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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 1846/2003

New Delhi, this the 17th day of August, 2004

Hon'ble Shri Shanker Raju, Member (J)

SI Vikram Singh Rathi,
S/o Sh. M. S. Rathi
R/o 267 PTS Colony,
Malviya Nagar,
New Delhi

...Applicant

(By advocate Sh. Bhasker Bhardwaj, proxy for Sh. Arun Bhardwaj)

Versus

1. Union of India
through Commissioner of Police,
PHQ, I.P. Estate
New Delhi
2. Jt. Commissioner of Police
Southern Range,
PHQ, I.P. Estate
New Delhi.
3. Dy. Commissioner of Police,
Distt. West,
Delhi.

...Respondents

(By advocate Shri Q.M. Kazim)

O R D E R (ORAL)

Applicant a Sub-Inspector in Delhi Police impugns adverse remarks recorded in his ACR for the period from 26-10-98 to 31-3-99 by the reviewing authority. Also assailed an order passed on representation dated 29-4-2002 maintaining the remarks.

2. Heard the learned counsel and perused the records. On perusal of the ACR for the aforesaid period, it transpires whereas the applicant on his satisfactory remarks in overall assessment and grading of average accorded by Reporting officer the reviewing authority recorded the following communicated adverse remarks.

"He needs close watch because complaints of misbehaviour during public dealing-accepted."

3. Learned counsel for the applicant states that the reviewing authority has entered the remarks on the basis of complaints of misbehaviour, no corrective steps and prior opportunity have been afforded during the reported period to the applicant and in view of para 5(III) of the reply of the respondents, it is admitted that no written warning was issued on the adverse remarks which lack objectivity.

4. Applicant has earlier approached this Court in OA 1144/2001 wherein by an order dated 8-2-2002 OA was partly allowed and the order on representation was set aside with the directions to deal with the contention of the applicant. However instead of application of mind the order was verbally reiterated on the comments offered by DCP.

5. Learned counsel for the respondents vehemently opposed the contention and stated that the applicant being a police officer using his position manipulates and ensures that his conduct is not reported by way of a complaint by influencing the concerned.

6. I have carefully considered the rival contentions. Instructions for writing Confidential Reports clearly provide in OM dated 20-5-72 to maintain objectivity in writing Confidential Reports and in case of any adverse material on seeing the

performance of an officer to take corrective measures and follow principles of natural justice to afford an opportunity to the concerned to improve upon.

7. Apex Court in State of UP vs. Yamuna Shanker Misra 1997 (4) SCC (7) observed as under:

"7. It would, thus, be clear that the object of writing the confidential reports and making entries in the character rolls is to give an opportunity to a public servant to improve excellence. Article 51-A(j) enjoins upon every citizen the primary duty to constantly endeavour to prove excellence, individually and collectively, as a member of the group. Given an opportunity, the individual employee strives to improve excellence and thereby efficiency of administration would be augmented. The officer entrusted with the duty to write confidential reports, has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately while giving, as accurately as possible, the statement of facts on an overall assessment of the performance of the subordinate officer. It should be founded upon facts or circumstances. Though sometimes, it may not be part of the record, but the conduct, reputation and character acquire public knowledge or notoriety and may be within his knowledge. 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 officer to correct the errors of the judgment, conduct, behaviour, integrity or conduct/corrupt proclivity. If, despite being given such an opportunity, the officer fails to perform the duty, correct his conduct or improve himself, necessarily the same may be recorded in the confidential reports and a copy thereof supplied to the affected officer so that he will have an opportunity to know the remarks made against him. If he feels aggrieved, it would be open to him to have it corrected by appropriate representation to the higher authorities or any appropriate judicial forum for redressal. Thereby, honesty, integrity, good conduct and efficiency get improved in the performance of public duties and standard of excellence in services constantly rises to higher levels and it becomes a successful tool to manage the services with officers of integrity, honesty, efficiency and devotion."

8. In another case of Swatanter Singh vs. State of Haryana 1997 (4) SCC (14), following observations have been made:

"6. It is sad but a bitter reality that corruption is corroding, like cancerous lymph nodes, the vital veins of the body politic, social fabric of efficiency in the public service and demoralizing the honest officers. The efficiency in public service would improve only when the public servant devotes his sincere attention and does the duty diligently, truthfully, honestly and devotes himself assiduously to the performance of the duties of his post. The reputation of being corrupt would gather thick and unchaseable clouds around the conduct of the officer and gain notoriety much faster than the smoke. Sometimes, there may not be concrete or material evidence to make it part of the record. It would, therefore, be impracticable for the reporting officer or the competent controlling officer writing the confidential report to give specific instances of shortfalls, supported by evidence, like the remarks made by the Superintendent of Police. More often, the corrupt officer manipulates in such a way and leaves no traceable evidence to be made part of the record for being cited as specific instance. It would, thus, appear that the order does not contain or the officer writing the report could not give particulars of the corrupt activities of the petitioner. He honestly assessed that the petitioner would prove himself to be an efficient officer, provided he controls his temptation for corruption. That would clearly indicate the fallibility of the petitioner, vis-à-vis the alleged acts of corruption. Under these circumstances, it cannot be said that the remarks made in the confidential report are vague without any particulars and, therefore, cannot be sustained. It is seen that the officers made the remarks on the basis of the reputation of the petitioner. It was, therefore, for him to improve his conduct, prove honesty and integrity in future in which event, obviously, the authority would appreciate and make necessary remarks for the subsequent period. The appellate authority duly considered and rejected the contention of the petitioner. Repeated representation could render little service. Rejection, therefore, is neither arbitrary nor illegal.

9. From the reply filed by the respondents it is admitted that the remarks entered by the reviewing authority regarding the complaint of misbehaviour against the applicant no written warning or corrective measures have been taken. It is very unfortunate that even particulars of those incidents have not been given.

10. ACR in the service career of a Government servant plays an important role to assess his suitability. Evaluation of adverse remarks on devised method

by DPC is carried out. If the remarks lack objectivity and the concerned is deprived of a reasonable opportunity, the same plays havoc and detriment to the career prospects. The reviewing authority in the present case on its own without any particular despite the applicant has been observed free of any complaint recorded these remarks without any basis. No corrective measures have been taken during the reported period in the form of memos, warnings, explanations to give an opportunity to the applicant to reform.

11. In this view of the matter having regard to the decisions of the Apex Court (supra) the remarks recorded by the reviewing authority are not legally sustainable. Accordingly OA is partly allowed. Adverse remarks entered in the ACR of the applicant by the reviewing authority are expunged. Appellate order rejecting the representation of the applicant is also quashed. No costs.

S. Raju
(Shanker Raju)
Member (J)

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