of reporting or reviewing as the case may be. It means that there must be a prescription in the matter of empowering the reporting authority under Rule 2(e) to make a report. The authority of the reporting authority under Rule 2(e) with specific power to report is found to be wanting in this case because the Secretary, ITYS is not shown to be the authority prescribed/empowered to report upon the work of the Director, Information and Publicity although he may be an officer who generally supervised the Director's work. If that be the conclusion to which

we should arrive, it is clear that in this case there is a serious lacuna in implementation of Rule 2(e) resulting in the report made against the Director being rendered totally nugatory having been recorded by the Secretary, ITYS who was not specifically empowered by Government and hence its confirmation by the Chief Secretary will also necessarily share the same fate. We cannot accede to the submission of the learned Government Pleader that rule 2(e) is not an enabling one and therefore its violation would not render invalid the ACR recorded by the Secretary, ITYS. It is well established from the decision of Taylor v. Taylor (1875) 1 Ch D 426, p.431 that a public authority bidden to do some act or duty shall do so only in the manner enjoined and not otherwise. Therefore, if the rule says only the empowered authority can report upon an officer, somebody not specifically empowered or authorised to report can report against such officer. Any such exercise will prove to be futile. We have, therefore, no hesitation in rejecting the Government Pleader's argument vis-a-vis the content and construction of Rule 2(e).

13. Accordingly, this application succeeds, the orders at Annexures A-1 and A-4 - one conveying the adverse remarks and the other refusal to expunge the adverse remarks and its confirmation are both quashed. All other questions raised and argued we however do not think it necessary to advert to them. No order as to costs.

TRUE COPY

SECTION OFFICER

CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH

BANGALORE

MEMBER (A)

VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560 038.

Dated:- 23 JUN 1994

APPLICATION NUMBER: 619 of 1993.

APPLICANTS:

Dr.S.Krishnamurthy, IPS., v/s. The Chief Secretary, Govt. of Karnataka,
To. Bangalore-1.

RESPONDENTS:

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Advocate General's Office, K.A.T. Unit,
Commercial Complex, Indiranagar, Bangalore-38.
4. Sri.M.H.Motigi, Advocate, No;200, 6th Block,
18th Main, Koramangala, Bangalore-560 034.

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Central administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the ORDER (Corrected)
~~STAY ORDER/INTERIM ORDER~~, passed by this Tribunal in the above
mentioned application(s) on 02-04-1994/14-06-1994.

S. Shanmugam
DEPUTY REGISTRAR
for JUDICIAL BRANCHES.

gm*

Issued
gm

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

ORIGINAL APPLICATION NO.619/1993

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MR.JUSTICE P.K. SHYAMSUNDAR VICE CHAIRMAN
MR. V. RAMAKRISHNAN MEMBER (A)

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Managing Director,
Karnataka State Tourism
Development Corporation,
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Queen's Circle,
Bangalore - 560 001

Applicant

(By Advocate Shri N.B. Bhat)

v.

State of Karnataka
by Chief Secretary to Government,
Vidhana Soudha,
Bangalore - 560 001

Respondent

* Correction

Substituted
the name as
per order of
the Bench
dated 14.6.'94
passed on Memo
for correction
filed by Sh.D.R.Rajashekarappa
State Govt.pleader and Advocate
for Respondent.

(By learned Government Pleader)
Shri D.R.Rajashekarappa *

O R D E R

(N.R.MAMURTHY)
DEPUTY REGISTRAR
23 June '94 (J).

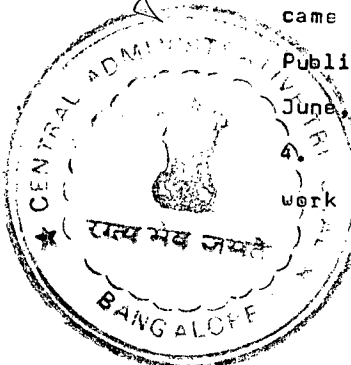
MR. JUSTICE P.K. SHYAMSUNDAR, VICE CHAIRMAN

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the Secretary, Information, Tourism and Youth Services (ITYS for short) of the State of Karnataka, an office generally held by an I.A.S. officer. During the period Dr. Krishnamurthy worked as Director of Information and Publicity, two different persons, both IAS, officers held charge of the office of Secretary, ITYS, the first one was Shri Chiranjiv Singh succeeded later by Shri S.R. Vijay. It was Shri Vijay who wrote the ACRs of Dr. Krishnamurthy for the year 1987-88. The ACRs recorded by Shri Vijay being to some extent uncomplimentary to Dr. Krishnamurthy, were communicated by the then Chief Secretary to Dr. Krishnamurthy as is generally done in the case of adverse remarks. The Chief Secretary's communication in that behalf is at Annexure A-1 and is dated 29.2.89 but, surprisingly the date 29.2.89 which probably is a mistake because the month of February in 1989 had only 28 days. Be that as it may, we think it appropriate to extract the said communication. It reads:

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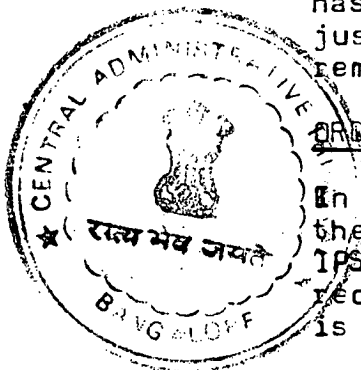
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ORDER NO.DPAR 102 SPS 89 BANGALORE DT.30.3.93

In the circumstances explained above, the request of Dr. S. Krishna Murthy, IPS for expunction of adverse remarks recorded in his C.R. for the year 1987-88 is hereby rejected."



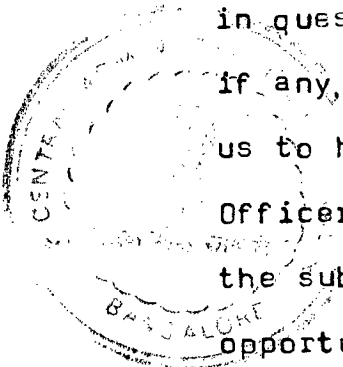
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which has undergone a sea-change. We extract Rule 2(e) as it now stands:

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As mentioned earlier, this rule came into effect w.e.f. 8.12.1987 and prior to that, the rule read as follows:

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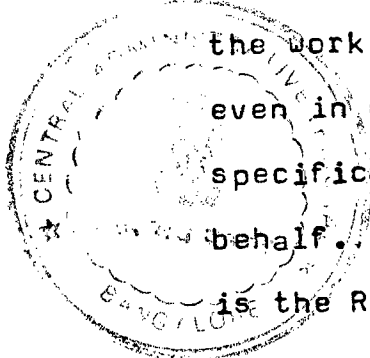
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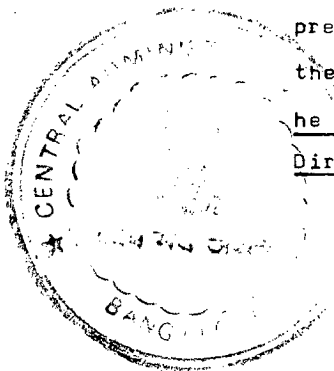
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- 1) In the case of the DGP the Chief Secretary should be the Reporting authority, the Home Minister should be the Reviewing Authority and the Chief Minister the Accepting authority;
- ii) In the case of the IGP, the DAG and Home Secretary should both initiate the CR which should be reviewed by the Chief Secretary and Accepted by the Home Minister.

3. We appreciate that the situation may vary from State to State and officers of the IPS may also be working in departments other than the Home Department. In such cases, the Reporting, Reviewing and the Accepting authorities would be different depending on the specific situations."

12. The above makes it clear that although in a given case the reporting authority and the reviewing authority may belong to different cadres, adherence to the rule is a pre-requisite in that whoever be the reporting officer or the reviewing officer, they have to be empowered by the Government in the matter of reporting or reviewing as the case may be. It means that there must be a prescription in the matter of empowering the reporting authority under Rule 2(e) to make a report. The authority of the reporting authority under Rule 2(e) with specific power to report is found to be wanting in this case because the Secretary, ITYS is not shown to be the authority prescribed/empowered to report upon the work of the Director, Information and Publicity although he may be an officer who generally supervised the Director's work. If that be the conclusion to which



we should arrive, it is clear that in this case there is a serious lacuna in implementation of Rule 2(e) resulting in the report made against the Director being rendered totally nugatory having been recorded by the Secretary, ITYS who was not specifically empowered by Government and hence its confirmation by the Chief Secretary will also necessarily share the same fate. We cannot accede to the submission of the learned Government Pleader that rule 2(e) is not an enabling one and therefore its violation would not render invalid the ACR recorded by the Secretary, ITYS. It is well established from the decision of Taylor v. Taylor (1875) 1 Ch D 426, p.431 that a public authority bidden to do some act or duty shall do so only in the manner enjoined and not otherwise. Therefore, if the rule says only the empowered authority can report upon an officer, somebody not specifically empowered or authorised to report can report against such officer. Any such exercise will prove to be futile. We have, therefore, no hesitation in rejecting the Government Pleader's argument vis-a-vis the content and construction of Rule 2(e).



13. Accordingly, this application succeeds, the orders at Annexures A-1 and A-4 - one conveying the adverse remarks and the other refusal to expunge the adverse remarks and its confirmation are both quashed. All other questions raised and argued we however do not think it necessary to advert to them.

SECTION OFFICER order as to costs.

CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

MEMBER (A)

VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560 038.

Dated:- 5 MAY 1994

APPLICATION NUMBER: 619 of 1993.

APPLICANTS:

Dr.S.Krishnamurthy, IPS.,
To.

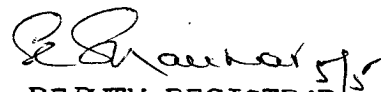
RESPONDENTS:

v/s. Chief Secretary, Govt. of Karnataka,
Bangalore-1.

1. Sri.N.B.Bhat, Advocate,
No.545,16th-A-~~xxxx~~Main,
Third Block, Koramangala,
Bangalore-560034.
2. The Chief Secretary,
Government of Karnataka,
Vidhana Soudha, Bangalore-1.
- ✓ 3. Sri.M.H.Motigi, Government Pleader,
Advocate General's Office,
KAT Unit, Comm.Complex(BDA),
Indiranagar, Bangalore-38.

Subject:- Forwarding of copies of the Orders passed by the
Central administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/, passed by this Tribunal in the above
mentioned application(s) on 22nd April, 1994.


fⁿ DEPUTY REGISTRAR
JUDICIAL BRANCHES.

ORIGINAL APPLICATION NO.619/1993

MR. V. RAMAKRISHNAN MEMBER (A)

Applicant

(By Advocate Shri N.B. Bhat)

V.

Respondent

(By learned Government Pleader)
Shri M.H. Motigi,

O R D E R

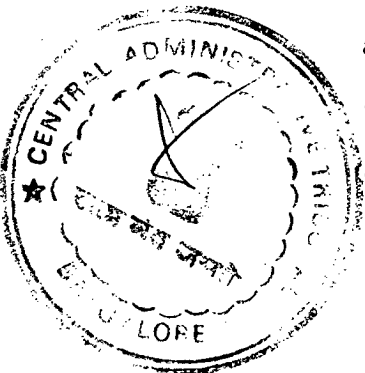
MR. JUSTICE P.K. SHYAMSUNDAR, VICE CHAIRMAN

Heard.

2. Admit.

3. The applicant herein Dr. Krishnamurthy is an IPS officer of 1967 batch who, after more than two decades of regular stint as a police officer, came to be posted as Director of Information and Publicity, Karnataka State from January, 1986 to June, 1990.

4. It transpires that during this period his work as Director was being directly monitored by



the Secretary, Information, Tourism and Youth Services (ITYS for short) of the State of Karnataka, an office generally held by an I.A.S. officer. During the period Dr. Krishnamurthy worked as Director of Information and Publicity, two different persons, both IAS, officers held charge of the office of Secretary, ITYS, the first one was Shri Chiranjiv Singh succeeded later by Shri S.R. Vijay. It was Shri Vijay who wrote the ACRs of Dr. Krishnamurthy for the year 1987-88. The ACRs recorded by Shri Vijay being to some extent uncomplimentary to Dr. Krishnamurthy, were communicated by the then Chief Secretary to Dr. Krishnamurthy as is generally done in the case of adverse remarks. The Chief Secretary's communication in that behalf is at Annexure A-1 and is dated 29.2.89 but, surprisingly the date 29.2.89 which probably is a mistake because the month of February in 1989 had only 28 days. Be that as it may, we think it appropriate to extract the said communication. It reads:

✗
"In the Annual Confidential Report on your work as Director of Information & Publicity, for the year 1987-88, the following adverse remarks have been recorded:

1. Appraising ability

Generally satisfactory. "However, he sometimes gives the impression that he is a little too lenient to his subordinates."

2. General Assessment:

He is a very sharp and intelligent officer. "He sometimes tends to cut procedures and to ignore his immediate superior officers."

Please acknowledge."

5. Dr. Krishnamurthy says that after receipt of these adverse remarks he was quite shocked and dumfounded by the adverse entries communicated to him and taking strong exception to it told the State Government that he did not deserve the uncomplimentary references made regarding formal quality of his work by the Secretary and therefore moved the Chief Secretary for expunging the adverse remarks. However, that endeavour did not succeed, the State Government as a belated consideration of Dr. Krishnamurthy's representation for expunction of the adverse remarks came out with a rejection order at Annexure A-4 dated 30th March, 1993. It reads:

"The following adverse remarks recorded in the C.R. of Dr. S. Krishna Murthy, IPS, for the year 1987-88 on his work as Director of Information and Publicity, Bangalore, were communicated to him vide D.O. letter dated 29.2.89 cited at (1) above.

1. Appraising ability: Generally satisfactory. However, he some times gives the impression that he is a little too lenient to his subordinates.
2. General Assessment: He is a very sharp and intelligent officer. "He sometimes tends to cut procedures and to ignore his immediate superior officers."

Dr. S. Krishna Murthy, IPS, in his representation dated 23.3.89 read at (2) above has requested Government to expunge the adverse remarks recorded in his C.R. for the year 1987-88 for the reasons mentioned therein. Government has examined and found that there is no justification for expunction of these remarks. Hence the following orders:

ORDER NO.DPAR 102 SPS 89 BANGALORE DT.30.3.93

"In the circumstances explained above, the request of Dr. S. Krishna Murthy, IPS for expunction of adverse remarks recorded in his C.R. for the year 1987-88 is hereby rejected."



- 4 -

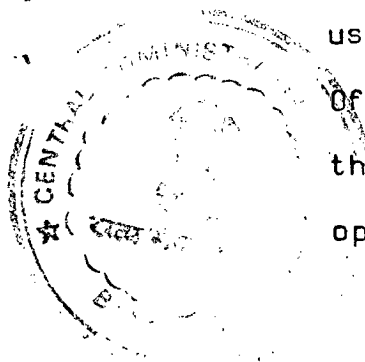
6. We do not know why it took so long for the State Government to make the above order 4 years after the officer had solicited expunction of the adverse remarks. We wonder why it took such a long time. But nothing, however, turns on the belated disposal of the applicant's representation. We have simply referred to it since the delay appears to be somewhat telling.

7. In this application Dr. Krishnamurthy assails the two orders at Annexures A-1 and A-4 - one conveying the adverse remarks and the other, refusal to expunge adverse remarks. The applicant strongly denounces both the orders and maintains that they are both capricious unjust and not merely that, they are wholly untenable. He says that he is an officer of exceptional merit apart from the high academic distinction which he enjoys with a Doctorate in Criminology, most appropriate for a police officer. Naturally, he laments with the turn of his fortune being belittled by the Government whom he was serving, according to him, with exceptional devotion and integrity. We have gone through the relevant file. What catches our eye is really a question of law raising the legitimacy of the right of the Reporting Officer Shri Vijay who had recorded his confidential report touching on his work and ability for the year 1987-88. This aspect has been brought out in the rejoinder placed on record by the applicant following the objection statement filed by the State Government supporting

the action of its officer.

8. Normally, we do not accept a rejoinder unless leave is granted. In this case, we granted leave to the applicant's counsel and permitted placing on record a rejoinder. It does raise an intricate question of law touching the competence of the Reporting Officer based on the amendment of the All India Service (Confidential Rolls) Rules, 1970, brought into effect with effect from 8.12.1987. We gave abundant opportunity to the State Government either to satisfy us that the amended rule does not affect the case of the applicant or to convince us that rule as amended, has been taken note of by issuing a necessary order by the State Government.

9. This matter had been hanging fire for quite a long time and more than six months have elapsed in waiting for a response from the State Government. Finally, today the learned Government Pleader Shri Rajasekharappa quite frankly told us that there ~~was~~ no doubting the applicability of the amended rule to the case of the applicant, a requirement enjoined by the rule was not complied with by the State Government but the learned Govt. Pleader supports his case by urging that the rule in question being an enabling one, its infraction if any, need not be taken seriously at all and asked us to hold that the remarks of the Reporting Officer is without blemish. Before we advert to the submission of the Govt. Pleader, we take this opportunity to extract the relevant rule i.e. 2(e)



which has undergone a sea-change. We extract Rule 2(e) as it now stands:

"'reporting authority' means such authority or authorities supervising the performance of the member of the Service reported upon as may be specifically empowered in this behalf by the Government."

As mentioned earlier, this rule came into effect w.e.f. 8.12.1987 and prior to that, the rule read as follows:

"'reporting authority' means the authority who was, during the period for which the confidential report is written, immediately superior to the member of the service and such other authority as may be specifically empowered in this behalf by the Government."

10. Now that there is no dispute that the reporting authority in this case has to conform to the amended rules, one further question arises and that really is the crux of the matter i.e. whether the Reporting Officer referred to under Rule 2(e) has been specifically empowered as enjoined by that rule to make the necessary report particularly when the ACR to be recorded related to the period following the coming into force of the amended rules. The rule after its amendment vis-a-vis the earlier one reflects a sea-change. Earlier, the Reporting Authority was one who was, during the period for which the confidential report is written, the immediate superior to the member of the Service and any member who may be specifically empowered by the Government in other words, prior to amendment any authority who was superior to the officer reported upon or

anybody who was empowered by the Government to write a report could record a report.

This is the purport of the rule as can be seen from letter dated 8.7.1977. It reads:

"I am directed to say that there is an impression in some quarters that according to clause (e) of Rule 2 of the All India Services (Confidential Rolls) Rules, 1970, the Reporting Authority can be either the authority immediately superior to the member of the Service reported upon or such other authority as may be specifically empowered in that behalf by the Government. It is hereby clarified that subject to the provision of sub-rule (6) of Rule 5 of the said Rules, the authority who was, during, the period for which the confidential reports is written, immediately superior to the member of the Service, has necessarily to record his report on the performance of the member of the Service. In addition, any other authority may be specially empowered by the Government to act as the Reporting Authority. The use of the conjunction "and" to join two sub-clauses in clause (e), *ibid* makes the above position abundantly clear."

11. But, after the amendment, the position has changed considerably in that the Reporting authority is defined to be the authority or authorities supervising the performance of the member of the Service reported upon as may be specifically empowered in this behalf by the Government. In other words, the amended rule requires two necessary in-puts. First is the Reporting authority must be one who was supervising the work of the officer reported upon and secondly even in order to make such a report he must be specifically empowered by the Government in that behalf. In other words, what the rule requires is the Reporting Officer must be one who regularly monitored the work of the officer reported upon

- 8 -

and who was also empowered by the Government to make the necessary report in that behalf. Shri Vijay, the reporting authority in this case satisfies but only one requirement of the rule in that he appears to be a person regularly monitoring and supervising the work of the Director, Information and Publicity in his capacity as Secretary to ITYS. Learned Government Pleader tells us that there is no chart detailing the work of the Secretary as such but it really does not matter. We take it that the Secretary has the power to supervise the work of the Director, Information and Publicity. The crucial and vital question is, ~~was~~ he actually empowered by Government to make any such report. The rule as we have seen is a composite one requiring twin in-puts - one being supervision and the other the power to report about the result of the supervision done. It is touching the latter requisite Shri S.R. Vijay^{exa} found to be wanting. It is not denied that he had not been specifically empowered by Government to make a report touching the work and ability etc. of the Director of Information and Publicity. As a matter of fact, following the amended rule 2(e), the Government of India had issued to all Chief Secretaries of State Governments a circular as follows:

"I am directed to invite a reference to this Department's letter of even number dated 29.7.1987 regarding amendment to AIS (CR) Rules, 1970 and to say that the comments received from various State Governments have been taken duly into consideration and the AIS (CR) rules, 1970 have been amended. A copy of the notification amending the said rules is enclosed.

2. The State Governments have been given full authority as before, for prescribing

the reporting authority, reviewing authority and the accepting authority for the All India Services. However, it would be necessary to maintain a certain degree of uniformity in prescribing the authorities for reviewing the work of senior All India Service Officers. The following is therefore suggested for your consideration and adoption:

- i) In the case of the DGP the Chief Secretary should be the Reporting authority, the Home Minister should be the Reviewing Authority and the Chief Minister the Accepting authority;
- ii) In the case of the IGP, the DGP and Home Secretary should both initiate the CR which should be reviewed by the Chief Secretary and Accepted by the Home Minister.

3. We appreciate that the situation may vary from State to State and officers of the IPS may also be working in departments other than the Home Department. In such cases, the Reporting, Reviewing and the Accepting authorities would be different depending on the specific situations."

12. The above makes it clear that although in a given case the reporting authority and the reviewing authority may belong to different cadres, adherence to the rule is a pre-requisite in that whoever be the reporting officer or the reviewing officer, they have to be empowered by the Government in the matter of reporting or reviewing as the case may be. It means that there must be a prescription in the matter of empowering the reporting authority under Rule 2(e) to make a report. The authority of the reporting authority under Rule 2(e) with specific power to report is found to be wanting in this case because the Secretary, ITYS is not shown to be the authority prescribed/empowered to report upon the work of the Director, Information and Publicity although he may be an officer who generally supervised the Director's work. If that be the conclusion to which

we should arrive, it is clear that in this case there is a serious lacuna in implementation of Rule 2(e) resulting in the report made against the Director being rendered totally nugatory having been recorded by the Secretary, ITYS who was not specifically empowered by Government and hence its confirmation by the Chief Secretary will also necessarily share the same fate. We cannot accede to the submission of the learned Government Pleader that rule 2(e) is not an enabling one and therefore its violation would not render invalid the ACR recorded by the Secretary, ITYS. It is well established from the decision of Taylor v. Taylor (1875) 1 Ch D 426, p.431 that a public authority bidden to do some act or duty shall do so only in the manner enjoined and not otherwise. Therefore, if the rule says only the empowered authority can report upon an officer, somebody not specifically empowered or authorised to report can^{not} report against such officer. Any such exercise will prove to be futile. We have, therefore, no hesitation in rejecting the Government Pleader's argument vis-a-vis the content and construction of Rule 2(e).

13. Accordingly, this application succeeds, the orders at Annexures A-1 and A-4 - one conveying the adverse remarks and the other refusal to expunge the adverse remarks and its confirmation are both quashed. All other questions raised and argued we however do not think it necessary to advert to them.

No order as to costs.

TRUE COPY

SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
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MEMBER (A)

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