

**Before M. M. Kumar & Ritu Bahri, JJ.**

**CHAMAN LAL GOYAL,—Petitioner**

*versus*

**STATE OF PUNJAB AND ANOTHER,—Respondents**

**C.W.P. No.15012 of 1994**

1st April, 2011

***Constitution of India - Art. 226/227 - Challenging adverse remarks recorded in the ACR - Punjab Prisons State (Class-I) Rules, 1979 - RI.6 - Petitioner joined at Chandigarh as DIG - Charge Sheet served on relating to 5-1/2 years old incident - Dislodged as DIG - Petitioner challenged - Allowed direction for promotion - SLP filed - Supreme Court set aside Division Bench judgment - Further directed consideration for promotion by not taking into consideration pendency of enquiry - Petitioner represented against adverse orders by filing an exhaustive reply - Held, remarks contrary to consistent performance in service - According of ACR a malice in Law- Adverse remarks set aside.***

*Held*, that in the nut shell, the factual position that emerges is that the recording of Annual Confidential Report' for the year 1992-93 does not suffer from personal malice or bias of Shri B.S. Sandhu against the petitioner. This can at the best be described as 'legal malice' or 'malice in law'. Recording of Annual Confidential Report on wrong facts can be with an oblique indirect object to harm the employee in his carrier, future prospects of promotion or to spoil his clean service record. It is a deliberate act against the rights of an employee for achieving an object which is against law. 'Legal malice' in administrative law would mean an intention manifested by an act which is wrong and without lawful excuse.

(Para 33)

*Further held*, that the above discussion the instant petition succeeds. The impugned adverse remarks recorded in the Annual Confidential Report of the petitioner for the year 1992-93 are hereby expunged and set aside.

(Para 34)

Petitioner in person.

Suvir Sehgal, Additional Advocate General, Punjab, for respondent  
No. 1.

D.S. Patwalia, Advocate, for respondent No. 2.

**RITU BAHRI, J.**

(1) The instant petition filed under Article 226 of the Constitution challenges adverse remarks recorded in the Annual Confidential Report of the petitioner for the year 1992-93, as conveyed vide letter dated 29.9.1993 (P-2), assessing him as an officer of 'below average'.

(2) Brief facts of the case are that on 22.11.1957 the petitioner joined the services of the Punjab Government as a Clerk in the Punjab Civil Secretariat. He was promoted as an Assistant in January, 1963. He was selected for appointment in the Punjab Prisons State Service (Class II) and joined as such on 1.1.1969. Thereafter, he was promoted to the post of Superintendent, District Jail/Deputy Superintendent Grade-I with effect from 15.3.1980 by superseding two of his seniors. He was again promoted to the Punjab Prisons State Service (Grade-I) with effect from 11.12.1986 again superseding two of his seniors. Till 31.3.1992, the petitioner earned Good/Outstanding reports from his superiors.

3. It is relevant and pertinent to mention here that the post of Inspector General of Prisons, Punjab, was held by Shri B.S. Sandhu-respondent No. 2 since 27.6.1986. He continued as such beyond the period of five years by virtue of extensions granted to him. One Shri M.L. Sandhu, who was the senior most Deputy Inspector General of Prisons in the respondent State of Punjab, was an aspirant for the post of Inspector General of Prisons. He challenged continuance of Shri B.S. Sandhu as Inspector General of Prisons by filing C.W.P. No. 4794 of 1993. In order of seniority, the petitioner was the immediate junior of Shri M.L. Sandhu. Thus, he was also an aspirant for the post of Deputy Inspector General of Prisons. On 30.4.1993, Shri M.L. Sandhu retired from the post of Deputy Inspector General of Police. In this manner, the petitioner had claimed the post of Inspector General of Prisons for which he also filed C.W.P. No. 735 of 1994, which was ordered to be heard along with C.W.P. No. 4794 of 1993 filed by Shri M.L. Sandhu. In the writ petition filed by

the petitioner continuance of Shri B.S. Sandhu respondent No. 2 as Inspector General of Prisons, Patiala, was challenged on the ground that since Shri B.S. Sandhu-respondent No. 2 has been granted extension, therefore, chances of the petitioner for promotion to the post of Inspector General of Prisons were adversely affected.

(4) The petitioner has submitted that when he become eligible for the post of Deputy Inspector General, Shri B.S. Sandhu respondent No. 2 started calculative moves to keep him away from the post of Inspector General of Prisons. The petitioner has claimed that without actually promoting him to the post of Deputy Inspector General of Prisons, the respondent State of Punjab-respondent No. 1 recommended him to be appointed against the post of D.I.G. w.e.f. 1.5.1993. Accordingly, an order was passed on 26.4.1993 and he joined at Chandigarh on 14.5.1993 against the post of D.I.G. On 30.6.1993, the petitioner made a representation for his regular promotion to the post of D.I.G. It has been alleged that due to influence of Shri B.S. Sandhu-respondent No. 2 and colourable exercise of power, instead of promoting him to the post of D.I.G., a charge sheet was served upon him relating to a 5½ years old incident relating to an attempted escape of a terrorist under-trial on the night of 1/2-1-1987 from the Nabha Jail. A regular departmental inquiry was instituted against him. He was also dislodged from the post of D.I.G.

(5) The petitioner challenged the aforementioned charge sheet and inquiry proceedings by filing Civil Writ Petition No. 10268 of 1993. He made various allegations against Shri B.S. Sandhu respondent No. 2. The said petition was allowed by a Division Bench of this Court on 25.8.1994 with costs of ₹ 5000/-. The charge sheet and appointment of the Enquiry Officer was quashed. A direction was also given to the respondents to consider the case of the petitioner for promotion in accordance with law (P-1).

(6) The respondent State of Punjab filed Special Leave Petition No. 10268 of 1994 before Hon'ble the Supreme Court against the judgment dated 25.8.1994 passed by the Division Bench of this Court in Civil Writ Petition No. 10268 of 1993. On 31.1.1995, the Special Leave Petition was allowed and while setting aside the Division Bench judgment of this Court, Hon'ble the Supreme Court directed the State of Punjab to finish the enquiry

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within eight months. A further direction was also given that the petitioner should be considered for promotion by not taking into consideration the pendency of the said regular enquiry.

(7) On 29.9.1993, the petitioner was communicated adverse remarks, which were recorded in his Annual Confidential Report for the year 1992-93 (P-2). The contents of the letter dated 29.9.1993, conveying the adverse remarks, reads thus :

“CONFIDENTIAL

Registered

From

The Inspector General of Prisons,  
Punjab, Chandigarh.

To

Sh. Chaman Lal Goyal, P.P.S-(I)  
Principal, Jail Training School, Patiala.

No. 8405/406 GI/E.4/Ch.Roll.

Dated, Chandigarh, the 29.9.1993

Subject: Annual Confidential Report for the 1992-93.  
Communication of Remarks.

According to the remarks in your Confidential Report for the year 1992-93, you are reported to be as under-

After having spent four years on easy station like Jail Training School, Patiala he was appointed as Superintendent Central Jail-cum-Maximum Security Jail Amritsar, being the senior most officer of the department. Instead of joining the new assignment he proceeded on earned leave for five months. He joined the duties only when he was posted to a jail of his choice i.e. Central Jail, Ludhiana. He is in the habit of avoiding difficult posting whenever the department selects him for a responsible job. The same thing happened when he was posted at Central Jail, Gurdaspur in the year 1987. This officer shirks responsibility and dictates his own terms. He cannot be entrusted any job of high responsibility.

He purchased one Bigha and one Biswa land during the year 1989-90 without the sanction of the competent authority. He was asked to explain his position but he has failed to do so, so far. Now he has reportedly constructed 6-7 shops on this site during the year 1992-93 without sanction of the competent authority. It is all beyond his known sources of income. He does not enjoy good reputation of honesty. He is assessed as a 'below average' officer.

2. Now that the above defects have been pointed out to you it is expected that you will make a serious effort to remove them. A copy of this letter has been placed in your Character Roll.”

(8) From a bare perusal of the above remarks it is obvious that the competent authority has recorded the adverse remarks against the petitioner on two counts – (i) He shirks responsibility and dictates his own terms and cannot be entrusted any job of high responsibility; and (ii) He purchased one Bigha and one Biswa of land during the year 1989-90 without sanction of the competent authority and constructed 6-7 shops in the year 1992-93, without known sources of income. It has also been recorded that he does not enjoy good reputation of honesty.

(9) On 8.11.1993 (P-6), the petitioner moved an application for supplying the following documents/particulars:

- “(1) Photo copy of the entire confidential report relating to the period i.e. 1992-93 (to prove that it was written and accepted in time and that too by only the authorized authority).
- (2) Documentary proof that it was sent to the accepting authority in time.
- (3) The basis (particulars of documents) on which the remarks/reports) particularly with regard to the alleged construction of 6-7 shops and that too beyond my known sources of income) is based.”

(10) However, the said application was rejected vide order dated 4.1.1994 terming the same as 'totally unjustified'. The petitioner was asked to represent on the basis of adverse remarks conveyed to him (P-7).

Thereafter, on 27.12.1993, the petitioner represented against the adverse remarks by filing an exhaustive reply (P-3). Alleging mala fide against Shri B.S. Sandhu-respondent No. 2 in recording of Annual Confidential Report for the year 1992-93, the petitioner has challenged the said adverse remarks in the instant petition.

(11) It is pertinent to notice that during the period under report i.e. 1992-93, the petitioner remained posted as under :-

- (i) 1.4.1992 to : Principal Jail Training School, Patiala.  
1.6.1992
- (ii) 2.6.1992 to : On leave duly sanctioned by respondent  
12.11.1992 No. 1 on the recommendation of  
respondent No. 2.
- (iii) 13.11.1992 to : Superintendent Jail, Ludhiana.  
31.3.1993

(12) The petitioner has alleged that Shri B.S. Sandhu respondent No. 2 was hostile and due to prejudice and with mala fide intention he has recorded the adverse remarks in the Annual Confidential Report. According to the petitioner, the remarks have been recorded in contravention of Punjab Government's instructions issued vide letter No. 15/23/92-1PP1/9158, dated 28.5.1993, which requires as under :-

- “(2) The Annual Confidential Reports shall be written for each financial year by the Reporting Authority by the 30th June each year.
- (3) The Reporting Authority would be responsible for sending the Annual Confidential Reports to the next Higher authority by the cadre controlling Authority.”

(13) The petitioner alleges that he was always selected and given responsibility to man the posts higher than that of the post which he was holding. In that regard the petitioner, in para 13 of the petition, has given details of his posting right from 1977 onwards, which in fact have not been denied by the respondents in their counter.

(14) With regard to the remarks of possessing the assets disproportionate to the known sources of income, the petitioner has pointed out that his wife belongs to the family of landlords with a considerable landed property and his children are well qualified. His son is MBA, his elder daughter is M.A. M.Phil, who is an earning hand as Lecturer since 1989, and his younger daughter, who is an MBA, is also working as a Management Executive. Other than this, the petitioner has inherited property from his parents, which he has shown in all his income tax returns. The plot in question was acquired by the petitioner's wife in the year 1989. This was done after sale of plot in Ludhiana. An intimation to that effect was given by the petitioner to the Inspector General of Prisons on 25.5.1989 (P-9) and an entry to this effect was also shown in the property return for the years 1989-90 and 1990-91. The petitioner has claimed that he had constructed only three shops over the plot in question and an intimation to that effect was also given by him vide letter dated 29.7.1992, wherein even source of expenditure to be incurred was also disclosed (P-12). Therefore, it cannot be said that he has constructed the shops beyond his known source of income.

(15) In the written statement filed by respondent No. 1 the stand taken is that the representation of the petitioner, dated 27.12.1993, against the adverse remarks was duly considered and rejected by the Government after due application of mind, vide order dated 20.7.1994. Since the petitioner has not challenged the said order, therefore, the writ petition is liable to be dismissed. In regard to allegation of mala fide levelled by the petitioner against Shri B.S. Sandhu-respondent No. 2, it has been stated that Hon'ble the Supreme Court in the case of **State of Punjab and others versus Chaman Lal Goyal (1)**, has specifically observed that in the absence of clear allegation against any particular officer, the charge of mala fide could not be sustained. It has been further submitted that Shri B.S. Sandhu-respondent No. 2 was promoted and appointed as Inspector General of Prisons, Punjab, in terms of Rule 6(1)(a) of the Punjab Prisons State (Class-I) Rules, 1979. Moreover, the C.W.P. Nos. 735 of 1994 and 4794 of 1993, filed by the petitioner and Shri M.L. Sandhu respectively,

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(1) (1995) 2 SCC 570

challenging continuance of Shri Sandhu were dismissed by this Court.

(16) It has been highlighted that the petitioner was held responsible for the incident of an attempted escape of eight undertrial terrorist prisoners from the Maximum Security Jail, Nabha. He was charge sheeted on 7.7.1992. After completing the inquiry, he has been found guilty of Charge No. 4.

(17) With regard to writing of confidential report it has been submitted that the same was to be written by respondent No. 2 after receiving the report of the Deputy Commissioner by 30th June of each year. In the present case, the report of the Deputy Commissioner was not received by the Head of Department i.e. respondent No. 2. Therefore, respondent No. 2 recorded the Annual Confidential Report in respect of the petitioner before 30.6.1993 and the same was accepted by the competent authority. The Annual Confidential Report in respect of Punjab Government Employees working in the field are recorded by the Head of the Department and three columns of the prescribed proforma i.e. columns No. 3, 4 and 5 are recorded by the Deputy Commissioner of the District. The columns of the proforma read as under:-

- “(1) Is he fit to draw his next increment or to cross the efficiency bar, if this is due?
- (2) General remarks on capacity and industry.
- (3) Integrity-Reputation for honesty.
- (4) Relationship with public.
- (5) Implementation of Developmental Schemes and Policies of Govt.
- (6) Control over accounts.
- (7) Defects, if any.
- (8) Over-all assessment.”

(18) In the Annual Confidential Report for the year 1992-93, the comments of Deputy Commissioner on the work and conduct of the petitioner were sent with the report on 15.10.1993. Therefore, there was no error in accepting the adverse remarks recorded by the competent authority i.e. Mr. G.S. Cheema, Home Secretary, Jails.



(19) Respondent No. 2 has also filed a separate written statement denying the allegations of mala fide. It has been high lighted in the written statement that Hon'ble the Supreme Court in State of Punjab and others v. Chaman Lal Goyal's case (Supra) has totally discarded the allegation of mala fide without any substance. The petitioner is in the habit of alleging mala fide and the same are, therefore, liable to be ruled out. Respondent No. 2 recorded the Annual Confidential Report on the basis of subjective satisfaction on objective material. The competent authority has accepted his comments and representation against the Annual Confidential Report has been considered and rejected. He has denied that the adverse remarks were in any way ill-conceived, motivated, vindictive, based on deep rooted prejudice and bias, unfounded or without any valid basis. There is no error of jurisdiction in recording the Annual Confidential Report. Respondent No. 2 has also mentioned that he had given two outstanding reports to the petitioner during the year 1990-91. He has denied that the petitioner was his rival especially when he has not been found suitable for the post of D.I.G. Prisons. The Inspector General of Prisons can be appointed as per Rule 6 of the Punjab Prisons State (Class-I) Rules 1979, which reads as under:-

“Rule 6. METHOD OF APPOINTMENT

- (1) Appointment to posts in service shall be made as under :-
  - (a) In the case of Inspector General of Prisons-
    - (i) by selection from amongst the officers of the department holding the posts specified in Group II and Group III of Appendix 'A' who have an experience of working on any one or more of these posts for a minimum period of 7 years;
    - (ii) by transfer of deputation of an officer in the cadre of I.A.S., I.P.S., or P.C.S.(Selection Grade).”

(20) It has been further stated that appointment to the post of Inspector General of Prisons is to be made by selection from amongst the officers of the department holding the posts specified in Group-II and Group-III of Appendix 'A', who have an experience of working on one or more posts for a minimum period of 7 years. The appointment can also be made by way of transfer or deputation from the cadre of I.A.S., I.P.S.,

or P.C.S. (Selection Grade). Respondent No. 2 has claimed that since the petitioner was not found suitable for appointment to the post of D.I.G. Prisons, he could not be appointed as I.G. Prisons and, thus, was not a rival to him.

(21) In the rejoined filed by the petitioner it has further been alleged that for recording of the Annual Confidential Reports, it was to be initiated by the Deputy Commissioner, Ludhiana, then reviewed by respondent No. 2 and then it was to be accepted by the highest authority i.e. Principal Secretary, Home, Government of Punjab. Respondent No. 2 without waiting the comments from the Deputy Commissioner, which were sent by 15.10.1992, initiated his Annual Confidential Report, which has been accepted by Mr. G.S. Cheema, Home Secretary, Jails. According to the petitioner no proper procedure was adopted for recording the Annual Confidential Report for the year 1992-93. He has also pointed out that once due leave had been sanctioned by the competent authority when he was posted as Superintendent Central Jail, Amritsar, then it cannot be recorded in the Annual Confidential Report for the year 1992-93 that he was avoiding his new assignment.

(22) The petitioner has alleged that some fabricated documents i.e., photographs of some property etc., belonging to his brother-in-law were sent. This property did not belong to him and vide order dated 4.3.1996, allegation No. 2 in the departmental inquiry initiated against him regarding purchasing a plot of one Biswa in village Islam Nagar, Tehsil Kalka, for '60,000/- in the name of his wife Smt. Pushpa Goyal and constructing shops thereon, was not proved because he has duly informed the Department about all the transactions and source of income from time to time. Therefore, the allegation that he was not enjoying good honesty is falsified.

(23) Mr. Chaman Lal Goyal, petitioner-in-person, has argued that when the Court is to examine the Annual Confidential Report of an employee, it has to examine that the object of writing the Annual Confidential Report of a public servant is a statement of overall assessment of the employee. The Court has to record a finding that the recording of the Annual Confidential Report is vitiated by extraneous consideration and/or bias. The Court can expunge the Annual Confidential Report. In that regard reliance has been placed by him on the judgments rendered in the cases of

**State of Maharashtra versus R.B.Sharma (2), Tejwant Singh versus State of Punjab (3), Rajinder Singh Sehrawat versus Union of India (4), Sukhdeo versus The Commissioner, Amravati Division, Amravati (5), State of U.P. versus Yamuna Shanker Misra (6), Dr. Jagdish Chander versus Union of India (7), Amrik Singh versus State of Haryana (8), and Kartar Singh versus State of Haryana (9).**

(24) Mr. Suvir Sehgal, learned Additional Advocate General, Punjab, has argued that the Annual Confidential Report for the year 1992-93 has been recorded as per the Government instructions. The Deputy Commissioner's comments were to be received by June, 1993. The I.G. Prisons initiated the Annual Confidential Reports after June, 1993. There was no procedural lapse in recording the Annual Confidential Report. They were duly accepted by the competent authority. He has contended that the order rejecting the representation of the petitioner has not been challenged till date. The allegation of the petitioner that Shri B.S. Sandhu-respondent No. 2 was biased against him and he was entitled to the post of Inspector General of Prisons is a misleading averment. As per Rule 6(1)(a) of the Punjab Prisons State (Class-I) Rules 1979, seven years experience is essential for the officer holding the posts specified in Group-II and Group-III of Appendix "A".

(25) Mr. D.S. Patwalia, learned counsel appearing for respondent No. 2 has vehemently argued that there was no malice and bias in the mind of respondent No. 2 while recording the Annual Confidential Report for the year 1992-93. He has placed reliance on judgments **Parbodh Sagar versus Punjab State Electricity Board (10), Baba Puran Nath versus State of Punjab (11), S.S. Lamba versus Punjab State Leather**

- (2) 2002 (1) SCT 392
- (3) 2000 (1) SCT 833
- (4) 2002 (1) SCT 743
- (5) 1994 (4) SLR 8
- (6) 1997(3) RSJ 33
- (7) 2006 (2) Law Herald (P&H) (DB) 1655
- (8) 1995 (2) SLR 769
- (9) 1995(8)SLR 720
- (10) 2000 (2) S.C.T. 829
- (11) 2001 (1) R.C.R. (Criminal) 791

**Development Corp. Ltd. (12), Moti Ram Deka versus G.M.N.E.F. Rlys (13), Delhi Transport Corporation versus D.T.C. Mazdoor Congress (14), and R.L. Butail versus Union of India (15).** He has argued that without being supported by any material on record it cannot be alleged that there was any malice on the part of respondent No. 2. He has laid stress on the fact that the petitioner has been held responsible for the incident of attempted escape of eight under-trial terrorist prisoners from Maximum Security Jail, Nabha. He was charge-sheeted on 7.7.1992 and after completing the inquiry, the petitioner has been found guilty. The writ petition filed by the petitioner challenging the appointment of Shri B.S. Sandhu-respondent No. 2 as Inspector General of Prisons has been dismissed by this Court. The allegation that respondent No. 2 was ill-conceived, motivated, vindictive, based on deep rooted prejudice and bias against the petitioner is, thus, unsustainable. In fact, respondent No. 2 has recorded the Annual Confidential Report on subjective satisfaction and objective material. The competent authority has accepted his comments and the representation of the petitioner has been rejected after due application of mind.

(26) Having heard the arguments put forth by the parties and perusing the record we are of the considered view that the following issues arises for determination by this Court :

1. Whether the petitioner proceeded on earned leave to avoid joining the new assignment and he was in habit of avoiding difficult postings?
2. Whether the petitioner purchased one Bigha and one Biswa of land without sanction of the competent authority and constructed 6-7 shops on the site beyond his known source of income?
3. Whether the petitioner does not enjoy good reputation of honesty?
4. Whether Shri B.S. Sandhu-respondent No. 2 acted in a biased manner against the petitioner in recording the Annual Confidential Report for the year 1992-93 and there was an element of malice exercise by him?

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(12) 1994 (4) S.C.T.192

(13) AIR 1964 SC 600

(14) 1991 Supp (1) SCC 600

(15) 1970 Serv. LR 926

(27) The Annual Confidential Reports of the petitioner right from 1983-84, 1984-85 (1.4.1984 to 31.7.1984, 31.7.1984 to 31.3.1985 and 4.4.1985 to 13.12.1985), 1985-86, 1.1.1987 to 31.3.1987, 1987-88, 1988-89, 1989-90, 1990-91 and 1991-92 are either very good or outstanding. There is no denial to the assertions made by the petitioner on the basis of his official record in the written statement.

(28) The petitioner has claimed that he was selected and given the job of responsible posts higher than that of the post which he was holding. The details of the posting handled by the petitioner are mentioned in para No. 13 of the writ petition. It transpires that the I.G. Prisons had selected him on a number of occasions with important and responsible seats. There is no denial to the averment in the written statement filed by the respondents. It is a conceded position that earned leave was sanctioned to the petitioner by the competent authority on the recommendation made by respondent No. 2. Therefore, non-joining of the petitioner to the new post cannot be used against him assuming that he was irresponsible. Thus, the first part of the impugned Annual Confidential Report is factually incorrect and could not be sustained by any stretch of imagination.

(29) The second issue concerns acquiring one Bigha and one Biswa of land and construction of 6/7 shops thereon. It is pertinent to mention here that a preliminary inquiry was conducted against the petitioner wherein one of the allegation against him pertains to purchasing a plot of one bigha and one biswa in village Islam Nagar, Tehsil Kalka for ₹ 60,000/- in the name of his wife Smt. Pushpa Goyal and constructing shops thereon. However, vide order dated 4.3.1996, passed by the Superintendent of Police, Vigilance Bureau, Flying Squad-2, Patiala, it has been found that the said charge is not proved because the petitioner has been duly informing the department from time to time and his income has increased by ₹ 96,988/- during the period under consideration. The said authority, accordingly proposed that the inquiry be closed (P-41). It is clear that the petitioner had always informed about the details of his property to the department in time and there is no concealment of any fact. In view of the said decision of the Inquiry Officer, the adverse remarks recorded against the petitioners in the Annual Confidential Report for the year 1992-93 concerning acquisition of property does not survive.

(30) The Officer entrusted with the duty to write confidential report has to respond efficiently, fairly and disproportionately while giving as correctly as possible, the statement of fact to assess the overall performance of the official which has not been done in this case. Keeping this aspect in view and after going through the entire file, it transpires that recording of the Annual Confidential Report for the year 1992-93 was based on wrong facts. The overall assessment and performance of the petitioner has to be assessed either 'Good', 'Very Good' or 'Outstanding'. The Annual Confidential Reports for the year 1982-83 onwards shows that the petitioner was a responsible officer and had no complaint regarding his honesty.

(31) So far as the allegation of bias and mala fide levelled by the petitioner against Shri B.S. Sandhu-respondent No. 2 in recording the impugned Annual Confidential Report are concerned, the same has not been substantially proved except that the Deputy Commissioner's comments were received on 15.10.1993 and the fact that the Annual Confidential Report was recorded before this date is not sufficient to prove the allegation of malice. The petitioner alleges that before rejecting his representation, vide order dated 20.7.1994, Shri B.S. Sandhu did not initiated any inquiry on the facts that he has purchased plot and constructed shops beyond his known source of income. The Deputy Secretary Home (G), vide letter dated 20.7.1994, sought the information from respondent No. 2 whether any action/inquiry had been taken on the reference made regarding construction of shops and expenditure beyond his source as recorded in the Annual Confidential Report. The petitioner alleges that Shri B.S. Sandhu had biased against him as both the letters of Deputy Secretary and rejection of his representation are of the same date. This fact is not sufficient to prove that Shri B.S. Sandhu has recorded the Annual Confidential Report for the year 1992-93 with personal bias and malice. Respondent No. 2 was much senior to the petitioner and the petitioner was not eligible for the post of Inspector General, Prisons as per rules. 32. It is, thus, clear that while recording the Annual Confidential Report for the year 1992-93, respondent No. 2 was not fair, objective and wrong on facts. The service record of the petitioner has been basically colourless. Different reporting and accepting officers of the State have found him honest and responsible officer. We are of the view that while rejecting the representation of the petitioner, the authorities have not been fair. The petitioner was appointed on many assignments which carried responsibility. He has never shown his inability to join such posting. On one occasion if his earned leave had been sanctioned

by the authority that event cannot be recorded in the Annual Confidential Report for the year 1992-93 to prove that he was in the habit of avoiding difficult posting. We are satisfied that the Officer does not shirk of any responsibility and he has carried out the appointment entrusted to him in the past. This part of the Annual Confidential Report is factually incorrect. The second part of the Annual Confidential Report has already been discussed. The charge was dropped by the Inquiry Officer in his report dated 4.3.1996 (P-41). While recording the Annual Confidential Report for the year 1992-93, the I.G. (Prisons) did not wait for the comments from the Deputy Commissioner. These comments were received on 15.10.1993 and they were not available on the official record brought in the Court. While rejecting his representation, the I.G. (Prisons) could have examined the Annual Confidential Report in view of the comments of the Deputy Commissioner which were sent on 15.10.1993.

(33) In the nut shell, the factual position that emerges is that the recording of Annual Confidential Report' for the year 1992-93 does not suffer from personal malice or bias of Shri B.S. Sandhu against the petitioner. This can at the best be described as 'legal malice' or 'malice in law'. Recording of Annual Confidential Report on wrong facts can be with an oblique indirect object to harm the employee in his carrier, future prospects of promotion or to spoil his clean service record. It is a deliberate act against the rights of an employee for achieving an object which is against law. 'Legal malice' in administrative law would mean an intention manifested by an act which is wrong and without lawful excuse. Hon'ble the Supreme Court in **S.T. Ramesh versus State of Karnataka**, in somewhat similar circumstances examined the recording of adverse remarks of a senior IPS Officer. In that case remarks were recorded for a short period of about 150 days. Hon'ble the Supreme Court after examining his service record observed that the remarks were contrary to his consistent performance in his service. The observations made in paras 20 and 23 of the judgment reads thus :

“20. The confidential report is an important document as it provides the basic and vital inputs for assessing the performance of an officer and further achievements in his career. This Court has held that the performance appraisal through C.Rs. should be

used as to tool for human resource development and is not to be used as a fault finding process but a developmental one. Except for the impugned adverse remarks for a short period of about 150 days the performance of the appellant has been consistently of high quality with various achievements and prestigious postings and meritorious awards from the President of India. We have already seen that the appellant has been graded as “very good”, “excellent” and “outstanding” throughout his career. It is difficult to appreciate as to how it could become adverse during the period of 150 days for which the adverse remarks were made. Furthermore, despite such adverse remarks, the Government of Karnataka, considering his merit and ability and outstanding qualities, has already promoted the appellant as the Inspector General of Police.

23. In order to satisfy ourselves we had called for the entire service record of the appellant and upon perusal of the same, we find that the remarks of the reporting officer for the period in question were contrary to his consistent performance. The observation of the respondent No.2 that the appellant was an arrogant officer is followed by his remark that his knowledge and work is good. Such an observation, in our judgment, cannot be the basis of an overall rating of average.”

A direction was given by the Apex Court not to treat the petitioner’s performance as average.

(34) As a sequel to the above discussion the instant petition succeeds. The impugned adverse remarks recorded in the Annual Confidential Report of the petitioner for the year 1992-93 are hereby expunged and set aside.

(35) The petitioner has also filed an application under Section 340 of the Code of Criminal Procedure. We find no reason to entertain the application and the same is hereby dismissed. The petitioner has been fighting this litigation with the back to the wall for so many years. Accordingly, the petitioner is held entitled to the costs, which are quantified as ‘25,000/-93, the petitioner has challenged the said adverse remarks in the instant petition.