

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

**ASHOK KUMAR KHANNA—Petitioner**

*versus*

**BHARAT SANCHAR NIGAM LIMITED AND  
OTHERS,—Respondents**

**C.W.P. No. 17179/CAT of 2010**

23rd September, 2010

*Constitution of India, 1950—Art. 226—P & T Manual Vol. III—Rl. 174(10)—Adverse remarks against a Senior Sub Divisional Engineer—Challenge thereto on ground that procedure for recording A.C.Rs. as disclosed in instructions not followed—Whether such instructions are statutory in character—Held, no—Guidelines for internal consumption only by officers for recording A.C.Rs.—Such guidelines/instructions cannot be held justiciable and enforced by a Court of Law—OA before Tribunal held not to be maintainable—No specific allegations of mala fide against reporting officer or reviewing officer nor supported by substantial evidence—Petition dismissed.*

*Held*, that the instructions on which reliance has been placed do not have statutory substance and, as such, such instructions are mere guidelines to be used by the reporting officer. These instructions are non-justiciable and cannot be enforced in the Court of law by filing a suit or seeking a writ. Therefore, the OA was not maintainable before the Tribunal.

(Para 10)

*Further held*, that allegations of *mala fide* are wholly vague and unspecified. Such allegations cannot be acted upon to record a finding of malice and bias. There has to be substantial evidence of malice and bias before the adverse remarks could be expunged on that ground. When the petitioner filed OA before the Tribunal again there was neither any specific allegation nor respondents No. 6 and 7 were impleaded as party respondents before the Tribunal. For the first time they have been impleaded as party before this Court, which itself shows that the allegations have been concocted later on.

(Para 11)

Anuj Raura, Advocate, *for the petitioner.*

**M.M. KUMAR, J.**

(1) The petitioner having failed before the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for brevity, 'the Tribunal'), has challenged its order dated 3rd September, 2009 (P-9), rejecting his claim for expunging of adverse remarks from the Annual Confidential Report of the petitioner pertaining to the year 2005-06. The petitioner has been working with the Bharat Sanchar Nigam Limited—respondent No. 1 and at the relevant period he was discharging the duty as a Senior Sub Divisional Engineer. The basis of challenge for expunging of the adverse remarks is that the instructions with regard to recording of adverse remarks stand completely violated and that the adverse remarks are wholly vague and unsubstantiated. A feeble attempt was made to challenge the adverse remarks alleging bias and *mala fide* against respondent Nos. 6 and 7. The petitioner has also challenged the order dated 2nd April, 2008 (P-5A), rejecting his representation/appeal against the adverse remarks.

(2) The argument of the petitioner before the Tribunal was that his representation has been rejected by a non-speaking and cryptic order. However, the aforesaid argument was rejected by the Tribunal holding that the representation/appeal was not statutory and, therefore, there was no need to pass any detailed and speaking order. In any case, the Tribunal found that the order dated 2nd April, 2008 (P-5A), has disclosed reasons and could not be regarded cryptic.

(3) Before we deal with various contentions raised by the learned counsel, it would be apposite to first read the adverse remarks conveyed to the petitioner,—*vide* letter dated 8th August, 2006 (P-1), in respect of the year 2005-06 :—

Item	Adverse remarks
<b>Part III : (A) Nature &amp; quality of work</b>	
Item No. 2. Quality of output	Below average performance in t/o work and programme objectives
Item No. 3 Knowledge of sphere of work	
(a) Technical/Financial	Below average
(b) Administrative	Below average

**Part III (B) Attributes :**

Item No. 1 Attitude of work	Below average dedication and motivation and willingness to take initiative
Item No. 2 decision making ability	Below average
Item No. 4 Ability to inspire and motivate	Below average capacity to motivate and obtain willing support from staff.
Item No. 5 : Communication skill (written and oral)	Below average , arguments are not specific to topic.
Item No. 6 : Interpersonal relations and team work	Below average relationship at all levels
Item No. 7 : Relation with the public	Below average
Item No. 8 : Attitude towards Scheduled Caste/Scheduled Tribes/Weaker Sections of society	V. little understanding
Item No. 9 : Interest to keep abreast of the latest technological developments in his/her field of activity	Below average

**Part (IV) General**

Item No. 3, General assessment.	Below average
Item No. 4. Grading	Below average"

(4) Against the aforesaid adverse remarks the petitioner filed an appeal/representation (P-2). The principal grounds taken in the appeal are that the adverse remarks were unjustified, unfounded and whimsical. It was also alleged that those remarks were result of biased and vindictiveness but no specific allegation against the reporting or the appellate authority were levelled nor any details were furnished substantiating the allegations. Another ground for challenging the adverse remarks was violation of Rule 174(10) of P&T Manual Volume-III.

(5) Mr. Anuj Raura, learned counsel for the petitioner has argued that the procedure for recording Annual Confidential Reports has not been followed as disclosed in the instructions compiled by Swami's Confidential Reports. He has read out paras 16, 17, 31 and 39 providing for principles required to be observed by the reporting officer while writing the ACR. He also alleged that the adverse remarks recorded against the petitioner were the result of biased and *mala fide* intention of respondent Nos. 6 and 7.

(6) It would first be necessary to deal with the instructions on which reliance has been placed by Mr. Raura. In para 16, the following guidelines have been provided for the reporting officer to follow :-

**“16. Principles to be observed by Reporting Officers in writing reports :-** The general principles which are required to be observed by the Reporting Officers for writing annual reports are included below :-

- (1) Remarks like “Doubtful Character”, “complaints received about his taking illegal gratification”, are not permissible. Entries should be based on established facts and not on mere suspicion.
- (2) No employee should be adversely affected by prejudicial reports recorded without fullest consideration. At the same time, none should be rewarded by excessively flattering reports which are not based on facts. With a view to checking up such possibilities, the following procedure is prescribed :-
  - (a) the memo of services should invariably be consulted at the time of writing the annual report though the report itself should necessarily be based on the employee's performance during the year as a whole;
  - (b) where an adverse remark is recorded in respect of an official having consistency good record, some details regarding the same should invariably be given;
  - (c) the report should give a clear opinion on the main points like character, integrity, industry, etc. ;

- (d) there should be no hesitation on the part of the Reporting Officers to record adverse remarks in justified cases;
- (e) Reporting Officers should not be in a hurry to write all the reports on one day.”

(7) It would also be pertinent to refer to Paras 31 and 39, which provide guidelines for self-appraisal and a report thereon by the reporting authority and the same reads thus :—

**“31. Guidelines for self-appraisal and report thereon by the Reporting Authority :**

1 to 3.                    xxx    xxx    xxx

- (4) If the Reporting Officer records along with reasons against the column provided that the self-appraisal contains too much of self-praise, such disagreements will not be considered as adverse remarks. Therefore, while recording reason for disagreement with the self-appraisal, the Reporting Officer may make it clear, whether or not his observations on the self-appraisal are to be taken as adverse remarks. If the Reporting Officer disagrees with the self-appraisal and intimates such disagreement to be taken as adverse, he may back it up with factual details and put them on record. Nothing, prevents the Reporting Officer to point out the inadequacies or exaggerations in the self-appraisal and ask the officer if he would like to reconsider it. Such an approach may rule out the possibility of disagreement in a large number of cases.
- (5) xxx    xxx    xxx
- (6) Adverse remarks in regard to the performance and conduct of the officer, recorded on the basis of sufficient material against any other column should as usual be communicated to the officer reported upon. The Reporting Officer’s observations have necessarily to be with reference to the actual performance of the officer during the period and that too on the basis of established facts and other relevant materials contained in the memorandum of service, etc.”

**“39. Maintenance of memorandum of services serving as basis for writing annual reports.—**With a view to enabling the Reporting Officers to make correct overall assessment of the work and conduct of their subordinates, the Reporting Officers are required to maintain memorandum of the services in respect of each officer employed under them. All instances of good and bad work coming to the notice of the Reporting Officer should be promptly noted in the memo of service Impression formed by the officer at the time of visits, inspections, interview, etc., should also be included in that memorandum. This memorandum should not be reduced to a black book by recording instances of only adverse nature. Instances of good work should also be liberally recorded. The memoranda of service should invariably, be consulted at the time of writing of annual reports. In case the Reporting Officer is not the immediate superior of the officer to be reported upon, the immediate superior should also maintain a memo of services, which should be consulted by the Reporting Officer at the time of writing the report. The memo of services in respect of an officer should be a complete and continuous record of his service and accordingly it should not be destroyed after the annual report has been written. The entries in the memo of the services may also be consulted on the occasions of making transfer, promotion or writing special reports. For writing the annual report, only those entries in the memo which pertain to the year of the report should be taken into account. The entries in the Memorandum of Service need not necessarily be communicated. As the Memorandum of Service is the sole basis for writing the annual reports, the Reporting Officer at the time of submitting reports to the countersigning authorities, if any should, make a specific mention in the forwarding letters that memoranda of services have been maintained and consulted. With a view to checking up that these memoranda are being properly and regularly maintained, the countersigning authorities may call for them and check them up. The negligence on the part of the Reporting Officers in this regard should be duly noticed.”

(8) A perusal of para 16 would show that no employee is to adversely suffer by a prejudicial report without fullest consideration. At the same time an employee is not to be rewarded by excessively flattering reports which are not based on facts. The reporting officer is required to consult the memorandum of service at the time of writing ACR and the report should be based on his performance during the year as a whole. The reporting officer is also required to give details if adverse remarks have been recorded which are inconsistent with his earlier 'Good' or 'Very Good' record. Likewise, a perusal of paras 31 and 39 would show that the reporting officer's observation should necessarily be with reference to the actual performance of the officer during the period in question and that too on the basis of established facts and other relevant material contained in the memorandum of service, which is required to be maintained in accordance with paragraph 39.

(9) The question then is whether the aforesaid instructions are statutory in character or merely guidelines for internal use of the department. The question is no longer *res integra*. The question regarding justiciability of similar instructions came up for consideration before a Division Bench of this Court in the case of **State of Punjab versus Janak Raj Jain, (1)**. In paras 10 and 11 of the judgment, their Lordships' of the Division Bench held that such like instructions are not statutory in nature and they are, in fact, guidelines for internal consumption by the officers for recording annual confidential reports. In case of any violation of such instructions it was for the reviewing authority to go into the matter and grant necessary relief to the officer if it was so satisfied. It has been categorically held that such like guidelines/instructions cannot be held justiciable and enforced by a Court of law. The aforesaid decision of the Division Bench has been followed by a learned Single Judge in the case of **A. R. Darshi versus State of Punjab, (2)**. In para 6 of the judgement, the following pertinent observations have been made, which deserve to be quoted in extenso :—

“6. After hearing the learned counsel for the parties and having gone through their pleadings, I am of the considered view that the petition is wholly without merit. According to the law laid down in the aforesaid authorities, the recording of annual confidential reports, communication of adverse remarks if any, and filing of

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(1) ILR 1987 (1) Punjab & Haryana 412

(2) 1988 (7) S.L.R. 275

representation for their expunction as also the consideration of the representations by the higher authorities, are the matters which are regulated by executive instructions issued by the State Government from time to time. The whole process is non-statutory and administrative in nature, violation whereof is not justiciable. The breach of the administrative instructions which are in the nature of guidelines for the internal consumption by the officers at the time of recording of annual confidential reports and expunction of adverse remarks etc., do not confer upon the officer concerned a right to challenge the same in a Court of law. Sufficient safeguards have already been provided in the executive instructions and the reviewing authority by considering the representation of the aggrieved employee, can grant the necessary relief to him if it is satisfied that the adverse remarks are either not based on some existent and relevant data or that the same had been actuated by personal malice or on considerations other than merit. The Court cannot substitute its own opinion for that of the reporting or the reviewing authority.”

(10) When the facts of the present case are examined in the light of the principles laid down in the aforesaid judgments, it is patent that the instructions on which reliance has been placed by Mr. Raura do not have statutory substance and, as such, such instructions are mere guidelines to be used by the reporting officer. These instructions are non-justiciable and cannot be enforced in the Court of law by filing a suit or seeking a writ. On our repeated asking Mr. Anuj Raura was not able to cite any view to the contrary. Therefore, we are of the view that at the first instance the OA was not maintainable before the Tribunal.

(11) The other argument pertaining to *mala fide* is equally without any merit. Against the adverse remarks, the petitioner filed an appeal on 7th September, 2006 (P-2). In paragraph 2 of the appeal the petitioner himself says that he might have put his foot on someone's corns and thus may have invited the wrath of the authorities. He further says that it was only a surmise and nothing specific could be stated. We specifically asked Mr. Raura to show specific allegations of *mala fide* in the appeal against the reporting officer or the reviewing officer. Naturally he had the difficulty in highlighting any such allegation except the one we have noticed. Those allegations are wholly vague and unspecified. Such allegations cannot be



acted upon to record a finding of malice and bias. There has to be substantial evidence of malice and bias before the adverse remarks could be expunged on that ground. When the petitioner filed OA before the Tribunal again there was neither any specific allegation nor respondent Nos. 6 and 7 were impleaded as party respondents before the Tribunal. For the first time they have been impleaded as party before this Court, which itself shows that the allegations have been concocted later on. It is well settled that until and unless the allegations of *mala fide* are specific and supported by substantial evidence they would not constitute a basis for recording a finding that the action of the authority suffered from any malice or bias. In that regard, reliance may be placed on the judgment of Hon'ble the Supreme Court rendered in the case of **State of Punjab versus V. K. Khanna**, (3) wherein it has been explained that the expression '*mala fide*' has a definite significance in the legal phraseology and the same cannot possibly emanate out of fanciful imagination or even apprehensions but there must be existing definite evidence of bias and actions which cannot be attributed to be otherwise *bona fide* actions not otherwise *bona fide*, however, by themselves would not amount to be *mala fide* unless the same is inaccompaniment with some other factors which would depict a bad motive or intent on the part of the doer of the act. In paras 8, 9 and 25, their Lordships' have observed as under :—

- “8. The test, therefore, is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In the event, however, the conclusion is otherwise that there is existing a real danger of bias administrative action cannot be sustained : If on the other hand allegations pertain to rather fanciful apprehension in administrative action, question of declaring them to be unsustainable on the basis therefore would not arise.
9. It is in same vein this Court termed it as reasonable likelihood of bias in Rattan Lal Sharma's case [Rattan Lal Sharma *versus* Managing Committee Dr. Hari Ram (Co-education) Higher Secondary School and Others (1993) 4 SCC 10] wherein this Court was pleased to observe that the test is real likelihood of

bias even if such bias was, in fact, the direct cause. In Rattan Lal Sharma's case (*supra*) real likelihood of bias has been attributed a meaning to the effect that there must be at least a substantial possibility of bias in order to render an administrative action invalid. Rattan Lal Sharma's case (*supra*) thus, in fact, has not expressed any opinion which runs counter to that in Girja Shankar's case (*supra*) and the decision in the last noted case thus follows the earlier judgment in Rattan Lal's case even though not specifically noticed therein."

xxx      xxx      xxx

25. Bias admittedly negates fairness and reasonableness by reason of which arbitrariness and *mala fide* move creep in issuance of the two notifications assuming in hot haste but no particulars of any malafides move or action has been brought out on record on the part of Shri V. K. Khanna -while it is true that the notings prepared for Advocate General's opinion contain a definite remark about the *mala fide* move on the part of Shri V. K. Khanna yet there is singular absence of any particulars without which the case of *mala fides* cannot be sustained. The expression '*mala fide*' has a definite significance in the legal phrasology and the same cannot possibly emanate out of fanciful imagination or even apprehensions but there must be existing definite evidence of bias and actions which cannot be attributed to be otherwise *bona fide* - actions not otherwise *bona fide*, however, by themselves would not amount to be *mala fide* unless the same is in accompany men with some other factors which would depict a bad motive or intent on the part of the doer of the act."

(12) In light of the aforesaid principle, even the second argument raised by Mr. Raura, cannot be sustained and the same is liable to be rejected.

(13) As a sequel to the aforesaid discussion, the writ petition is without any substance and does not warrant admission. The same is accordingly dismissed.

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**R.N.R.**