

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No.705/2003

Gwalior, this the 25th day of August, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman

Ajest Singh Choudhary, aged about 51
years, S/o Late Shri S.P.Choudhary,
Commandant, 34th SAF Battalion,
Char, Distt-Dhar(M.P)

APPLICANT

(By Advocate - Shri S. Nagu)

VERSUS

1. Union of India through Secretary, Home,
North Block, New Delhi 100 001.
2. State of Madhya Pradesh, through,
Principal Secretary, Home (Police)
Mantralaya, Vallabh Bhawan, Bhopal
(M.P.)
3. Director General Police, Police
Headquarters, Lal Parade Ground,
Bhopal(M.P.)

RESPONDENTS

(By Advocate - Shri Om Namdeo)

O R D E R

By filing this OA, the applicant has sought the
following main reliefs :-

"B.1 to quash the adverse remarks for the appraised
year 2001-2002 communicated by memo datd 18.12.2002.

8.2 to quash the memo dated 16.9.2003 rejecting
the representation of the applicant.

8.3 to declare that the exercise of writing the
adverse remarks and rejecting of representation is
void illegal and arbitrary".

2. The brief facts of the case as stated by the
applicant are that he joined the State Police Service
(for short 'SPS') as Deputy Superintendent of Police.

He was inducted into Indian Police Service (for short 'IPS')
vide notification dated 15.2.2000. Before he was inducted
into IPS, his seniority in the SPS was wrongly fixed. He
filed a Writ Petition before the Hon'ble High Court of MP
which stood transferred and registered as Transferred
Application No.1197/1988 on constitution of the M.P.

Administrative Tribunal, Jabalpur. The said TA1197/1988 was

allowed vide order dated 2.12.1997 with a direction to the respondents to revise the applicant's seniority, which was complied with much delay by orders dated 1.8.1998, thereby revising the seniority of the applicant in the cadre of Dy.SP from serial no. 77 to 17A. In the meantime the applicant was superseded for his induction into IPS. After exhausting all departmental remedies, the applicant preferred OA 667/1999 before the Tribunal which was finally disposed of vide order dated 10.1.2003 with a direction to consider the case of the applicant by review selection committee as in 1996. As the aforesaid order dated 10.1.2003 was not complied with, the applicant was constrained to file C.C.P.No.31/2003, in which the Principal Secretary, Home and the Director General Police were made party by name. It is alleged by the applicant that on receipt of the notice for contempt, the Principal Secretary Home, felt offended and thus started nursing animus against the applicant. Finally, on 17.9.2003, the CCP 31/2003 was disposed of. During the year 2001-2002 the applicant was posted as SP, at Police Headquarters, Bhopal till July, 2001. During his stay at Bhopal, the applicant rendered outstanding service and it was because of that he was given charge of newly formed district of Sheopur, wherein the applicant took over on 18.7.2001. According to the applicant, he has done commendable work during his tenure as SP, Sheopur for the period 18.7.2001 to 31.3.2002. However, to the utter dismay of the applicant, he was communicated with an adverse remark of his confidential report for the year 2001-2002 vide memo dated 18.12.2002 (Annexure-A-7). The applicant preferred a detailed representation dated 17.2.2003 followed by a supplementary representation dated 20.3.2003, however, the same have been rejected by the respondents vide order dated 16.9.2003. Aggrieved by this, the applicant has filed this O.A. by claiming the afore-mentioned reliefs.

3. The respondents in their reply have submitted that the applicant while he was posted as SP, Sheopur, he was found



taking interest in the welfare of the staff members and their family welfare, however, his performance as SP has been found to be of an average standard. Accordingly, in his ACR for the year ending 31st March, 2002 the following remarks were recorded-

"Shri Choudhary is an experienced officer whose performance as S.P. Sheopur has been of average standard. He exercised average control over his sub-ordinates and his supervision of crime work was of average standard".


The respondents have contended that since the aforesaid remarks were adverse in nature, the same were communicated to the applicant affording him an opportunity to represent. The applicant made a representation, which was duly considered by the competent authority and it was found that the remarks recorded in his ACR for the year ending 31st March, 2002 were correct, reflecting the true picture about the performance of the applicant and were recorded after considering the same objectively. The applicant was accordingly informed about the rejection of the representation. The claim put forth by the applicant in the present OA that he has been made a victim of circumstances is categorically denied by them and they have stated that the OA is devoid of merit and the same is, therefore, liable to be dismissed.

4. Heard both the learned counsel of ^{the} parties. The learned counsel for the applicant has submitted that earlier the seniority of the applicant in the grade of Dy.SP in the SPS was wrongly fixed. He filed a writ petition, which was transferred to the State Administrative Tribunal, Jabalpur. The SAT allowed the TA and directed the State Government to fix his seniority, and accordingly his seniority was fixed correctly. In the meantime he was superseded by his juniors for induction into IPS. As he was not shown at the proper place in the seniority list, he was inducted into IPS vide order dated 15.2.2000 on the basis of wrong seniority. When his seniority was refixed, he became due for induction into IPS in the year 1996. Therefore, he filed an OA 667/1999 and



the Tribunal vide order dated 10.1.2003 directed the respondents to hold a review selection committee meeting. Since the order of the Tribunal was not implemented by the respondents, the applicant filed a contempt petition impleading the Principal Secretary, Home as well as the Director General Police by name and that is why both these officers got offended. The learned counsel has submitted that the applicant has all along 'outstanding' record and there cannot be sudden fall in his performance from 'outstanding' to 'average'. The applicant has worked during the year from 1.4.2001 to 18.7.2001 in the Police Headquarters and has done outstanding work. After 18th July, 2001 he was given independent charge of the newly formed district Sheopur. It can be seen that no adverse remarks for the performance of the applicant in the Police Headquarters from 1st April 2001 to 18th July, 2001 - i.e. 1st part of the year 2001-2002, has been recorded. The learned counsel has further submitted that because of the malafide and bias of the officers due to filing of the contempt petition, the adverse remarks have been recorded during the later part of the year when he functioned as ¹SSP, Sheopur. He has contended that the adverse remarks are not sustainable as they are not based on the actual performance of the applicant. To support his claim, the learned counsel has relied on the decisions of the Hon'ble Supreme Court in the cases of State of U.P. Vs. Yamuna Shanker Misra and another, (1997) 4 SCC 7 and U.P. Jal Nigam and others Vs. Prabhat Chandra Jain, (1996) 2 SCC 363.

4. On the other hand, the learned counsel for the respondents has stated that the adverse remarks have been recorded by the reporting officer/reviewing Officer on the objective assessment of the performance of the applicant during the relevant period. They are only advisory in nature and had been given to afford an opportunity to improve



the performance. His representation has been duly considered and rejected by the competent authority and, therefore, this OA is liable to be dismissed.

5. I have gone through the rival contentions put forth by the learned counsel of both sides. The learned counsel for the respondents has produced the ACR dossier of the applicant and I have carefully gone through the same.

I find that the CRs of the applicant for the years 1993-94 to 2000-2001 are outstanding/very good. In this case, the CR for the preceding year of the communication of the adverse remarks i.e. 2000-2001 is outstanding and for 2001-2002 it is average. There is a sudden fall in the grading of the applicant from 'outstanding' to 'average'. There cannot be such a steep fall in the performance of the applicant within one year from 'outstanding' to 'average'. It appears that the reporting officer and the reviewing officers have not made their assessment objectively and correctly. In this connection we may refer to the CR of the applicant for the year ending (Below average) 31.3.1999 when he was graded as 'GHATIA'/by the reporting officer but the Reviewing Officer has recorded the following remarks-

"This officer had exposed the nefarious and corrupt activities of Shri Purshottam Sharma, the then SSP (Radio). In fact he has given evidence in Enquiries/Lokayukta Enquiries against Shri Sharma. Hence the A.C.R. reflect Shri Sharma's anger and frustration, rather than a correct evaluation of the officer. I do not agree with the above A.C.R. and this A.C.R. should be treated as expunged.

The fact that this officer has worked very hard in the period under review. He is an honest, courageous, capable officer. His work and conduct has been very good. He is fit for promotion.

CATEGORY-'A' (Very Good)".

The aforesaid remarks had been agreed by the DGP, MP Bhopal.

This itself shows that the earlier also the ACR of the applicant has not been recorded by the reporting officer objectively. Therefore, it supports the contention of the applicant that the adverse remarks recorded in this ACR for the year ending 31st March, 2002 were not recorded objectively and the officers have become prejudiced against him, because of his filing so many cases. I also find that the applicant has been given an


appreciation letter dated 1.5.2000 by the Principal Secretary Home for rendering commendable service in rescuing 732 families from the flood, in Narbada river in Hoshangabad district in September, 1999. I also find that before recording the adverse remarks in the ACR of the applicant for the year 2001-2002 applicant has not been given any opportunity in the form of advice or otherwise nor he has been counselled about his shortcomings. The Hon'ble Supreme Court in the case of U.P. Jal Nigam (supra) has held as under-

"if the graded entry is of going a step down, like falling from 'very good' to 'good' that may not ordinarily be an adverse entry since both are in positive grading. All that is required by the authority recording confidentials in the situation is to record reasons for such downgrading on the personal file of the officer concerned, and inform him of the change in the form of an advice. If the variation warranted be not permissible, then the very purpose of writing annual confidential reports would be frustrated. Having achieved an optimum level the employee on his part may slacken in his work, relaxing secure by his one-time achievement. This would be an undesirable situation. All the same, the sting of adverseness must in all events, not be reflected in such variations, as otherwise they shall be communicated as such. It may be emphasised that even a positive confidential entry in a given case can perilously be adverse as to say that an adverse entry should also be qualitatively damaging may not be true. In the instant case we have seen the service record of the first respondent. No reason for the change is mentioned. The downgrading is reflecting by comparison. This cannot sustain.

In the instant case also I find that no reasons for such down grading the ACR of the applicant from 'outstanding' to 'average' have been recorded in the personal file of the applicant. The Hon'ble Supreme Court in the case of Yamuna Shanker Misra (supra) has held as under-

"Before forming an opinion to make adverse entries in confidential reports, the reporting/reviewing officer should share the information which is not a part of the record, with the officer concerned. This amounts to an opportunity given to the erring/corrupt officer to correct the errors of the judgment, conduct behaviour, integrity or corrupt proclivity. If, despite giving such an opportunity, the officer fails to perform the duty or correct his conduct or improve himself, necessarily the same is to be recorded in the confidential report and a copy thereof supplied to the affected officer so that he will have an opportunity to know the remarks made against him."

I find that the reporting officer has not given any opportunity in terms of the above judgment to the applicant, before recording the average report. He has also not given any reason for justifying his recording the average



report in various columns of the ACR of the applicant. Therefore, the remarks communicated to the applicant for the year 2001-2002, cannot sustain in view of the aforesaid decisions of the Hon'ble Supreme Court.

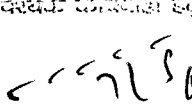
6. In the result, the Original Application is allowed. The adverse remarks recorded by the reporting officer/ reviewing officer in the confidential report of the applicant for the year 2001-2002 are quashed and set aside. The impugned orders/memoranda dated 16.9.2003 and 18.12.2002 are ^{also} quashed and set aside. The respondents are directed to obliterate the adverse remarks in the ACR of the applicant for the year 2001-2002, within a period of one month from the date of communication of this order. No costs.


(M.P. Singh)
Vice Chairman

rkv.

प्रस्तावक से ओ/व्हा.....जयपुर, दि.....
सचिव, अल्पसंख्यक आयोग
(1) सचिव, अल्पसंख्यक आयोग, जयपुर
(2) आयोग के सदस्य/अध्यक्ष.....के कार्यालय
(3) राज्य सरकार के मुख्य सचिव.....के कार्यालय
(4) जयपुर के जल, वायु, पर्यावरण विभाग
सूचना एवं आवाज के माध्यम से

S. Nigam
On Mandate


उप सचिव


1-9-04