

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

DATE OF ORDER: 24/10/2001

OA No. 309/1998

L.D. Gidra son of Shri Chhog Mal aged about 55 years resident of IV/8, A.G. Colony, Bajaj Nagar, Jaipur at present working as Senior Audit Officer in the office of Accountant General (Audits) Rajasthan, Jaipur.

.....Applicant

VERSUS

1. The Union of India through the Accountant General Rajasthan, Jaipur.
2. The Senior Deputy Accountant General, Office of Accountant General, Rajasthan, Jaipur.
3. Shri S.K. Khanna, Senior Deputy Accountant General (Retired), at present resident of 6-Kha-7, Jawahar Nagar, Jaipur.
4. The Comptroller and Auditor General of India, New Delhi.

.....Respondents.

None present for the applicant.

Mr. Bhanwar Bagri, counsel for the respondents.

CORAM

Hon'ble Mr. S.K. Agarwal, Member (Judicial)

ORDER

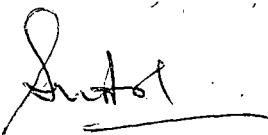

PER HON'BLE MR. S.K. AGARWAL, MEMBER (JUDICIAL)

In this OA filed u/s 19 of the Administrative Tribunals Act, applicant makes the following prayers:

- (i) that the adverse remarks for the year 1995-96 and part of the year 1996-97 (April, 96 to July, 96) may be expunged.
- (ii) further prayer has been made to quash and set aside order on representation/appeal by which representation/appeal filed by the applicant has been rejected.
- (iii) to direct the respondents to consider the service record of the applicant for the relevant years as satisfactory and applicant may be given all consequential benefits.

2. The Reporting officer as well as Reviewing Authority gave adverse entries to the applicant for the year 1995-96 and part of the year 1996-97 (April, 1996 to July, 1996), as mentioned in the Annexures attached with this OA. According to these Annexures, it appears that adverse entries have been recorded in every columns except the columns of integrity and health.

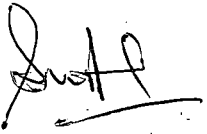
3. In brief, facts of the case, as stated by the applicant are that the applicant was initially appointed on 6.8.1964 as UDC. He was promoted as Section Officer on 6.2.76 and Assistant Audit Officer on 1.3.84 and Audit Officer on 9.5.91 and Senior Audit Officer on 9.5.94 on the basis of consistently good record but Reporting officer, Shri S.K. Khanna, gave adverse remarks due to personal bias for the year 1995-96 and for part of the year 1996-97 (April, 1996 to July, 1996) and communicated to the applicant. Applicant submitted detailed representation which was rejected. Thereafter applicant submitted an appeal against such rejection, which was also rejected. It is stated that no prescribed procedure was adopted in writing down ACR, no warning was given to the applicant so as to give him an opportunity to improve himself and communication of these adverse remarks was altogether on account of personal bias of respondent no. 3. It is worth-mentioning that the same Reporting Officer gave good ACR to the applicant for the years 1992-93 and 1993-94 and cash award was also given to the applicant for his good performance. It is also stated that on account of personal bias, Reporting Officer gave adverse entries in all columns of ACR except column relating to integrity and health. The Applicant was appointed as UDC in the year 1964 and since then his work and conduct was appreciated and he was promoted as & when his turn came, then how a person can suddenly develop every type of deficiency as



mentioned in the OA. Respondent no. 3 has written adverse remarks against applicant in each column except integrity and health whereas no Memo was given to the applicant in the year 1994-95. The only Memo given to the applicant was in July, 1996 and applicant has properly explained his position as to how and under what circumstances the review could not be completed. Therefore, it is stated the adverse remarks given to the applicant are baseless. It is also stated that applicant was promoted from time to time because of his consistent good record and he was allowed to cross the Efficiency Bar in time and he was also awarded merit certificate and cash award for his good performance. Hence subsequent adverse remarks were the out come of personal bias of respondent no.3 only. Hence these adverse remarks are liable to be expunged.

4. Reply was filed. In the reply, allegation of personal bias on the part of respondent no. 3 have been totally denied. It is stated in the reply that respondent no. 3 on tour inspected his work and observed that there was no progress in the work areas of the applicant. Therefore, he was directed to report to the Headquarter to complete the work. It is stated that for covering his official failures, applicant has made baseless and false allegations against respondent no. 3. It is also stated that ACR of the applicant were on the basis of performance made by the applicant during the year. It is stated that Reporting Officer had asked employees subordinate to him to furnish their Self-Appraisal within the stipulated time and applicant has also filled the same. Therefore, there is no procedural fault on the part of respondent. ACR are filled up on the basis of performance of the employee in a particular year and his past performance has no bearing upon it. It is further stated that applicant failed to complete the review for the year 1995-96 and part of the year 1996-97 and this poor performance altogether have been reflected in the relevant ACR. That is why this was done by the Reporting Officer. Hence applicant has no case.

5. Separate reply by respondent no. 3 has also been filed reiterating the facts stated in the reply filed by official respondents and denied the allegation of personal bias against him. In the reply, respondent no. 3 has further stated that allegation of personal bias against him are totally false and baseless and ACR was written on the basis of his performance in the relevant year.



6. Rejoinder and reply to rejoinder has also been filed, which are on record.

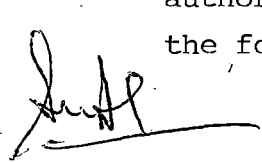
7. Heard the learned counsel for the respondents and perused the written submissions filed by the learned counsel for the applicant and also perused the whole record.

8. The purpose of ACR is to help the individual to recognise the areas of deficiencies and makes efforts to overcome his deficiencies. The remarks in the ACR have direct bearings of the growth of the career of the individual. These are required to be recorded with great care without prejudice. The reporting Officer is required to write down the ACR of the official subordinate to him according to rules and regulations provided for the purpose. He must have a definite base to write adverse remarks against the concerned officer with certain instances and he should also ensure that an opportunity was given to the applicant to rectify those shortcomings which he has noticed from time to time. Instead of giving vague and general remarks, the reporting Officer while making adverse entries must indicate specific instances where the officer reported upon, in the assessment of the reporting officer, has been found wanting.

9. In State Bank of India & Others vs. Kashinath Kher & others (1996) 8 SCC 762, Hon'ble Supreme Court pointed out that the object of writing the CR is two fold i.e. to give an opportunity to the officer to remove deficiencies and to inculcate discipline. Secondly, it seeks to serve improvement of quality and excellence and efficiency of public service.

10. In Sukhdeo Vs. Commissioner, Amravati Division (1996) 5 SCC 103. it is also laid down that attribution of malice and arbitrariness to reporting and reviewing officers who are not impleaded as respondents and who have no opportunity to explain their conduct, could not be accepted.

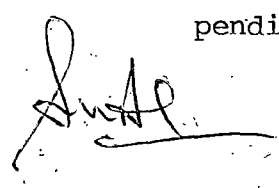
11. In U.P. Jal Nigam Vs. Prabhat Chandra Jain, (1996) 2 SCC 363 their Lordship held that for down grading the ACR, the authority has to record the reasons and inform the applicant in the form of advice.



12. In M.A. Rajasekhar Vs. State of Karnataka (1996) 10 SCC 369 their Lordship stated that the superior authority is obliged to guide the subordinate by pointing out deficiency and since this exercise has not been done, the said adverse remarks are stated to be not consistent with law.

13. In State of U.P. Vs. Y.S. Misra, 1997 4 SCC 7, it is laid down by the Apex Court that a confidential report is written to enable an employee to improve his performance in public service. This should be a good input and catalyst to enable the employee to strive towards excellence in accordance with Article 51-A of the Constitution as a fundamental duty in all spheres of individual collective activity. The second guideline laid down was that there should be complete objectivity in writing a confidential report because it is primary responsibility of the reporting and reviewing officer. The third guideline was that the confidential report need to be written accurately on the basis of facts. The reporting and reviewing officer should confront the reported officer with the facts and the adverse inference before forming an opinion to make an adverse remark so that the reported officer gets an opportunity either to improve himself or to explain his conduct.

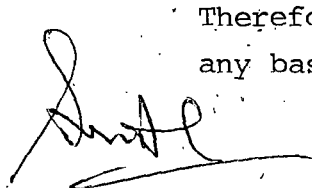
14. In the instant case, ACR for the period from 1.4.95 to 31.3.96 was filled up by the reporting officer on 22.8.96 and for the period from 1.4.96 to 31.7.96 on 29.8.96 - after his retirement on 31.7.96. The applicant appears to have worked under Shri S.K. Khanna, the reporting officer from June, 1993. The same Reporting Officer gave good ACR to the applicant for the years 1993-94 and 1994-95 out of which one resulted into promotion to the applicant and crossing the Efficiency Bar and another culminated Cash award and merit certificate to the applicant. How an officer can become almost bad in all the spheres of service in subsequent years. This goes to show that reporting officer started have bias attitude towards the applicant after his tour to Kekri visit on 27.2.97, as stated by the applicant in his OA. No advise was ever given by the Reporting Officer to the applicant in this matter inspite of progress report submitted to him from time to time but with a view to put the whole blame upon the applicant for failure of review, the Reporting Officer spoiled the ACR of the applicant. This also gets corroboration from the fact that after his visit to Kekri on 27.2.97, respondent no. 3 ordered to keep the review pending and directed the applicant to report at the Headquarter



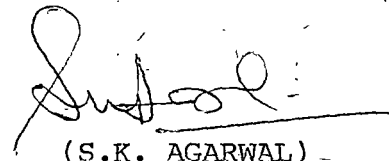
at Jaipur. If the applicant would have allowed, the applicant, *he* could have completed the full work as per planning made by ECPA Section, duly approved by Senior Deputy Accountant General. This situation could not have arisen if the Reporting officer did not keep the review pending with him for three and half months and put the blame upon the applicant of not completing the review in time. Hence for the poor performance, as alleged by respondents, the applicant cannot be blamed. Therefore, in my view, the adverse remarks given by the Reporting officer and Reviewing Authority are baseless, unjustified and unreasonable and liable to be expunged.

15. It is also worth mentioning here that applicant was initially appointed as UDC in the year 1964 and he was promoted from time to time as Section officer, Assistant Audit Officer, Audit Officer and Senior Audit Officer on the basis of his good service record and he was never superseded. Therefore, all of a sudden how the same officer can be said to be a bad in all spheres of his activities which is neither convincing nor believable. No basis has been explained by the respondent department for recording the adverse entries, as mentioned above, for the years 1995-96 and part of the year (April 1996 to 31.7.1996).

16. The Reporting officer appears to have written the confidential report of the applicant after his retirement. No self appraisal of the applicant for the period from April, 1996 to July, 1996 was available with the Reporting officer. No explanation/memo of any kind appears to have been given to the applicant for pointing out his shortcomings/deficiencies noticed by the Reporting officer during the period against the applicant. Only in June, 1996, a Memo was given to which reply was given by the applicant, explaining how and under what circumstances a review could not be completed. The applicant in so many words alleges malafides against respondent no. 3, who has been impleaded as necessary party. Although, he has denied the allegation but looking to the facts the circumstances of this case, the fact that during the whole tenure of his service till the adverse remarks are given, applicant was promoted on the basis of his good service record as & when his turn came and applicant was also given cash award and merit certificates. Therefore, these adverse entries in the ACR in the absence of any basis are liable to be expunged.



17. Therefore, in view of the facts and circumstances of this case and settled legal position, I am of the constrained opinion that adverse remarks given by the Reporting officer and Reviewing Authority to the applicant for the year 1995-96 and part of the year 1996-97 (April, 1996 to July, 1997) are liable to expunged. I, therefore, allow this OA and declare to treat the adverse remarks given by the Reporting officer and Reviewing Authority to the applicant for the year 1995-96 and part of the year 1996-97 (April, 1996 to July 1997) as nonest and hereby expunged. The order passed on representation/appeal is hereby quashed. Applicant shall also be entitled to all consequential benefits. No order as to costs.



(S.K. AGARWAL)

MEMBER (J)

AHQ