

Before Hemant Gupta & Ajay Tiwari, JJ.

STATE OF HARYANA,—Petitioner

versus

**CENTRAL ADMINISTRATIVE TRIBUNAL, CHANDIGARH
BENCH, CHANDIGARH AND OTHERS,—Respondents**

C.W.P. No. 18050 of 2005

24th July, 2008

Constitution of India, 1950—Art. 226—All India Services (Confidential Rolls) Rules, 1970—Rls. 5, 6 and 8—Tribunal ordering to expunge remarks recorded by Accepting Authority in ACR—Challenge thereto—Process of recording of remarks by reporting authority comes to an end with recording of remarks by accepting officer—In terms of Rule 8 only adverse remarks are required to be communicated—Remarks recorded by Accepting Authority are final remarks in hierarchy of Officers—Not necessary for Accepting Authority to record reasons for downgrading remarks recorded by reporting and reviewing authorities as final word in matter of recording of reports is that of Accepting Authority—Reasoning of Tribunal that Accepting Authority was required to record reasons to disagree with recording of remarks by reporting/reviewing authority, not sustainable in law—Petition allowed, order of Tribunal set aside.

Held, that Rule 5 of the All India Services (Confidential Rolls) Rules, 1970 contemplates that the confidential report assessing the performance, character, conduct and quality of every member of service, shall be written for each financial year or calendar year, as may be specified by the Government. Rule 6 of the Rules deals with the review by the reviewing authority and Rule 6-A of the Rules deals with the Accepting Authority. The Accepting Authority in terms of Rule 2(a) of the Rules means such authority supervision the performance of the reviewing authority as may be specially empowered in this behalf by the Government. Therefore, the process of recording of remarks starts with the remarks of the reporting authority, but such process comes to

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an end with the recording of remarks by the accepting officer. In terms of Rule 8, it is only the adverse remarks in the confidential report, which are required to be communicated together with the substance of entire confidential report by the Government or such other authority as may be specified by the Government.

(Para 11)

Further held, that the reasoning given by the Tribunal that the Accepting Authority was required to record reasons to disagree with the recording of remarks by the reporting/reviewing authority, is not sustainable in law. The Accepting Authority is the authority which supervises the performance of the reviewing authority and the reviewing authority in terms of Rule 2(f) of the Rules, is the authority, which supervises the performance of the reporting officer. Therefore, it is the hierarchy of the Officer, supervising the work which have to record the remarks. The remarks recorded by the Accepting Authority are the only final remarks in the hierarchy of the Officers. Therefore, it is such remarks, which are relevant. Thus, it was not necessary for the Accepting Authority to record the reasons for downgrading the remarks recorded by the reporting and reviewing authorities as the final word in the matter of recording of reports is that the of Accpeting Authority.

(Para 12)

Ms. Mamta Singhal Talwar, AAG, Haryana.

None, for the respondents.

HEMANT GUPTA, J.

(1) The challenge in the present writ petition is to the order dated 29th July, 2005 passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as the Tribunal). *Vide* the aforesaid order, an original application filed by respondent No. 2 under Section 19 of the Administrative Tribunals Act, 1985, was allowed and the remarks recorded by the Accepting Authority in the Annual Confidential Report for the year 1997-98 were ordered to be expunged.

(2) The applicant is an IPS Officer of 1985 batch, allotted to Haryana Cadre. The applicant alleged that his wife is grand daughter of sister-in-law of Shri Bansi Lal, the then Chief Minister. He and his relatives are not on good terms with Shri Bansi Lal. While working as Superintendent of Police in Panipat and Kurukshetra during the general elections of 1991, Shri Bansi Lal wanted the applicant to illegally help his party. On refusal to do so, Shri Bansi Lal became biased and vindictive against the applicant. When Shri Bansi Lal came to power in 1996, the applicant was shifted to Chandigarh. The applicant apprehended that his ACRs for the year 1996-97 and 1997-98 were downgraded by Shri Bansi Lal, respondent No. 4 as an Accepting Authority. This was done because of his bias and vindictiveness towards the applicant. In view of the said facts, the applicant claims that though no adverse remarks were conveyed to him, but his ACR has been illegally and arbitrarily downgraded. Reliance is placed upon the judgment of the Hon'ble Supreme Court in **U.P. Jal Nigam versus Prabhat Chandra Jain, (1)**. He submitted various representations, but it was on 8th November, 2002, the Financial Commissioner and Principal Secretary to Government of Haryana, conveyed to him that his representations regarding conveying adverse remarks in his ACR does not fall in the ambit of rules and, therefore, has been filed.

(3) In reply, the official respondents averred that the Accepting Authority may accept the remarks of the reporting/reviewing authority with such modification as may be considered necessary before countersigning the report, accepting the ACR as 'Good' instead of 'Very Good'. The said reporting does not involve anything adverse nor it can be called downgrading. The ACR becomes complete only after acceptance by the Accepting Authority. Therefore, the applicant was advised that his representation regarding conveying of the ACR does not fall within the ambit of rules. It was also denied that the judgment in **U.P. Jal Nigam** case (supra) is applicable to the present case.

(4) Shri Bansi Lal respondent No. 4, in his written statement, denied the allegations of *mala fide* levelled against him. It is stated that the Accepting Authority has to apply his mind while reporting on

(1) 1996 (2) SCC 363

the performance of an officer and not to accept blindly whatever has been written by the Reporting/Reviewing Officer. He has further stated that the applicant is a distant relative of his and he had no occasion to meet him as there was no close family relation with him and that he was not aware of the alleged strained relations with the relatives of the applicant. He had not met the applicant till date socially in any family function and even could not recognize the applicant. He has a quite large family and the applicant may be in touch with some members of his family. He has further stated that the said respondent never wanted the applicant to help his party during elections held in 1991 and 1996.

(5) The learned Tribunal found that the two issues needs to be considered. Firstly, whether the report which per-se is not adverse, but has been downgraded without giving any reason as in the present case, need to be communicated and secondly, whether such remarks need to be expunged/ignored. In respect of the first question, the Tribunal held that the purpose of conveying adverse remarks is not only to give opportunity if they are based on factual mistake or *mala fide*, but also to give him chance of improvement. The Tribunal concluded that the communication of remarks, which are not adverse at the belated stage serves no purpose. However, in respect of the second question, the Tribunal discussed the procedure adopted and proforma used for recording the ACR. Relying upon **U.P. Jal Nigam's** case (supra), the Tribunal held to the following effect :—

“14. I have perused the ACRs one for the year 1996-97 and two for the year 1997-98. It is noticed that they have been recorded by the two different reporting officers of the rank of DIG/IG and reviewed by the two different reviewing officers of the rank of ADGP/DGP. Besides these officers, the Director General of Police and two Home Secretaries have also agreed with the assessment of the officer as “very good”. The Home Minister has also seen the reports before they were put up to the Chief Minister as accepting authority. The Chief Minister, in the report of both the years had merely recorded that he would assess the work and conduct of the officer as “Good”.

15. “Good” report per-se is not considered adverse and, therefore, not communicated to the officer. However, such a report is a silent killer because its damage at a later date when the competition is for higher jobs and an officer adjudged as “Good” cannot make grade due to intense competition. Considering these aspects of writing confidential reports, the Apex Court in the case of U.P. Jal Nigam (supra) said that even a positive confidential entry in a given case can perilously be adverse.”

(6) Later while discussing the allegations of *mala fide* and bias of respondent No. 4 against the applicant, the Tribunal held that respondent No. 4 has been guided by his earlier impression about the officer and not by his actual performance in the post held by him even though he has not been recognising him. The Tribunal found that non recording of reasons as held in **U.P. Jal Nigam’s case (supra)**, is arbitrariness in writing of ACR. Still further it was held that since respondent No. 4 was differing with the opinion of various officers, who had supervised his work, he should have recorded reasons for doing so.

(7) We have heard the learned counsel for the petitioner. None has put in appearance on behalf of the applicant, although a note was put in the casue list that Shri Dharam Pal Singh Malik, Advocate, should make himself present for today.

(8) Learned counsel for the petitioner has relied upon **Union of India and another versus Major Bahadur Singh, (2)** wherein the judgment in **U.P. Jal Nigam’s case (supra)** was considered. It was held by the Hon’ble Supreme Court therein that the said judgment was intended to be made only for the employee of U.P. Jal Nigam and has no universal application.

(9) It was also contended that in terms of the All India Services (Confidential Rolls) Rules, 1970 (for short ‘the Rules’), the process of recording of the ACR is complete only after the same is accepted by the Accepting Authority i.e. in the present case, the then Chief Minister. Reliance was placed upon Rules 6-A and 6-B of the Rules.

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It is, thus, contended that with the writing of remarks by the Accepting Authority alone, the process of recording of the ACR comes to an end. Different steps in the process of recording of ACR are not relevant as it is the order, which could be said to affect the rights of the applicant. Rule 6-A and 6-B of the Rules read as under :—

“6-A. Acceptance of the confidential report.—(1) The accepting authority shall within one month of its review record his remarks on the confidential report and may accept it, with such modifications as may be considered necessary and countersign the report.

Note : An entry to this effect shall be made in the confidential report.

- (2) Notwithstanding anything contained in sub-rule (1), it shall not be competent for the accepting authority to accept and countersign any such confidential report,—
- (a) where the accepting authority is a Government servant, after he retires from service, and
 - (b) in other cases, after he demits office.

Explanation.—For the purpose of this rule a Minister shall not be treated as having demitted office if he continues to be a Minister in the Council of Ministers with a different portfolio or in the Council of Ministers immediately reconstituted after the previous Council of Ministers of which he was a Minister with the same or a different portfolio.

6-B. Cases in which the accepting authority writes or reviews the confidential report.—Notwithstanding anything contained in Rule 5 or Rule 6, where the accepting authority writes or reviews the confidential report of any member of the Service, it shall not be further necessary to review or accept such report.”

(10) The judgment of the Hon'ble Supreme Court in **U.P. Jal Nigam's case (supra)** and **Major Bahadur Singh's case (supra)**, came for consideration before a Bench of this Court in Civil Writ Petition No. 12427-CAT of 2003 decided on 11th April, 2008 (Union of India and others versus Central Administrative Tribunal and others). In the said case, the reference has been made to a Division Bench judgment of Delhi High Court in **Rajinder Kumar versus Union of India (3)**, and Jammu and Kashmir High Court in the case of **Union of India versus Col. (Dr.) Jiban Chandra Saha (4)**, wherein the judgment in **U.P. Jal Nigam's case (supra)** was considered and it was held that the said judgment cannot be read out of context and it is a judgment on its fact finding. After considering the aforesaid judgments and the judgment of the Delhi High Court in **Bahadur Singh (Major) versus Union of India (5)**, which ultimately became subject matter of consideration before the Supreme Court in the case of **Union of India and another versus Major Bahadur Singh (supra)**, this Court held to the following effect :—

“It is only the adverse entries in the Annual Confidential Reports which are required to be communicated in terms of the Government of India office memorandum dated 3rd January, 1978, which is to the following effect :—

“20. **Communication of adverse entries and how to be done.**—All adverse entries in the confidential report of Government servant, both on performance as well as on basic qualities and potential should be communicated along with a mention of good points within one month of their being recorded. This communication should be in writing and a record to that effect should be kept in the CR dossier of the Government servant concerned.”

In the present case, the petitioner was graded “Excellent” in the year 1995, though in the year 1996 he was graded ‘Very Good/Good’. It cannot be said

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- (3) 2001 (3) SCT 887
(4) 2001 (3) SCT 309
(5) 2003 (2) SCT 514

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that the reasons were required to be recorded for recording the Very Good or Good entries. The entry for the year 1996 cannot be said to be adverse which alone was required to be communicated in terms of the judgment of the Hon'ble Supreme Court in **Bahadur Singh's case** (supra).”

(11) Rule 5 of the Rules contemplates that the confidential report assessing the performance, character, conduct and quality of every member of service, shall be written for each financial year or calendar year, as may be specified by the Government. Rule 6 of the Rules deals with the review by the reviewing authority and Rule 6-A of the Rules deals with the Accepting Authority. The Accepting Authority in terms of Rule 2(a) of the Rules means such authority supervising the performance of the reviewing authority as may be specially empowered in this behalf by the Government. Therefore, the process of recording of remarks starts with the remarks of the reporting authority, but such process comes to an end with the recording of remarks by the accepting officer. In terms of Rule 8, it is only the adverse remarks in the confidential report, which are required to be communicated together with the substance of entire confidential report by the Government or such other authority as may be specified by the Government.

(12) The reasoning given by the Tribunal that the Accepting Authority was required to record reasons to disagree with the recording of remarks by the reporting/reviewing authority, is not sustainable in law. The Accepting Authority is the authority which supervises the performance of the reviewing authority and the reviewing authority in terms of Rule 2(f) of the Rules, is the authority, which supervises the performance of the reporting officer. Therefore, it is the hierarchy of the Officers, supervising the work which have to record the remarks. The remarks recorded by the Accepting Authority are the only final remarks in the hierarchy of the Officers. Therefore, it is such remarks, which are relevant. Thus, we are of the opinion that it was not necessary for the Accepting Authority to record the reasons for downgrading the

remarks recorded by the reporting and reviewing authorities as the final word in the matter of recording of reports is that of Accepting Authority.

(13) In terms of the judgment of the Hon'ble Supreme Court in **Bahadur Singh's case** (*supra*), as followed by this Court in CWP No. 12427-CAT of 2003, we are of the opinion that it is only the adverse entries in the Annual Confidential Report, which are required to be communicated.

(14) Consequently, the present writ petition is allowed. The impugned order passed by the Tribunal is set aside. As a consequence thereof the original application filed by the applicant stands dismissed.

R.N.R.

Before Augustine George Masih, J.

NEELAM & OTHERS,—Petitioners

versus

STATE OF HARYANA AND OTHERS,—Respondents

CrI. Misc. No. 31895-M of 2006

2nd September, 2008

Code of Criminal Procedure, 1973—Ss. 156(3) & 202—Indian Penal Code, 1860—Ss. 306, 34—Death of husband of petitioner No. 1—Father-in-law of petitioner No. 1 filing complaint in Court of SDJM—SDJM ordering investigation of matter u/s 202 Cr. P.C.— Whether on receipt of complaint, Magistrate could, on taking cognizance of an offence complained of, direct registration of FIR u/s 156(3) Cr.P.C.— Held, no—Whether in a case where it appears to Magistrate that offence complained of is exclusively triable by the Court of Session, the Magistrate could have directed registration of FIR u/s 156(3) Cr.P.C.—Held, no—Order of Magistrate directing police to register a case against accused u/s 306/34 IPC held to be illegal being not in accordance with law and provisions of Cr.P.C.—Petition allowed, order of SDJM, FIR and all consequential proceedings arising therefrom quashed.