

in such a language as if to produce a sense of resentment depicting malafide intention or else the format or the language couched should be such that it does not produce resentment but it is given as a chance to try and improve himself in those defects.

3. Our attention is drawn towards Annexure A3 regarding ACR of year ending 31.3.97 and towards A5 regarding ACR year ending 31.3.98. He has also contended that the remarks have neither been reported nor recorded within the stipulated period/time basis .

3. Learned counsel for the respondents, on the other hand, submits that the applicant has been given oral warning repeatedly by the respondents.

4. After hearing the applicant himself and the learned counsel for the respondents and carefully perusing the records, we find that as per the instructions given from time to time, the reporting officer is required to bring to the notice of the employee about the shortcomings during the period of reporting and such shortcoming observed by the reporting officer should be communicated to the employee in writing. While the respondents have admitted this fact in the reply, except communication of both ACRs, no other information was given to the applicant prior to the issuance of these ACRs. In case the employee does not show any improvement and does not make any effort to overcome the shortcoming, the same should be recorded in his confidential reports. In the instant case, the respondents have not been able to convince the Tribunal why such course was not adopted while recording the adverse remarks for the year ending 97-98. The Hon'ble Supreme Court in the case of State of UP vs. Yamuna Shankar Mishra (1997) 4 SCC 7 has held that "before forming an opinion to

be adverse, the reporting officers writing confidentials should share the information which is not a part of the record with the officer concerned, have the information confronted by the officer and then make it part of the record. This amounts to an opportunity given to the erring/corrupt officers to correct the errors of the judgment, conduct, behaviour, integrity or conduct/corrupt proclivity."

4.1. We also find that the applicant has also filed another OA No. 188/2001 which was disposed of vide order dated 13th February, 2004. In that OA the applicant challenged the adverse remarks communicated to him for the year 1999-2000. The Tribunal allowed the said OA. Para 6 of the said order is relevant and the same is reproduced below :

"6. I have considered the rival contentions of the parties. I find that certain adverse remarks were recorded in the ACRs of the years ending 1999 and 2000. As per instructions given from time to time the reporting officer is required to give counselling to bring to the notice of an employee about the short comings observed by him during the period of reporting & shortcoming observed by the reporting officer should be communicated to the employee in writing. In case, the employee does not show any improvement and does not make any effort to overcome the shortcomings, the same should be recorded in his confidential reports. In the instant case the respondents have not been able to convince the Tribunal that such a course was adopted by them while recording the adverse remarks in the ACRs of the applicants for the years 1999 and 2000. The Hon'ble Supreme Court in the case of State of UP Vs. Yamuna Shanker Mishra, (1997) 4 SCC 7 has held that "Before forming an opinion to be adverse, the reporting officers writing confidentials should share the information which is not a part of the record with the officer concerned, have the information confronted by the officer and then make it part of the record. This amounts to an opportunity given to the arring/corrupt officer to correct the errors of the judgment, conduct, behaviour integrity or conduct/corrupt proclivity."

In the instant case also, we find that the respondents have not followed the procedure as stated in the aforesaid order. In this view of the matter the decision of the Tribunal in OA No. 188/2001 squarely covers this case also.

DR

5. In the facts and circumstances of the case, we quash and set aside the adverse remarks communicated to the applicant for the years 1997 and 1998. Accordingly, the original Application stands disposed of. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

"SA"

पृष्ठांकन से ओऽज्ञा..... जवलपुर, दि.....
परिवर्तित १०० पृष्ठा

(1) शहीद बद्रीनाथ दत्त विद्यालय, जगलपुर
 (2) शहीद बद्रीनाथ दत्त विद्यालय, जगलपुर
 (3) शहीद बद्रीनाथ दत्त विद्यालय, जगलपुर
 (4) शहीद बद्रीनाथ दत्त विद्यालय, जगलपुर

2nd 6/9/04