

**Central Administrative Tribunal
Principal Bench**

OA No.2395/2013

New Delhi, this the 10th day of August, 2015

**Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Dr. B. K. Sinha, Member (A)**

Hemant Nagrale S/o N. G. Nagrale,
Colaba Police Station, Mumbai.

... Applicant

(By Advocate: Shri Ravi Prakash with Shri Varun Sharma)

Versus

1. Union of India through
Home Secretary,
Ministry of Home Affairs,
North Block, New Delhi.

2. State of Maharashtra through
Additional Chief Secretary (Home),
Home Department, Mantralaya,
Mumbai-400032.

... Respondents

(By Advocate : Shri Rajeev Kumar and Shri Gyanendra Singh)

O R D E R

Justice Syed Rafat Alam, Chairman :

By means of this Application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has sought a direction to the respondents to communicate his ACR for the period 01.04.2006 to 31.03.2007, and further to expunge the adverse remarks contained therein. He has, therefore, sought the following relief:

“(a) Communicate the ACR of the Applicant for the period between 01.04.1006 to 31.03.2007;

- (b) Direct the Respondents to expunge the adverse remark from the ACR of the Applicant for the period between 01.04.1006 to 31.03.2007;
- (c) Award cost of litigation; and/or
- (d) Pass any other order(s) or direction(s), which this Hon'ble Tribunal may deem fit and proper in the light of the facts and circumstances of the instant case as well as in the interest of justice."

2. The applicant is an officer of the Indian Police Service of 1987 batch allocated to Maharashtra cadre, and is presently posted as Additional Director General of Police (Planning & Coordination) on being promoted as such vide order dated 14.02.2014. It is his case that throughout his entire service career he has earned the grading of either 'outstanding' or 'very good' in his ACRs, and that he has always achieved the intended targets and also received various appreciation letters from superior officers in recognition of his work, yet in the ACR for the year 2006-07 he has been graded as 'good', which is below benchmark, and as such its non-communication is fatal, and, therefore, the same is required to be expunged/upgraded.

3. We have heard Shri Ravi Prakash assisted by Shri Varun Sharma, learned counsel for the applicant and Shri Gyanendra Singh and Shri Rajeev Kumar, learned counsel appearing for respondent No.1. However, no one appeared for respondent No.2.

4. It is contended that the applicant filled the self-appraisal part of the ACR for the period 01.04.1006 to 31.03.2007 and submitted the same

on 18.05.2007 listing out the targets achieved and appreciations received by him. However, in the month of January, 2012 he came to know that he is graded as 'good' only in the aforesaid ACR. It is submitted that the grading of 'good' would amount to adverse remark, and as such the same should have been communicated to him within the prescribed time. It is further submitted that the above ACR is recorded by the reporting authority but not reviewed/endorsed either by the reviewing or the accepting authority till date, as required under the rules; and the reporting authority did not give him any warning or memo before downgrading his ACR, which is in violation of the rules. It is further submitted that the same was since not communicated to the applicant as required, he was not aware of the same, and as such could not make representation for its expunction/upgradation within time, and when he came to know of the same, he immediately made a representation on 05.01.2012 seeking upgradation of his aforesaid ACR commensurate with the benchmark prescribed for next promotion, followed by a reminder dated 08.08.2012. However, when he received no reply to his representation, he has approached this Tribunal seeking the relief extracted hereinabove. In support of his case, the applicant has relied upon the judgments of the Hon'ble Supreme Court in *U. P. Jal Nigam & others v Prabhat Chandra Jain & others* [AIR 1996 SC 1661]; *Dev Dutt v Union of India & others* [(2008) 8 SCC 725]; and *State of U.P. v Yamuna Shanker Misra* [(1997) 4 SCC 7].

5. On the other hand, learned counsel appearing for the respondent No.1 opposed the prayer. He, however, is not in a position to controvert that the below benchmark ACRs were not communicated to the applicant. Respondent No.1 despite time being granted did not even bother to file any counter affidavit/reply controverting the averments made in the OA of the applicant, and, therefore, in the absence of any denial, the same is deemed to have been admitted.

6. No one has appeared on behalf of the respondent No.2, State of Maharashtra, though name of Shri Preshit Surse is shown as learned counsel for respondent No.2. From the order-sheet it appears that this matter has been adjourned on several occasions on the request made on behalf of the respondents on one pretext or another. However, the respondent No.2 has filed its counter affidavit, wherein a preliminary objection has been raised regarding territorial jurisdiction of the Principal Bench in the matter, but did not controvert or deny the statements made in the Application. It is averred in the reply filed by the respondent No.2 that the applicant is presently posted as Additional Director General of Police (P&C), Maharashtra, at Mumbai, and as would appear from the title of the case, he has shown his address at Mumbai, and, therefore, the cause of action has arisen within the territorial jurisdiction of the Mumbai Bench of the Tribunal, and as such this Application is not cognizable by the Principal Bench. It has further been stated that the applicant has directly filed the OA before the Principal Bench at Delhi without seeking

permission under Section 25 of the Act read with rule 6 of the CAT (Procedure) Rules, 1987, and thus the same is liable to be dismissed on this ground itself.

7. We have considered the preliminary objection raised in the counter affidavit of respondent No.2 about maintainability of the Application. In our view, there is no force in the preliminary objection about the territorial jurisdiction of the Principal Bench. It would appear from the array of parties that office of one of the respondents, i.e., respondent No.1, Ministry of Home Affairs, who is the cadre controlling authority of the applicant, is located in Delhi and, therefore, in our view, Principal Bench also has jurisdiction to entertain the matter. Our view finds support from the judgment of the Delhi High Court in *Dr. K. P. Verma v Union of India and others*, CW No.517/2003 decided on 23.07.2003.

8. The stand of respondent No.2 in its counter affidavit is that during the year 2006-07 the applicant was working as Addl. Commissioner of Police (Crime), Brihan Mumbai, and his reporting authority was then Joint Commissioner of Police, who graded him 'good', and since the reviewing and accepting authorities had retired, his ACR for the aforesaid period could not be reviewed or accepted. It is further submitted that processing of the ACR for the period 2006-07 is governed by All India Services (Confidential Rolls) Rules, 1970 (hereinafter referred to as Rules of 1970), rule 8 whereof provides that where the confidential report of a

member of the Service contains an adverse remark, it shall be communicated to him in writing together with substance of the entire confidential report by the Government or such other authority as may be specified by the Government ordinarily within two months of the receipt of the confidential report and a certificate to this effect is to be recorded; however, the question as to whether a particular remark recorded in the Confidential report is an adverse remark or not, shall be decided by the Government, and further in the event of any difference of opinion between the Central and State Governments whether a particular remark is to be deemed an adverse remark or not, the opinion of the Central Government shall prevail. It is further submitted that the grading of 'good' recorded in the ACR of the applicant for the year 2006-07 cannot be said to be adverse remark, and, therefore, there is no question of communicating the same to him, and that the applicant was not denied promotion at any stage due to the aforesaid 'good' grading in his ACR. It is also submitted that the representation of the applicant dated 05.01.2012 against the alleged adverse remark is beyond the statutory period of limitation prescribed under the Rules of 1970.

9. In view of the aforesaid stand taken on behalf of the respondent No.2 and also in view of the fact that the grading of 'good' in the ACR for the year 2006-07 has not been treated as adverse, as the applicant has been promoted subsequently, in our view, its non-communication would not visit the applicant with any civil consequences,

and as such it cannot be said to be illegal. However, in our view, even where the remarks are not adverse but not commensurate to the performance of an employee as per his estimation, such employee can make a representation for its upgradation keeping in view his performance, which is required to be considered and disposed of on merit by recording reasons. Admittedly, the applicant has already made a representation on 05.01.2012 in respect of the said ACR, which has not been disposed of, as would appear from the pleadings of the parties. We, therefore, direct to the respondent No.2 to examine the grievance of the applicant and dispose of his aforesaid representation by passing a speaking order within a period of three months from the date of receipt of certified copy of this order.

10. The Application is accordingly disposed of with the above direction. There shall, however, be no order as to costs.

(Dr. B. K. Sinha)
Member (A)

(Syed Rafat Alam)
Chairman

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