




HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 3444/2013

Jagidsh Prasad

----Petitioner

Versus

1. The Chief Secretary, Government of Rajasthan, Secretariat, Jaipur
2. The Transport Commissioner cum Additional Chief Secretary, Government of Rajasthan, Privahan Bhawan, Sahkar Marg, Jaipur
3. The Principal Secretary, Transport Department, Government of Rajasthan, Privahan Bhawan, Sahkar Marg, Jaipur
4. The Principal Secretary, Department of Personal, Government of Rajasthan, Secretariat, Jaipur

----Respondents

For Petitioner(s)	:	Mr. Sandeep Saxena, Adv.
For Respondent(s)	:	Mr. P.S. Naruka, Adv. for Mr. Rupin Kala, Govt. Counsel

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Order

RESERVED ON	::	10.07.2023
PRONOUNCED ON	::	25.07.2023

Reportable

1. Instant petition has been filed by the petitioner with the following prayer:-

“i) this Hon’ble Court may kindly be pleased to call the entire record of the case and after examining the same be pleased to quash and set aside the adverse remarks for the year 2005-2006 for the period of 1.4.2005 to 16.12.2005, communicated vide communication dated 15.2.2007 as well as the rejection of the reply



dated 15.10.2011 and the remarks recorded in the APA reported of 2005-2006 for the period of 1.4.2005 to 16.12.2005 be expunged.

ii) If any prejudicial order to the interest of the petitioner is passed during the pendency of the writ petition. The same may kindly be taken on record and be pleased to quashed and set-aside.

iii) Any other appropriate writ, order or direction which may be considered just and proper in the fact and circumstances of the case may kindly be passed in favour of the petitioner.

iv) Cost of the writ petition may be allowed petitioner."

2. Learned counsel for the petitioner submits that the petitioner was holding the post of Additional Regional Transport Officer from 24.01.2003 and he was promoted to the post of Regional Transport Officer against the vacancies of 2005-2006 vide order dated 15.07.2005 and he joined the said post on 16.07.2005. Counsel submits that the aforesaid promotion order of the petitioner was recalled and the petitioner was given promotion on the said post on 10.12.2012 against the vacancies of 2009-2010. Counsel submits that the reason for delaying the promotion of the petitioner was the adverse entries recorded into the ACR of the petitioner pertaining to the year 2005-2006. Counsel submits that the petitioner has served the Department for more than three decades and in his entire service career, his services remained unblemished and there were no complaints whatsoever against him and no charge-sheet was ever being served to him. Counsel submits that without giving any advisory and without giving any notice the ACR of the petitioner were downgraded to unsatisfactory while the work performance of the petitioner was



excellent and several appreciations in this regard were given by the higher authorities in favour of the petitioner. Counsel submits that the petitioner discharged his duties to the best satisfaction of the authorities and the pendency of the law cases was nil when such adverse entries were recorded in his ACR. Counsel submits that it is the settled proposition of law that the authorities are required to record the reason and inform the officer concerned of the change in the form of an advise. Counsel submits that downgrading made without giving any reason cannot be allowed to sustain. In support of his contentions, counsel has placed reliance on the following judgments:-

i) State of Maharashtra Vs. Ravikant S. Patil reported in **1991 (2) SCC 373;**

(ii) U.P. Jal Nigam v. Prabhat Chandra Jain reported in **1996(2) SCC 363;**

(iii) M.A. Rajasekhar v. State of Karnataka and Anr. reported in **1996(10) SCC 369;**

(iv) M.S. Bindra v. Union of India and Ors. reported in **1998(7) SCC 310;**

(v) Abhijit Ghosh Dastidar v. Union of India reported in **(2009) 16 SCC 146;**

(vi) G.S. Saxena v. State of Rajasthan and Ors. (High Court) reported in **2016(2) WLC (Raj.) (UC) 520;**

(vii) Roop Singh Jodha v. State of Rajasthan and Ors. (High Court) reported in **2007(1) WLC 70;**

(viii) Satya Narayan Kumawat v. State of Rajasthan & Ors. reported in **2015(1) WLC 268;**

(ix) Mohan Lal Vijay V. State of Rajasthan & ors. reported in **2009(4) W.L.C. 53;**

(x) Gopal Singh Rathore V. Union of India and another reported in **2003(4) WLC 503 and**



(xi) Pawan N Chandra Vs. Rajasthan High Court reported in 2009 (17) SCC 770.

3. Counsel submits that in view of the submissions made hereinabove, the adverse entries made against the petitioner for the year 2005-2006 be quashed and set aside and the respondents be directed to provide all consequential benefits to the petitioner.

4. Per contra, counsel for the State respondents opposed the arguments raised by the counsel for the petitioner and submitted that the advisory was issued to the petitioner and he was advised to take interest in the allotted work and follow the Court cases but his performance in the work was nil and looking to such performance of the petitioner, adverse entry (unsatisfactory) was recorded in his ACR. He submits that against the adverse entry, the petitioner filed a representation before the higher authorities and the same was rejected. Counsel submits that without proper channel the petitioner sent his ACR to the Department of Personnel (for short, 'DoP') which shows his conduct that he was trying to misguide the Department by sending the ACR directly. Counsel submits that initially ad-hoc promotion was given to the petitioner in the year 2005 but the same was withdrawn because of adversity in the ACR of the petitioner. His promotion was extended for the period of one year and, thereafter, no vacancies for the post of Regional Transport Officer were available in the subsequent years, hence promotion has been given to the petitioner on the promotion post against the vacancies of the year 2008-2009. Counsel submitted that the scope of interference of this Court with regard to the adverse remark in ACR is very narrow and limited hence under these circumstances, interference



of this Court is not warranted and the writ petition is liable to be dismissed.

5. In rebuttal, counsel for the petitioner submits that regular promotion was given to the petitioner to the post of Regional Transport Officer vide order dated 15.07.2005. Counsel further submits that the ACR of the petitioner was not filled by the Reporting Officer but the same was filled by Reviewing Officer who was not competent to fill the ACRs of the petitioner. Counsel submits that it is incorrect on the part of the respondents to say that the petitioner submitted his ACR through wrong channel. Counsel submits that as per the instructions, the ACR was sent through proper channel. Counsel further submits that the Department itself asked the petitioner to submit his ACR vide its letter dated 30.04.2007 to DoP. Counsel further submits that the ACR of the subsequent period of the same year were found to be outstanding. He further submits that as per clause 13.9 of the Rajasthan Departmental Promotion Rules (for short 'the Rules') the Departmental Promotion Committee (for short, 'DPC') can be conducted prior to 30th September of the financial year and no review DPC can be conducted after 30th September. Lastly he argued that arguments raised by the counsel for the respondents has no substance.

6. Heard and considered the submissions made at the bar and perused the material available on the record.

7. At the outset, it is made clear that this Court cannot moderate the appraisal and grading given to an officer/employee. While exercising power of judicial review, Court should not venture to assess and appraise on the grading of an employee. But if the



Court finds that adverse entries made in the ACR or grading given to an employee are vitiated by extraneous consideration, the Court must interfere and quash them. It is essential to maintain the integrity and sanctity of the ACR of an employee and the legitimacy of the conclusions relating to his/her overall performance.

8. The object of writing confidential reports or character of roll of a Government Servant is to afford an opportunity to the officer concerned to remove his deficiencies, if any, to inculcate discipline and to improve quality, excellence and efficiency of public service. The officer writing the confidential report should show objectivity, impartiality and fair assessment without any prejudices whatsoever with the highest sense of responsibility to inculcate devotion to duty, honesty and integrity to improve excellence of an individual officer. Thus, the action of the officer entrusted with the duty to write ACR must not be susceptible to the rise of arbitrariness.

9. It is duty of the Reporting Officer and the Reviewing Officer to take care not only that in their assessment of overall performance of the subordinate officer but also they are not influenced by any personal interest, bias or malice. In other words, it must appear on the face of the record that in assessing overall performance and giving grade to an officer in his ACR, the authorities have acted fairly and without any bias.

10. It is trite law that an officer entrusted with 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, on statement of facts, an



overall assessment of the performance of the Officer. However, at the same time, the Reporting Officer before forming an opinion adverse to the Subordinate Officer should confront the officer with such information and then only the same may be made part of the report. Reference in this connection may be made to the following observation of the Hon'ble Apex Court in **State of U.P.**

Vs. Yamuna Shanker Misra reported in **1997(4) SCC 7** : -

"....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 over all assessment of the performance of the Subordinate officer. It should be founded upon facts or circumstances.

Before forming an opinion to be adverse, the Reporting Officers writing confidential 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 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."

11. On the same line, the Hon'ble Apex Court in **Union of India Vs. E.G. Nambudiri** reported in **1991(3) SCC 38** held as under:-

"....Therefore, in the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a Government servant against the adverse entries the the competent authority is not under any obligation to record reasons. But the competent authority has no licence to act arbitrarily, it must act in a fair and just manner. It is required to consider the questions raised by the Government servant and examine the same, in the light of the comments made by the officer awarding the



adverse entries and the officer countersigning the same. If the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons. However, it does not mean that the administrative authority is at a liberty to pass orders without there being any reasons for the same. In Governmental functioning before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion, if such an order is challenged in a Court of law, it is always open to the competent authority to place the reasons before the Court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence aliunde before the Court to justify its action."

12. Their Lordships of the Hon'ble Supreme Court in **M.A. Rajasekhar Vs. State of Karnataka** reported in **1996 (10) SCC 369** were considering somewhat similar remarks recorded in the confidential report of the appellant that he "does not act dispassionately when faced with dilemma" it was in this context their Lordships in para no.4 of the judgment observed as under:-

"It is now settled law that object of making adverse remarks is to assess the competence of an officer on merits and performance of an officer concerned so as to grade him in various categories as outstanding, very good, good, satisfactory and average, etc. The competent authority and the reviewing authority have to act fairly or objectively in assessing the character, integrity and performance of the incumbent."

13. Their Lordships of the Hon'ble Supreme Court in **Sukhdeo Vs. Commissioner Amravati Division, Amravati & Anr.** reported in **1996(5) SCC 103** while following the earlier judgment in **State Bank of India & Ors. Vs. Kashinath Kher**



& Ors. etc. reported in **1996(8) SCC 762** at 578 observed as under: -

“the controlling officer while writing confidential and character role report, he should be a superior officer higher above the cadres of the officer whose confidential reports are written. Such officer should show objectivity, impartiality and fair assessment without any prejudice whatsoever with highest sense of responsibility to inculcate in the officer's devotion to duty, honesty and integrity so as to improve excellence of the individual officer. Lest the officers get demoralised which would be deleterious to the efficacy and efficiency of public service. In that case it was pointed out that confidential reports written and submitted by the officer of the same cadre and adopted without any independent scrutiny and assessment by the committee was held to be illegal. In this case, the power exercised is illegal and it is not expected of from that high responsible officer who made the remarks. When an officer makes the remarks he must eschew of making vague remarks causing jeopardy to the service of the subordinate officer. He must bestow careful attention to collect all correct and truthful information and give necessary particulars when he seeks to make adverse remarks against the subordinate officer whose career prospect and service were in jeopardy. In this case, the controlling officer has not used due diligence in making remarks. It would be salutary that the controlling officer before writing adverse remarks would give prior sufficient opportunity in writing by informing him of the deficiency he noticed for improvement. In spite of the opportunity given if the officer/employee does not improve then it would be an obvious fact that would form material basis in support of the adverse remarks. It should also be mentioned that he had given prior opportunity in waiting for improvement and yet was not availed of so that it would form part of the record.”

14. This Court had an occasion to examine the instructions regarding Annual Performance Appraisal, 1976 in **Richpal Singh Vs. State** reported in **1992(2) WLC 669**. While following the principles laid down by Hon'ble Apex Court in **State of Haryana VS. P.C. Wadhwa**, reported in **AIR 1987 SC 1201**, this Court held that even if the administrative instructions issued by the Government are not having statutory



force, they must be substantially complied with. The Government which had issued the instructions and the officers, who are bound to act in conformity with the administrative instructions and whose actions are the actions of the Government, must be held to be bound by these administrative instructions. The administrative authorities, which declare that their actions will be governed by certain standards must adhere to those standards. Arbitrary departure from such instructions will vitiate the action taken by such authorities. Faced with the problem of non adherence to such instructions especially in the context of the cases where positive reports given by the Reporting Officers are down graded or are recorded in the negative form by Reviewing/Accepting Officer, the Government has issued a circular on 3.4.1998, which is worth reproduction : -

"It has been observed that the APARS of the State Service Officers are sometimes downgraded by Reviewing/Accepting authority, without giving any reasons or justifications and it becomes difficult to properly defend such cases in Courts. The Supreme Court has also recently held that proper reasons must be recorded while down grading the APAR rating of a Reportee Officer. Accordingly it has been decided that the Reviewing / Accepting authorities should invariably record detailed reasons / justifications if APARS of the Reportee Officers are downgraded by them."

15. Remarks in the APARS of a government servant play a significant role in his service career. While good remarks may help him gain timely promotion, adverse remarks may delay such promotion and in some cases, may even permanently end the chances of such promotion. It is true that the compliance of



principles of natural justice in the sense of giving notice and providing opportunity of hearing cannot be insisted upon in the matter of recording of adverse remarks. At the same time, however, desirability of applying those principles at least in some semblance has always been impressed upon the executive by series of judicial pronouncements. This is based on sound principles of fairness and transparency in administrative action. Such a course is required to be adopted so as to rule out any possibility of arbitrariness and colourable exercise of power. The Government of Rajasthan has issued the APAR Instructions of 1976 with an avowed objective of adherence to these very principles of law. Guidelines contained in these instructions insist on objectivity of assessment rather than subjectivity of the officer making such assessment. They are intended to safeguard interest of the government servants so that no prejudice is caused to them by any possible bias on the part of the officer recording remarks in his APAR.

16. In the instant case, it is an admitted position that the petitioner was working on the post of Additional Regional Transport Officer and he was promoted to the post of Regional Transport Officer on 15.07.2005 and he joined the promotion post on 16.07.2005. So twice his ACRs were filled in the same year for his two different posts. For his post of Additional Regional Transport Officer, his ACR was written for the period commencing April 2005 to 16.12.2005 and for his post of Regional Transport Officer his ACR was filed w.e.f 16.07.2005



till March, 2006. It is worthy to note here that for the ACR of April, 2005 till 16.12.2005, his performance was mentioned as 'unsatisfactory', his work and was mentioned as 'nil' and he was advised to take interest in the allotted work and follow up to the court cases. He submitted representation against the above ACR and the comments of the Reporting Officer were called who advised to correct the entries of the petitioner but even then his representation was rejected and the adverse entries of ACRs were upheld as it is.

17. It is relevant to note here that for the same year the ACR was filed for the period commencing from 16.07.2005 to March, 2006 and the Reporting Officer found the performance of the petitioner 'outstanding' and this fact was recorded in his ACR that the petitioner is an outstanding officer, very hard working and devoted to his job. He has ability to take responsibility and get work done from subordinates. During his tenure of Dy.T.C. (writ) he took pain in getting litigation work disposed of quickly. He may be awarded with any type of responsibility, the Reviewing Officer agreed with the report of Reporting Officer and also treating the work performance of the petitioner as 'outstanding' and the accepting officer accepted the aforesaid ACR of the petitioner.

18. Now the question remains for consideration of this Court that how the work performance of the petitioner for the same year was taken differently his working prior to 16.07.2005



treated as 'unsatisfactory' and the same was treated as 'outstanding' after 16.07.2005.

19. Record indicates that several appreciation letters were issued to the petitioner for his working performance and the pendency of the cases came to nil during his working. It is significant to mention that the adverse entries made in the half year of the ACR in question are not in keeping with the petitioner's past record and the higher authority did not make any attempt to find out the real cause for his sudden downgrading in the same ACR. Sudden adverse remarks in the half year of the ACR of the petitioner suffer from biasness. The ACRs of the petitioner for the period commencing w.e.f. 01.04.2005 to 16.12.2005 and 16.07.2005 to March 2016 are self contradictory. The performance of a person like the petitioner cannot be unsatisfactory and outstanding in the same year. Hence, the adverse remarks in the ACR of the petitioner pertaining to the period 01.04.2005 to 16.12.2005 are not tenable in the eye of law.

20. It is worthy to note here that ACR of the petitioner for the questioned year were filled by the Reviewing Officer and not by the Reporting Officer who was not competent to fill the same however, at later stage when his comments were sought by the Department on the representation submitted by the petitioner, justifying his action, he recommended for taking sympathetic view of deleting the adverse entries in the ACR of the petitioner. It is clear that the ACR of the petitioner were filled by a person



who was not competent to do so, hence, such adverse entries in such ACR are not valid as per the APAR instructions.

21. For the foregoing reasons, the writ petition is allowed. The adverse entries made in the petitioner's ACR for the period 1.04.2005 to 16.12.2005 are quashed and expunged from the record. Consequences to follow.

22. The stay application and all applications (pending, if any) also stand disposed of.

23. No order as to costs.

(ANOOP KUMAR DHAND),J

MR/pcg/45