

**Central Administrative Tribunal
Jaipur Bench, JAIPUR**

OA.454/2006

This the 16th day of February, 2010

Hon'ble Shri M.L. Chauhan, Member (Judicial)

Mr. Peeyush Gautam, aged about 38 years, S/o Shri Y.K. Gautam, presently working as Assistant Master of Mathematics, Office of Military School, Dholpur (Rajasthan).

...Applicant

(By Advocate: Shri T. P. Sharma proxy for Sh.P.K.Sharma)

- V E R S U S -

1. The Union of India, Through: It's Secretary, Ministry of Defence, New Delhi.
2. The Principal, Military School, Dholpur (Rajasthan)
3. The Director MT -15, DTE General of Military Training (MT-15), General Staff Branch, Army Headquarters, DHQ, P.O. New Delhi-110011.

.....Respondents

(By Advocate: Ms. Kavita Bhati proxy for Sh.Kunal Rawat)

O R D E R(Oral)

The applicant has filed this OA, thereby praying for quashing the impugned order dated 30.4.2006, whereby the representation of the applicant was rejected, with further prayer that respondents be directed to award applicant all the benefits in the service ignoring the adverse remarks.

2. Briefly stated, facts of the case are that the applicant while working as Assistant Master in Military School, Dholpur (Rajasthan), the adverse remarks were recorded in his ACRs for a period from 01.04.2004 to 31.03.2005. The said adverse remarks were communicated to the applicant vide letter dated 27th July, 2005 (Annexure A-2). The adverse remarks were recorded against the applicant for the aforesaid period were in the following terms.

ANNUAL CONFIDENTIAL REPORT: ASSISTANT MASTER
FOR THE YEAR OF 20004-2005

1. The following adverse remarks are reflected in your ACR for the period 01.04.2004 to 31.3.2005.

	<u>Contents</u>	<u>Remarks</u>
Part- III		
Col.4(a)	Commitment to the task assigned	Not satisfactory. A letter No. C/056/Comp(i .) dated 12 Oct., 2004 was issued for not conducting quiz competition as per the School calendar 2004-2005
Col.4(b)	Devotion of duty	Not satisfactory
Col.6	Punctuality	Not satisfactory a letter No. C/053/Comp dated 19 th Oct., 2004 was issued for absent during break off assembly.
<u>Part-IV</u>		
Col.3	Do you agree with the assessment of the officer given by the reporting officer?	No. The reporting officer was liberal in grading. The officer should have graded him below average.
Col.5	General remarks with special comments about the general marks given by the	Shri Peeyush Gautam lacks discipline.

	reporting officer and remarks about the meritorious work of the officer including the grading.	Repeated verbal counseling have litter impact on him to improve performance in duty.
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2. In case you wish to represent the adverse remarks, you should do so within the period of 30 days from the date of receipt and sent to this HQs under a confidential cover addressed to:-

Col Ravinder Passi
Director MT-15,
Dte Gen of Military Training
GS Branch
Army Headquarters
New Delhi.

3. Please acknowledge.

(K.Raman)
Lt. Col. Offg. Dir., MT-15
For DCOAS(IS&T)

3. The applicant has filed representation against the aforesaid adverse remarks and the said representation was also rejected vide impugned order dated 30.4.2006 (Annexure A-1).

4. The case of the applicant is that the said adverse remark is outcome of the FIR lodged by the father of applicant against the respondent No.2 and other for the incident which occurred in the intervening night of 28-29th September, 2004 when the applicant was attacked at his residence on the behest of respondent No. 2 and the goons who not only beat him merciless but also tried to electrocute him. It is further the case of the applicant that on account of this incident, he was so injured

and terrified that he could not move out of his residence till his father came from Lukhnow and lodged FIR on 06.10.2004. It is further stated that this criminal case is still pending. The applicant has specifically pleaded that prior to this incident there was no adverse remarks against the applicant. On the contrary, he was rewarded for his work as can be seen from the pleading made in Para 4 of the OA. It is categorically stated that to prepare ground for ACR against the applicant number of letters were issued to him which have been annexed as Annexure A-4 and A-6 to A-11 with the OA. It is further stated that the applicant has also replied to these baseless allegations vide Annexures A-5 & A-12 to A-17. The grievance of the applicant is that none of reply was considered by the authorities objectively and the entries in the ACR were made with prejudiced mind and even representation dated 31.8.2005 made by the applicant against the adverse entry was rejected without considering the points raised by the applicant vide impugned order dated 30.4.2006. It is on the basis of these allegations that applicant has filed this OA.

5. Notice of this application was given to the respondents. Respondents have filed their reply thereby justifying their action on the basis of letter issued by them as Annexure A-4 & A-6 to A-11. It is stated that the applicant was given

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performance counseling which was issued through letter dated 12.10.2004. Besides this the applicant has also been warned many time for indiscipline, lack of sense of discharge of duties as is evident from perusal of Annexure A-4, A-6 to A-11. Thus according to respondents on the basis of these letters, reporting office has rightly given adverse remarks in the A.C.Rs of the applicant. It is further stated that all clarification given by him were not found satisfactory, therefore, the adverse remarks have been maintain by the authorities and the appeal was also rejected accordingly. Thus, according to the respondents it is not permissible for this Tribunal to interfere in the matter while exercising power of judicial review.

6. I have heard learned counsel for parties and gone through the material placed on record. At the out set I wish to make it clear that this court cannot moderate the appraisal and grading given to an officer/employee. While exercising power of judicial review, court should not venture to assess and appraise on the grading of an officer /employee. But if the court finds that adverse entries made in the ACRs or grading given to an officer/employee are vitiated by extraneous considerations, the court must interfere and quash them. It is essential to maintain the integrity and sanctity of the ACR of an officer/employee and the legitimacy of the conclusions relating

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to his/her overall performance. In this context, ~~the~~^{he} may mention that the object of writing confidential reports or character roll of a Government servant is to afford an opportunity to the officer concerned to remove his deficiencies, if any, to inculcate discipline and to improve quality, excellence and efficiency of public service. The officer writing the confidential report should show objectivity impartiality and fair assessment without any prejudices whatsoever with the highest sense of responsibility to inculcate devotion to duty, honest and integrity to improve excellence of the individual officer/ employee. (**State of UP v. Yamuna Sanker Misra and another**, 1997 (4) SCC 7; **Swantantar Singh v. State of Haryana and others**, AIR 1997 SC 2105; **Union of India and others v. N. R. Banerjee and others**, 1997 (9) SCC 287 and **State of Gujarat and another v. Suryakant Chunilal Shah**, 1999 (1) SCC 529. In the **State of U.P. v. Y.S. Misra(Supra)** it was observed that the officer entrusted with the duty to write confidential report has a public responsibility and trust to write the confidential report objectively, fairly and dispassionately while giving, as accurately as possible, the statement of facts on overall assessment of the performance of the subordinate officer/employee. It should be founded upon facts or circumstances. Thus, the action of the officer entrusted with

the duty to write ACR, in order to survive, must not be susceptible to the vice of arbitrariness.

7. It is duty of the Reporting officer and the Reviewing Officer to take care not only that in their assessment of overall performance of a subordinate employee or officer they are not influenced by any personal interest, bias or malice, but to avoid appearance of labouring under such an influence. In other words, it must appear on the face of the record that in assessing overall performance of a giving grade to an officer in his ACR, the authority had acted fairly and without any bias in the fact.

8. In the instant case it is admitted fact that incident of assaulted took place on the night of 28th September, 2004 whereas FIR pertaining to the incident was lodged on 6.10.2004 by the father of applicant as the applicant has sustained injury on account of assault. Further judicial notice can be taken of the fact that respondents has also issued charge sheet against the applicant which was subject matter of dispute in another OA-whereby the allegation against the applicant was that he has exaggerated the factum of the injuries. In other words charge against the applicant was that nodoubt he has sustained the injuries but in the FIR lodged by the father of applicant nature of injuries sustained by him, has been exaggerating as such the applicant is guilty of

misconduct. It can not also be disputed that FIR has been lodged against the respondent No.2 Principal Military School Dholpur who is instrumental /authority in issuing letters Annexure A-4, A-6 to A-11. Not only this he is also accepting authority in respect of the ACR recorded by the reporting officer in the case of applicant. As can be seen from adverse remarks respondent No. 2 has also categorically recorded under Part IV Col.3 that he does not agree with the assessment given by the reporting officer and he was liberal in grading and the aforesaid officer should have been granted below average. It is also admitted fact that all these letters Annexure A-4, A-6 to A-11 have been issued by the respondent No. 2 only after the incident and when on 6.10.2004 FIR was lodged by the father of applicant.

9. Thus, keeping these facts in view, the question which requires my consideration is whether the applicant has been treated fairly while making entries in the ACRs for the aforesaid period by a person against whom allegation has been leveled by filing FIR and whether the aforesaid adverse remarks was actuated on account of criminal case filed by the father of applicant. Further question which requires my consideration is whether the representation of the applicant made by him against expunging of adverse remarks was considered in right perspective.

10. Before consider this issue it will be worthwhile to notice two principles of natural justice. The principles of natural justice consist primarily of two min rules namely, nemo judes in cause sua (No man shall be a judge in his own cause) and audi alteram partem (hear the other side). The corollary deduced from the above two rules and particularly the adui alteram partem rule was qui aliquid statuerit parte inaudita, altera, aequum licet dixerit, haud aequum facerit "he who shall decide anything without the other side, having been heard although he may have said what is right will not have done what is right' or as is now expressed " justice should not only be done but should manifestly be seen to be done.

11. In the instant case the applicant in his representation/ appeal against adverse remarks dated 31.8.2005 which runs in twelve pages and has been placed on record as Annexure A-3 has at the out-set categorically stated that process of perverse and allegatory letters started only after the brutal assaulted on him in the night of 28th & 29th September 2004 and further attempt to electrocute him by Lt. Col. K. Raman alongwith his trusted goons and subsequently ~~is~~ named in FIR lodged by the father of applicant in Police Station Thana Sadar Dholpur on 6th Oct., 2004. Thus all these letters have been issued with sole purpose to crush him by issuing allegatory letters which

latter became the basis of being reflected in the ACR in the form of adverse remarks. As can be seen from the order dated 30.4.2006 Annexure A-1, the representation of the applicant has been rejected by passing cryptic order and nothing can be inferred from this order that matter was examined in the back drop of allegation of bias attitude of respondent No.2 on account of lodging the FIR by the father of applicant which according to the applicant from the basis for issuing the letters and recording of adverse remarks of indiscipline and lack of sense to discharge of duties and casual attitude more particularly when prior to the date of incident no such allegations were leveled and entries made in the ACR. Rather the applicant has been rewarded for his work as mentioned in the Para 4 of the OA which fact has not been disputed by the respondents.

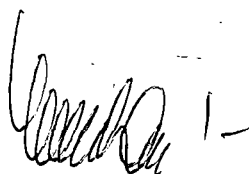
12. Nodoubt, it is true that no speaking order / reasons need be recorded in the order while rejecting the representation against the adverse entries but certainly such reasons should find mention in the noting portion in order to see whether the matter was examined in the right perspective after taking into consideration, the reply so submitted by the official. As already noticed above there is nothing on the record to suggest that the case of the applicant was considered in the right perspective

and the allegation leveled by the applicant that the entry of adverse remarks were actuated on account of bias attitude of the respondent No. 2 ^{when} FIR was lodged on his behalf regarding criminal assaulted on 6.10.2004, which appears to have not been taken into consideration while passing impugned order Annexure A-1. Further it appears that while passing impugned order Annexure A-1, the appropriate authority has also not examined the matter in the light of violation of principle of natural justice inasmuch as the person against whom the FIR was lodged was also associated in recording /writing entries in the ACRs and it appears be case where principle of natural justice viz justice should not only be done but should manifestly be seen to be done" appears not to have been taken into consideration while rejecting representation of the applicant against adverse remarks. Be that as it may, since there is no reason forthcoming whether the matter was examined by the authorities in the right perspective and contentions raised by the applicant in his representation that entries in the ACRs are based on letters Annexure A-4, A-6 to A-11 or the out come of Registration of criminal case against the Respondent No.2 and it is only after lodging of FIR that Respondent No. 2 has issued all these letter on account of his bias attitude appears to have not been considered while rejecting the case of the applicant, I am of the view that impugned order dated

30.04.2006 Annexure A-1 is require to be quashed and set aside and competent authority is directed to reconsider the case of applicant in the light of observations made hereinabove and plea taken by the applicant in his representation dated 31.8.2005 (Annexure A-3) and to pass a speaking & reasoned order as to whether the adverse remarks as recorded in the ACRs for the period 2004-2005 as reproduced in the earlier part of judgment are require to be maintained or expunged. Till such the decision is not taken, adverse remarks as conveyed vide letter dated 27th July, 2005 Annexure A-2 shall not be given effect. Such the decision shall be taken by the competent authority within a period of three months from the date of receipt of a copy of this order. The decision so taken shall be communicated to the applicant.

13. Needless to add that in case the applicant is still aggrieved by the decision so taken by the respondent, it will be permissible for him to file substantive OA thereby challenging the decision so taken by the respondents.

14. With these observations the present OA is disposed of.



(M.L. Chauhan)
Member (Judicial)