

**Neutral Citation No. - 2023:AHC:175037-DB**

**A.F.R.**

**Reserved on:- 26.5.2013**

**Delivered on:- 29.08.2023**

**Court No. - 44**

**Case :-** WRIT - A No. - 53425 of 2015

**Petitioner :-** Sunil Kumar Singh Iii

**Respondent :-** State of U.P. and Another

**Counsel for Petitioner :-** Pankaj Kumar Singh, Ashok Khare, Ashok Kumar Nigam, Vikas Budhwar

**Counsel for Respondent :-** C.S.C., Manish Goyal

**Hon'ble Dr. Kaushal Jayendra Thaker, J.**

**Hon'ble Rajeev Misra, J.**

**(Delivered by Hon'ble Rajeev Misra, J)**

1. This writ petition under article 226 of the Constitution of India has been filed for a writ of certiorari seeking quashing of annual confidential remarks awarded by the District Judge, Ghaziabad to the petitioner for the year 2013–14 (Annexure-2 to the writ petition), the decision taken by Administrative Committee of High Court of Judicature at Allahabad as communicated to the petitioner, vide letter dated 1.6.2015, (Annexure- 4 to the writ petition) rejecting representation of the petitioner against the said adverse entry inasmuch as, in the opinion of Administrative Committee, no illegality was committed by the then District Judge in awarding adverse entry to the petitioner for the year, 2013-14, as well as communication dated 4.7.2015 (Annexure-6 to the writ petition), whereby the second representation filed by petitioner against the adverse entry awarded to him for the year 2013-14, has also been rejected, but on the ground of maintainability.

3. Record shows that the petitioner Sunil Kumar Singh-III was selected by the U.P. Public Service Commission for U.P. Judicial Services in the year 2000. After selection, petitioner was duly appointed as Civil Judge, Junior Division and was posted at Lucknow on 23.12. 2003. It is

the case of the petitioner that since his initial appointment, his work and conduct has always been appreciated by his superiors. On account of above, petitioner has been awarded good/very good entries in his Annual Confidential Reports in his tenure of service up to the period 2012-13. For ready reference, the details of the same are tabulated herein under:

Sl. No.	Year	Place of posting	Integrity	Rating	Authority
1.	2003-04	Lucknow	Certified	Good	Administrative Judge
2.	2004-05	Saharanpur	Certified	Good	Adverse remark as fair was expunged by Hon'ble Court as per information communicated to District Judge Saharanpur vide Registrar Confidential D.O. No. C. 130/Df. (A)/2006 dated 23.2.2006.
3.	2005-06	Saharanpur	Beyond doubt	Good	District Judge
4.	2006-07	Saharanpur	Beyond doubt	Good	District Judge
5.	2007-08	Saharanpur	Certified	Good	Administrative Judge
6.	2008-09	Kanshiram Nagar	Certified	Very Good	Administrative Judge
7.	2009-10	Kanshiram Nagar	Beyond doubt	Very Good	District Judge
8.	2010-11	Kanshiram Nagar	Beyond doubt	Very Good	District Judge
9.	2011-12	Kanshiram Nagar	Certified	Good	Administrative Judge
10.	2012-13	Ghaziabad	Certified	Good	Administrative Judge
11.	2013-14	Ghaziabad	Doubtful	Average	Subject matter of present writ petition
12.	2014-15	Pilibhit	Awaited	Awaited	--

4. In the year 2013–2014, petitioner was posted as Additional Chief Judicial Magistrate at Ghaziabad. According to petitioner, he had performed his duty to the best of his ability, yet in the year 2013–14, the then District Judge, Ghaziabad awarded an adverse entry to petitioner for the said period i.e. 2013-14, which is to the following effect **“Integrity doubtful” as there are several complaints against the petitioner.**

5. Feeling aggrieved by the aforesaid adverse entry awarded to petitioner, he made a representation dated 10.10.2014 before the High Court, Allahabad. According to the learned counsel representing respondent 2, since the then District Judge, Ghaziabad, who had awarded aforementioned adverse entry to petitioner, was elevated to the Bench of this Court and also in view of the resolution dated 01.10.1997 passed by the Administrative Committee of this Court as well as in accordance with the provisions of Chapter 3 Rule 4 of the High Court Rules, the said representation of the petitioner was placed before a Committee of the High Court. The said committee upon consideration of the representation of the petitioner made the following recommendation:-

*"The officer has submitted above mentioned representation dated 10.10.2014 against the adverse remarks recorded by the then District Judge, Ghaziabad (as Hon'ble Judge of this Court) for the year 2013-14, reproduced below:*

<p><i>"1(a) Integrity of the Officer whether beyond doubt, doubtful or positively lacking. Note: If the officer's integrity is doubtful or positively lacking, it may be so stated with all relevant facts, reasons(s) supporting material.</i></p>	<p><i>Doubtful There were several complaints</i></p>
<p><i>2. Overall assessment of the merit of the officer (outstanding, Very Good, Good, Average, Poor)</i></p>	<p><i>Average</i></p>

6. Subsequent to above, the Administrative Committee of this Court rejected the aforesaid representation filed by the petitioner, vide undated Item Agenda Number-20 of the meeting dated 1.6.2015. The said decision was communicated to petitioner by the Deputy Registrar of High Court,

vide his letter dated 1.6.2015. For ready reference, the decision of the Administrative Committee referred to above is extracted herein under:

**“Agenda Item No. 20:**

***Representation dated 10.10.2014 of Shri Sunil Kumar Singh - III, the then Additional Chief Judicial Magistrate, Ghaziabad presently posted as Civil Judge (Senior Division), Pilibhit.***

***"The officer has submitted above mentioned representation dated 10.10.2014 against the adverse remarks recorded by the then District Judge, Ghaziabad (as Hon'ble Judge of this Court) for the year 2013-14, reproduced below:-***

***"1(a) Integrity of the officer whether beyond Doubtful. doubtful or positively lacking. There were several Note: If the officer's integrity is doubtful or complaints. positively lacking, it may be so stated with all relevant facts, reason(s) & supporting material.***

***2. Overall assessment of the merit of the officer Average (outstanding, Very good, good, Average, Poor)***

***We have perused the representation of the officer, the ACR recorded by the then District Judge (as Hon'ble Judge of this Court) for the relevant year.***

***The officer in his representation has stated that the District Judge did not send remarks in time, to the High Court and no reason for delay has been recorded. There is no material for recording his integrity as doubtful. The remarks have not been given in prescribed proforma. The reporting officer has not disclosed the nature and particulars of the complaints. He has worked with utmost devotion, sincerity and integrity and no complaint was ever brought to his notice. He has requested to expunge the adverse remarks recorded by the District Judge, Ghaziabad (Now Hon'ble Judge of Court) for the year 2013-14.***

***We have been informed that a Vigilance Enquiry no.13/2014 is also pending against the officer.***

***The Committee is of the view that the then District Judge, later on elevated as the Hon'ble Judge of the High Court, after witnessing the work and conduct of the officer for the whole of the year, has doubts about the integrity of the officer, the same can not be said to be without any basis. Therefore, the representation of the officer is devoid of any force and is recommended to be rejected."***

7. Subsequently, the petitioner made another representation dated 10.10.2014 with the prayer that matter be placed before Administrative Committee for considering the adverse entry awarded to the petitioner for the year 2013–2014 in the light of the facts stated in the representation itself. However, the said representation was not considered on the ground that since the said representation is second representation, therefore, same is not maintainable. A communication dated 4.7.2015 was sent to

petitioner regarding aforesaid. For ready reference, the same is reproduced herein under:

***“I am desired to refer to the representation dated 16.5.2015 of Sri Sunil Kumar Singh-III the then A.C.J.M Ghaziabad presently Civil Judge (Sr. Div). Pilibhit against the adverse remarks occurring in the annual confidential remarks recorded by the then District Judge, Ghaziabad for the year 2013-14 as well as for upgradation of his overall assessment of merit and to say that on its consideration, the Hon’ble Court has been pleased to order that the said representation be filed as the same is not enertainable in view of full Court resolution dated 6.1.1990 being second in nature.***

***Sri Sunil Kumar Singh-III, aforesaid may kindly be informed accordingly”***

8. Thus feeling aggrieved by above, petitioner has now approached this court by means of present writ petition.

9. Instant writ petition came up for admission on 17.9.2015 and this court passed the following order:

**“C.A. within a period of one month.**

**R.A. within two weeks thereafter.**

**List this petition for admission/hearing in the week commencing 26 October 2015”**

10. In compliance of above order dated 17.9.2015, a counter affidavit has been filed by the High Court, wherein the claim of petitioner has been disputed. Ultimately present writ petition came to be dismissed, vide order dated 22.1.2020 passed by a Division Bench of this court comprising of Hon’ble Mr Justice Sudhir Agrawal and one of us Hon’ble Mr. Justice Rajeev Misra. The order dated 22.1.2020 reads as under:

***“1. Heard Sri Vikas Budhwar, learned counsel for petitioner and Sri Ashish Mishra, learned counsel for respondent.***

***2. Petitioner has been communicated adverse entry by District Judge, Ghaziabad in Annual Confidential Remark (hereinafter referred to as "ACR") for the period 01.04.2013 to 31.03.2014, and has withheld integrity of petitioner.***

***3. Learned counsel for petitioner submitted that no specific reasons have been given, but he could not dispute that withholding of integrity has been confirmed by Administrative Judge and also by this Court's Administrative Committee.***

***4. Aforesaid orders having become final, we do not find that there is any reason to interfere with remarks given by***

***District Judge, since, same stands already endorsed by Administrative Judge as well as Administrative Committee of this Court. Moreover, aforesaid orders are not under challenge in this petition.***

***5. Dismissed accordingly. Interim order, if any, stands vacated. ”***

11. Feeling aggrieved by aforementioned order dated 22.1.2020, petitioner filed a review petition seeking review of the order dated 22.1.2020 and same came to be registered as Review Application No. 8 of 2020. The aforesaid review application was nominated by Hon'ble the Chief Justice to this Bench as Hon'ble Sudhir Agarwal, J. was not available. The review application came to be allowed by this court vide order dated 10.5.2023. The same reads as under:

***“(Order on the Review Application)***

***1. Heard Mr. Ashok Kumar Nigam, the learned counsel for review petitioner, the learned Standing Counsel representing Respondent 1 and Mr. Rakesh Mishra, the learned counsel representing Respondent 2.***

***2. This review petition has been filed seeking review of the order dated 22.01.2020 passed by a Division Bench comprising of their Lordships Hon'ble Mr. Justice Sudhir Agarwal and Hon'ble Mr. Justice Rajeev Mishra. For ready reference, the above order dated 22.01.2020 is extracted hereinunder:-***

***"1. Heard Sri Vikas Budhwar, learned counsel for petitioner and Sri Ashish Mishra, learned counsel for respondent.***

***2. Petitioner has been communicated adverse entry by District Judge, Ghaziabad in Annual Confidential Remark (hereinafter referred to as "ACR") for the period 01.04.2013 to 31.03.2014, and has withheld integrity of petitioner.***

***3. Learned counsel for petitioner submitted that no specific reasons have been given, but he could not dispute that withholding of integrity has been confirmed by Administrative Judge and also by this Court's Administrative Committee.***

***4. Aforesaid orders having become final, we do not find that there is any reason to interfere with remarks given by District Judge, since, same stands already endorsed by Administrative Judge as well as Administrative Committee of this Court. Moreover, aforesaid orders are not under challenge in this petition.***

***5. Dismissed accordingly. Interim order, if any, stands vacated.***

***Order Date :- 22.1.2020"***

***3. Since His Lordship Hon'ble Sudhir Agarwal J. is no longer available, the present review petition has therefore, been nominated by Hon'ble Chief Justice to this Bench vide order dated 18.01.2021.***

***Accordingly, the aforementioned review petition has come up before this Bench.***

***4. Mr. Ashok Kumar Nigam, the learned counsel for review petitioner submits that the order dated 22.01.2020 is liable to be reviewed on the ground that there are error apparent on the face of the record. Elaborating his submission, he submits that order under review is based on an erroneous premise that the adverse entry awarded to the review petitioner by the District Judge was confirmed by the Administrative Judge and also by the Administrative Committee of the High Court. The said recital has been contradicted by submitting that since the District Judge who had awarded the adverse entry to the review petitioner for the period 01.04.2013 to 31.03.2014 was subsequently elevated to the Bench of this Court and therefore, the matter was not placed before the Administrative Committee.***

***5. He next submits that adverse entry can be awarded to a judicial officer but the same has to be inconsonance with the circular dated 15.05.2007 issued by the High Court which provides that the material which is sought to be relied upon, for awarding the adverse entry must be disclosed to the concerned Officer. However, the adverse entry was awarded to the writ petitioner in derogation of the above.***

***6. According to the learned counsel for review petitioner, it is on account of above that the Bench while hearing the review petition on 11.07.2022 directed that the original record be placed. On the above premise, he submits that order under review is therefore, liable to be reviewed by this Court.***

***7. Mr. Ashish Mishra, the learned counsel representing High Court has placed the original record before the Bench. We have examined the same. On a specific query raised by us as to whether, the material relied upon by the District Judge for awarding adverse entry to the petitioner was disclosed to the review petitioner or not, he has fairly submits that the adverse entry has been awarded to the review petitioner on the basis of discrete inquiry conducted by the then District Judge.***

***8. It is thus apparent that the circular dated 15.05.2007 has not been complied with by the District Judge while awarding adverse entry to the review petitioner for the period 01.04.2013 to 31.03.2014.***

***9. In view of the discussion made above, the inescapable conclusion is that the order under review suffers from errors apparent on the face of the record. We accordingly review the order dated 22.01.2020.***

***10. The review petition is allowed.***

***11. Let the matter appear for hearing on merits on 22.05.2023.”***

12. We have heard Mr. Ashok Kumar Nigam, the learned counsel for petitioner and Mr. Ashish Mishra, the learned counsel representing respondent 2.

13. Mr. Ashok Kumar Nigam, the learned counsel for petitioner in support of present writ petition submits that right from the year 2003 up to

2013, the petitioner has never been awarded an adverse entry. For the first time in his carrier, the petitioner was awarded an adverse entry in the year 2013–14. In support of above, he has referred to the chart giving the details of annual confidential remarks awarded to the petitioner, which has already been extracted in the preceeding part of this judgment.

14. According to the learned counsel for petitioner, the Reporting Officer i.e. the then District Judge handed over the charge of his office on 2.2.2014, but the adverse entry was awarded by him to the petitioner on 10.9.2014 i.e after seven months of his having relinquished the office.

15. With reference to Rule 5(2) of All India Services (Confidential Rolls) Rules, 1970, he submits that ordinarily, the annual entry should have been awarded within the period while the District Judge was still in office or within a period of one month thereafter. Reference was then made to Rules 5(2) and 5(5) of the aforementioned Rules and on basis thereof, it is sought to be contended that since the then District Judge, Ghaziabad, who had awarded adverse entry to the petitioner, had handed over the charge on 02.02.2014, therefore, he had no authority to write the annual confidential report of the petitioner. Similarly, reference was also made to Chapter-8 of Rules 8.11 of the aforesaid Rules in support of the submission that even under the said Rules, it is provided that Reporting Officer shall award the entry within one month of his retirement or demission of Office. However in the present case, the Reporting Officer i.e. the then District Judge, Ghaziabad had already relinquished his office on 02.02.2014 and therefore, he could not have awarded the annual entry to the petitioner after expiry of a period of seven months from the date he relinquished his office i.e. on 10.09.2014.

16. Attention of the Court was then invited to the circular letter No. 23 6F (C/ 2007) dated 19.5.2007. The said circular has been made applicable with retrospective effect from 1.4.2007. The same is on record at page 120 of the paper book. The note appended to coloumn A of head note 1 is



relevant for the controversy in hand. Accordingly, the same is reproduced hereinunder:-

**"a. Integrity of the Officer whether beyond doubt, doubtful or positively lacking.**

**NOTE: If the officer's integrity is doubtful or positively lacking, it may be so stated with all relevant facts, reasons(s) & supporting material."**

17. On the basis of aforesaid note appended to column A of Head Note 1 of the circular, it is contended by the learned counsel for petitioner that annual confidential remarks for the year 2013–14 could have been awarded to the petitioner only as per the norms provided in the aforesaid circular itself.

18. With reference to above, he submits that all relevant facts, reasons and supporting material should have been mentioned along with the entry so awarded by the then District Judge to the petitioner. However in the present case, the then District Judge has simply awarded an adverse entry to the petitioner, which is to the following effect "**Doubtful, There were several complaints**". Since the adverse entry awarded to the petitioner for the year 2013–14 is not in consonance with the note appended to column 1A of the circular dated 19.5.2007, as the material particulars are conspicuous by their absence, therefore, the said adverse entry awarded to the petitioner is liable to be quashed by this court.

19. It is further contended by the learned counsel for petitioner that as per the stand of respondent-2 as it explicit from the written arguments submitted by the learned counsel for respondent-2 and also the record, it is evident that in respect of complaints made against the petitioner, a Vigilance Enquiry No. 13 of 2014 was initiated. Subsequently, the same was converted into Departmental Enquiry No. 06 of 2017. The Enquiry Officer submitted his report dated 1.2.2019. Ultimately, the enquiry

proceedings were dropped, vide order dated 21.3.2019, as none of the complaints made against the petitioner was found to be true.

20. In the aforesaid conspectus, it is submitted by the learned counsel for petitioner that in view of the above noted facts, the reason recorded by the then District Judge for awarding an adverse entry to the petitioner (several complaints were made) has since vanished as the enquiry initiated against the petitioner on the basis of the alleged complaints has resulted in favour of petitioner. As such, there was no truth in the complaints so made against the petitioner. He thus contended by submitting that when the very basis of the adverse entry has vanished, the adverse entry so awarded to the petitioner cannot be sustained.

21. According to the learned counsel for petitioner, on account of the adverse entry awarded to petitioner for the year, 2013-14, which otherwise is manifestly illegal, petitioner was denied promotion in HJS Cadre for the year UPHJS 2015, UPHJS 2016, UPSJS 2017, UPHJS 2018 and UPHJS 2018(II). Ultimately, the petitioner was promoted in UPHJS 2018. On the above premise, it is contended by learned counsel for applicant that the adverse entry awarded to petitioner for the year, 2013-14 is subsequent to the circular dated 19.5.2007 but neither the relevant facts nor the supporting material has been referred to nor any reason to withhold the integrity of the petitioner on the basis of the said material has been reported by reporting officer i.e the then District Judge, Ghaziabad in the Annual Confidential Roll, as such, the adverse entry was awarded to the petitioner in complete derogation of the procedure provided for awarding an adverse entry in the circular dated 19.05.2007 by this Court. Consequently, the same is illegal and therefore, liable to be quashed.

22. Learned counsel for petitioner also invited the attention of Court to the resolution dated 1.10.1997 passed by the Administrative Committee in its meeting held on 1.10.1997. Since the said resolution has material bearing in the present case, accordingly, the same is extracted herein under:

AGENDA	RESOLUTIONS
<p><b>1. Confirmation of the minutes of the meeting of the Administrative Committee held on 21.9.1997</b></p>	<p><b>1. Considered the minutes of the meeting of the Administrative Committee held on 21.9.1997 resolved that the minutes be confirmed subject to the following modification</b>  <b>(I) In item no. 12 the resolution shall read.</b>  <b>“Resolved that in such a case the entry in the character roll be recorded by the Hon’ble Judge who was the District Judge of the concerned District during the relevant period and the said entry will also be entry of the Court if any. Representation is received against such an entry then the matter will be placed before the Administrative Committee for consideration”</b></p>

23. With reference to the record, the learned counsel for petitioner submits that since the Reporting Officer i.e the then District Judge, Ghaziabad was subsequently appointed as a Judge of this Court, therefore the adverse entry awarded to the petitioner for the year 2013–14 was not referred to the Administrative Judge for his Approval. Administrative Committee has simply concurred with the report of the Committee without recording any finding in its resolution in the light of the circular dated 19.05.2007. Learned counsel for petitioner has also placed before the Court, the chart appended along with the written arguments supplied by the learned counsel for opposite party- 2 along with his written statement in respect of the fact that most of the complaints made against the petitioner, were found to be untruthful and ultimately, they were consigned to the record. For ready reference, the aforesaid chart is reproduced hereinunder:-

**“Senior Registrar (Jud.) (Confidential)**

May kindly see the status of the complaints, received against Sri Sunil Kumar Singh-III, while posted as Additional Chief Judicial Magistrate-III, Ghaziabad in the period of 2013-2014 in reference to requisition dated 11.05.2023 of Joint Registrar (litigation), placed below.

Sr. No.	File Number	Particulars	Status

1.	S-394/1, 1A/2013	Complaint dated 13.11.2013 alongwith its enclosures made by Sri Bhagwan Gaud, R/o Shahbad Mohammadpur, New Delhi, Sri Jitendra Kumar Shah, R/o C-403, Aditya Garden City, Sector-6. Vashudhara, Ghaziabad, and Ms. Saroj Devi, R/o -House No. 281, Village Shahbaj. Mohammadpur. New Delhi, against Sri Sunil Kumar ACIM-III, Ghaziabad.	consigned/closed vide order dated 19.12.2013 of Hon'ble the Administrative Judge, Ghaziabad. (The complaint file has been weeded out) in the light of order dated 10.04.2014 of Hon'ble the Chief, Justice the copy of the said order enclosed herewith)
2.	X-23/43, 43A, 43B/2014	Letter No.1/E.A./D.J./2014 dated 16.04.2014 and Letter No. 1655/1 dated 26.04.2015 sent by the District Judge, Ghaziabad and Letter dated 19.04.2014 endorsed by the District Judge, Ghaziabad vide endorsement no.1526 XV dated 19.04.2014 regarding incident of road raze occurred 13.04.2014 lodged by Sri Sunil Kumar Singh-III, A.C.J.M. Court No.-III, Ghaziabad, against Sri Surendra Kumar, ASI of Delhi Police and Sarita Bihar, DCP of Delhi.	Vide order dated 30.04.2014 of Hon'ble the Chief Justice entrusted Vigilance Enquiry to Special Officer (vigilance). All the file (In original were sent to Special Office (vigilance) on 12.05.2014, 17.05.2014 and 31.07.2014.
3.	S-394/1, 1A/2014	Counter complaint dated 18.04.2014 (with enclosures) moved by Smt. Deep Mala Bakshi, wife of Sri Surender Bakshi, R/o 2/250. Upper Jatwara, Mehrauli, New Delhi, against Sri Sunil Kumar Singh-III, A.C.J.M-III, Ghaziabad, regarding criminal misuse of judicial powers.	
4.	X-23/ 71/2014	Representation dated 11.6.2014 (with enclosures) sent by Sri Sunil Kumar Singh-III, Civil Judge (S.D.), Pilibhit duly endorsed by the District Judge, Pilibhit, vide endorsement no. 1146/1 dated 12.06.2014, addressed to Registrar General and with subject representation to expunge the F.I.R.	
5.	S-394/2, 2A,2B/2014	Complaint dated 13.09.2014 made by Sri Ravindra Singh Verma Verma, R/o 195 Chipiyana, Ghautambuddh Nagar, against Sri Sunil Kumar Singh-III, the then	Consigned/closed vide order dated nil of Hono'ble the Administrative Judge, Ghaziabad. (The complaint file has been

		AC'M-III, Ghaziabad, in connection with case no. 2547/2012 under section 156 (3) Cr.P.C to registered an F.I.R. against his wife Smt. Suneeta Singh.	weeded out in the light of order dated 10.4.2014 of Hon'ble the Chief Justice- the copy of the said order is enclosed herewith)
6.	S-394/3/2014	Letter No. 3788/XV dated 11.08.2014 of District judge, Ghaziabad, regarding conduct of Sri Sunil Kumar Singh-III, the then ACIM-III, Ghaziabad, reflecting against him in judicial proceedings of case no. 511/2010 (crime 1906/2009)- State vs. Rajeev Gupta & others, u/s 420, 409, 506 1.P.C., P.S. Sihani Gate, disposed off by him on 21.01.2014.	Consigned to record vide order dated 25.03.2021 of Hon'ble the Administrative Judge, Ghaziabad..
7.	S-394/4/2014	Complaint dated 02.07.2014 moved by Sri Mehtaab S/o Sri Haji Shipedar of Islampur, Thana Bhawan, Muzaffarnagar, against the Sri Sunil Kumar Singh-III, then A.C.J.M.-III, Ghaziabad and against Sri Arun Kuamr Tyagi, Chmaber no. 28, Meerut, regarding allegedly extorting rupees 7,20,000/ from his family for releasing complainant from Jail in case crime no. 898/13, case no. 3818/13- state vs. mehtab, u/s 25 Arms Act, P.S. Sihani Gate, Ghaziabad.	Consigned to record vide order dated 19.9.2016 of Hon'ble the Administrative Judge, Ghaziabad.  (The complaint file has been weeded out in the light of order dated 10.04.2014 of Hon'ble the Chief Justice-- the copy of the said order is enclosed herewith)
8.	S-394/6/2014	Unsigned complaint dated 20.09.2014 and 04.10.2014, jointly moved by Sri Ramesh Kumar, Sri Narendra Yadav and Sri Kishan Pal Arya, against Sri Sunil Kumar Singh-III, the the then A.C.J.M.-III, Ghaziabad, regarding corruption.	Consigned to record vide order dated 10.03.2015 of Hon'ble the Administrative Judge, Ghaziabad.  (The complaint file has been weeded out in the light of order dated 10.04.2014 of Hon'ble the Chief Justice-- the copy of the said order is enclosed herewith)

Report is accordingly submitted.

Therefore, may if approved by your goodself, the aforesaid status alongwith the relevant documents may be sent to Joint Registrar (Litigation) for onward necessary action.”

24. It is thus urged by learned counsel for petitioner that surprisingly, the Administrative committee of High Court while considering the representation of petitioner has not adverted to aforesaid aspect of the matter, which has vitiated the decision taken by Administrative Committee as most of the complaints made against petitioner had already been consigned to record. Consequently, decision taken by the Administrative Committee is not the outcome of diligent exercise of discretion with reference to the material on record. The Administrative Committee in a casual and cavalier fashion has rejected the representation of the petitioner. As such, the same is wholly arbitrary, therefore, the same can not be sustained, hence liable to be quashed by this Court.

25. The claim of petitioner has, however, been vehemently opposed by Mr Ashish Mishra, the learned counsel for respondent-2. He submits that it is true that the mandate of the circular dated 19.5.200 was not complied with by the then District Judge, concerned inasmuch as the relevant facts and supporting material have neither been referred to in the Annual Confidential Roll of the petitioner nor they were disclosed to the petitioner nor any reason in the light of the same has been recorded. However, the fact remains that the decision was taken by the immediate superior of the petitioner i.e. Reporting Officer/the then District Judge, Ghaziabad. The opinion formed by Reporting Officer cannot be impugned and castigated in the light of the submissions urged by learned counsel for petitioner. He being the immediate superior of the petitioner and others can form opinion against his subordinates on the basis of other material also which may come to his knowledge. Therefore, the impugned adverse entry awarded to the petitioner cannot be faulted on the submission urged by the learned counsel for petitioner as noted above. To buttress his submission, he has placed reliance upon the judgement of Supreme Court in **Rajendra Singh Verma (dead) through and Others vs. Lieutenant Governor (NCT of DELHI), (2011) 10 SCC 1**. Much emphasis has been

laid on paragraphs 190 to 193 of the report, which are, accordingly, extracted herein below:

*190. As observed by this Court in R.L. Butail v. Union of India [(1970) 2 SCC 876] it is not necessary that an opportunity of being heard before recording adverse entry should be afforded to the officer concerned. In the said case, the contention that an inquiry would be necessary before an adverse entry is made was rejected as suffering from a misapprehension that such an entry amounts to the penalty of censure. It is explained by this Court in the said decision that: (SCC p. 876)*

*"(ii) ... Making of an adverse entry is not equivalent to imposition of a penalty which would necessitate an enquiry or the giving of a reasonable opportunity of being heard to the government servant concerned."*

*191. Further, in case where the Full Court of the High Court recommends compulsory retirement of an officer, the High Court on the judicial side has to exercise great caution and circumspection in setting aside that order because it is a complement of all the Judges of the High Court who go into the question and it is possible that in all cases evidence would not be forthcoming about integrity doubtful of a judicial officer. As observed by this Court in High Court of Punjab & Haryana v. Ishwar Chand Jain [(1999) 4 SCC 579 : 1999 SCC (L&S) 881], at times, the Full Court has to act on the collective wisdom of all the Judges and if the general reputation of an employee is not good, though there may not be any tangible material against him, he may be given compulsory retirement in public interest and judicial review of such order is permissible only on limited grounds. The reputation of being corrupt would gather thick and unchaseable clouds around the conduct of an officer and gain notoriety much faster than the smoke. Sometimes there may not be concrete or material evidence to make it part of the record. It would, therefore, be impracticable for the reporting officer or the competent controlling officer writing the confidential report to give specific instances of shortfalls, supported by evidence.*

*192. Normally, the adverse entry reflecting on the integrity would be based on formulations of impressions which would be the result of multiple factors simultaneously playing in the mind. Though the perceptions may differ, in the very nature of things there is a difficulty nearing an impossibility in subjecting the entries in the confidential rolls to judicial review. Sometimes, if the general reputation of an employee is not good though there may not be any tangible material against him, he may be compulsorily retired in public interest. The duty conferred on the appropriate authority to consider the question of continuance of a judicial officer beyond a particular age is an absolute one. If that authority bona fide forms an opinion that the integrity of a particular officer is doubtful, the correctness of that opinion cannot be challenged before courts. When such a constitutional function is exercised on the administrative side of the High Court, any judicial review thereon should be made only with great care and circumspection and it must be confined strictly to the parameters set by this Court in several reported decisions. When the*

*appropriate authority forms bona fide opinion that compulsory retirement of a judicial officer is in public interest, the writ court under Article 226 or this Court under Article 32 would not interfere with the order.*

*193. Further, this Court in M.S. Bindra case [(1998) 7 SCC 310 : 1998 SCC (L&S) 1812] has used the phrase "preponderance of probability" to be applied before recording adverse entry regarding integrity of a judicial officer. There is no manner of doubt that the authority which is entrusted with a duty of writing ACR does not have right to tarnish the reputation of a judicial officer without any basis and without any "material" on record, but at the same time other equally important interest is also to be safeguarded i.e. ensuring that the corruption does not creep in judicial services and all possible attempts must be made to remove such a virus so that it should not spread and become infectious. When even verbal repeated complaints are received against a judicial officer or on enquiries, discreet or otherwise, the general impression created in the minds of those making inquiries or the Full Court is that judicial officer concerned does not carry good reputation, such discreet inquiry and/or repeated verbal complaints would constitute material on the basis of which ACR indicating that the integrity of the officer is doubtful can be recorded. While undertaking judicial review, the Court in an appropriate case may still quash the decision of the Full Court on administrative side if it is found that there is no basis or material on which the ACR of the judicial officer was recorded, but while undertaking this exercise of judicial review and trying to find out whether there is any material on record or not, it is the duty of the Court to keep in mind the nature of function being discharged by the judicial officer, the delicate nature of the exercise to be performed by the High Court on administrative side while recording the ACR and the mechanism/system adopted in recording such ACR.*

27. On the above premise, the learned counsel for respondent-2 contends that no illegality can be attached to the decision taken by the then District Judge, Ghaziabad in awarding adverse entry to the petitioner. As such, no interference is warranted by this Court in the present writ petition. Consequently, the present writ petition is liable to be dismissed.

28. Having heard the learned counsel for petitioner, and learned counsel representing respondent 2, upon consideration of the material on record as well as the submissions made, the solitary issue which arises for determination in this writ petition is whether in the facts and circumstances of the case, the adverse entry awarded to the petitioner cannot be sustained in view of the note appended to column 1A of the circular dated 19.5.2007 or the same can be sustained as per the mandate



of the Supreme Court expressed in the case of **Rajendra Singh Verma (Supra)**.

29. There is no dispute between the parties that the procedure regarding writing of Annual Confidential Remarks of Judicial Officers was crystallized by this Court vide circular dated 19.05.2007. The said circular is not directory but mandatory as it directs the reporting authority to write Annual Confidential Remarks of Judicial Officers as per the circular itself. It is by now well settled that where the law prescribes, a thing to be done in a particular manner, it can be done in that manner alone and not otherwise. This was held way back in 1936 in the case of **Nazir Ahmad Vs. King Emperor, AIR 1936 Privy Council 253**. The same view has been reiterated time and again and we need not burden our judgment with multiple judgments on the said issue.

30. Apart from above, there is another aspect of the matter which has been clearly omitted by the learned counsel representing respondent 2. The adverse entry was awarded to the petitioner for the year, 2013-14 by the then District Judge, Ghaziabad by writing the following remarks **“Integrity doubtful” as there are several complaints against the petitioner**. The adverse entry awarded to the petitioner has been sought to be sustained by the learned counsel representing respondent 2 that even though the adverse entry awarded to the petitioner as noted herein above is not in consonance with the mandate of note appended to column 1A of the circular dated 19.05.2007 but since the then District Judge, Ghaziabad was the immediate superior of the petitioner and therefore, he being the reporting authority also, could have awarded adverse entry as there may be information available with him for which no material may be available. It is in the above conspectus that much emphasis was laid to the judgment of the Supreme Court in the case of **Rajendra Singh Verma (Supra)** and it is on the basis of above that a vehement effort was made to submit that irrespective of the facts noted above, the impugned adverse entry can still be maintained.

31. At the first flush, the submission urged by the learned counsel for respondent 2 may appear to be attractive but on deeper scrutiny the same is bereft of any substance and therefore, liable to be rejected.

32. It is the admitted case of respondent 2 that in respect of the complaints made against petitioner, steps were taken to find out the truthfulness of the complaints made against petitioner. As per the tabulation relied upon by learned counsel representing respondent 2, which we have already referred to in paragraph 24 of the judgment, it is evident that most of the complaints had been consigned to the record as nothing adverse was found against the petitioner. It is also the admitted case of respondent 2 that a vigilance enquiry being **Vigilance Enquiry No. 6 of 2017** was directed against the petitioner in respect of the complaints made against him. The same was converted into **Departmental Enquiry No. 06 of 2017**. The Enquiry Officer submitted his report dated 01.02.2019. Ultimately, the enquiry proceedings initiated against the petitioner were dropped, vide order dated 21.03.2019. Thus the inescapable conclusion which can be drawn on the basis of above is that none of the complaints made against the petitioner was found to be true. Once the complaints made against the petitioner were found untruthful, the very basis for awarding adverse entry to the petitioner has vanished. It would thus be a travesty of justice to maintain the adverse entry awarded to the petitioner even when the complaints made against him were found untruthful. In the light of above, the decision relied upon by the learned counsel for respondent 2 is clearly distinguishable and cannot be relied upon to sustain the adverse entry awarded to the petitioner.

33. We may at this stage, refer to the judgment of this Court rendered in WRIT-A No. 60546 of 2015 (Khaliqzama Vs. State of U.P. and 4 Others) decided on 22.05.2017 relied upon by the learned counsel for petitioner. The Court in aforementioned case dwelled into the facts of the case and upon deeper scrutiny recorded thus;-

*"The records which have been produced do not indicate any information gathered from any source or even the name of any person having a complaint about the integrity and judicial dispatch of the petitioner. There are no complaints even by the Members of the Bar, before whom the petitioner performed judicial work during the assessment year in question. It is the solitary complaint of Mr. Naresh Gambhir alleging rude behaviour of the petitioner who is a lawyer from outside and appearing in a compliant case about which the facts have been indicated above. Thus, there is absolutely no material in the entire record to construe anything about such serious allegations of illegal gratification, partiality or being impersonal. Not only this, the entry of ACRs for the period 01.04.2013 to 31.03.2014 i.e., 2013-14 that is of the succeeding year, has been 'outstanding' and the integrity has been certified as 'beyond doubt' with adequate disposals and with a ranking as a 'good officer' by the learned District Judge.*

*The only material worth to be noted is the letter of the District Judge dated 29.07.2013. Apart from this, it is only the confidential note dated 11.03.2013 the contents whereof have neither been disclosed nor brought forward before this Court nor did the petitioner had any occasion to reply to the same in spite of the order passed on the previous occasion on 28.04.2017 extracted herein above.*

*If the Officer is to be indicted on such a serious allegation, then the real course to be adopted by the High Court could have been either to hold a vigilance enquiry or a regular enquiry in order to examine the seriousness of such allegations. This was never opted for by the High Court and which could have been the method of gathering information as indicated in the judgement of Rajendra Singh Verma (Supra) to construe that the integrity of the officer had become doubtful. The perception may not be a matter of interference by us but we have failed to gather any information worth the name to support the allegations as made in the impugned adverse remarks except the allegation of the alleged insulting behavior of the petitioner in the written complaint of Mr. Naresh Gambhir.*

*As far as transfer of files from the court of petitioner to another court, on the direction of Hon'ble Administrative Judge is concerned, averments have been made in paragraph Nos. 71, 72, and 73 of the Writ*

*Petition that information was sought by the petitioner from the District Judge regarding transfer of files from his court and he was informed by the District Judge that no such file was transferred from the court of petitioner. In paragraph No. 26 of the counter affidavit, aforesaid averments made in paragraph Nos. 71, 72 and 73 of the Writ Petition have been denied. We find from the record that the petitioner has been informed by the District Judge, Gautam Buddha Nagar vide letter dated 08.09.2015 (Annexure No. 25 to the writ petition), in reply to information sought by the petitioner, annexing the report of the readers stating therein that no file was transferred from the court of petitioner to any other court, during the year 2012-13. Hence, the inference of complaint having been made and any file or File No. K-115/1/2012 being transferred from the court of petitioner to another court, as indicated in the impugned adverse remark, does not appear to be borne out of record."*

On the above premise, the Division Bench allowed the writ petition.

34. After having drawn a parallel in between the facts of the present case and that of Khaliqzama, it is apparent that while in the case of aforesaid petitioner, no enquiry was conducted to examine the seriousness of the allegations made against aforesaid petitioner whereas in the present case, an enquiry was held but nothing adverse was found against the petitioner.

35. We may further refer to the judgment of the Lucknow Bench of this Court in SERVICE BENCH No. 6108 of 2017 (Rajvir Singh Vs. Hon'ble Allahabad High Court Alld. Thru. Registrar General & Ors) decided on 01.10.2018. The Court upon consideration of the material on record and upon evaluation of the submissions urged, ultimately, delineated its views as follows:-

*"Reporting of any adverse remark should be based on some tangible material and not on any surmises. Discussion made above, lead us to the conclusion that in the facts and circumstances of the case, adverse remarks against the petitioner could not have been awarded. While saying so, we are conscious that it is impermissible for this Court to*

*substitute its own finding in respect of the character roll entries of the petitioner in exercise of our jurisdiction under Article 226 of the Constitution of India. However, what we have noticed in the preceding paragraphs lead us to observe that the adverse remarks could not have been awarded to the petitioner on the basis of the material relied upon by the District Judge. The material cannot be said to be germane. Two complaints, which form the basis of the adverse remarks against the petitioner stood rejected by Hon'ble the Administrative Committee and the alleged critical comments made by the District Judge while deciding the revision petition filed against the order of the petitioner is not a relevant material which could form the basis of such adverse remarks.*

*Annual Character Roll entries in the Annual Confidential Report of an officer should be based on the overall assessment of his/her work and conduct. In this context, it is noticeable that service record of the petitioner is unblemished ever since he joined the service as a judicial officer except the adverse remarks entered in the Annual Confidential Report pertaining to the year 2011-12 which is under challenge in this petition.*

*For the reasons given and discussion made above, we find that the writ petition deserves to be allowed."*

36. We find that the facts of the present case and that of aforementioned petitioner are in congruence inasmuch as, there is no such distinguishing feature on the basis of which, the ratio laid down in aforementioned judgment could be held to be inapplicable to the facts and circumstances of the present case.

37. In view of the discussion made above, we have no hesitation to hold that the adverse entry awarded to the petitioner for the year, 2013-14 is wholly illegal. Therefore, the same cannot be sustained and is liable to be quashed. It is, accordingly, quashed. Similarly, the decision of the Administrative Committee, High Court, Allahabad as communicated to the petitioner, vide communication dated 04.07.2015 also cannot be sustained for the reasons recorded above. Accordingly, we quash the

impugned decision taken by the Administrative Committee as noted above.

38. In view of above, the present petition succeeds and is allowed. Since the petitioner was not promoted to HJS Cadre in the UPHJS 2015 on account of pendency of the enquiry proceedings. Irrespective of above, the petitioner was promoted to UPHJS 2018 even though the enquiry proceedings came to be dropped against the petitioner only on 21.03.2019. We, therefore, direct to award promotion to the petitioner with retrospective effect i.e. UPHJS 2015. The necessary exercise in this regard shall be undertaken and completed within a period of 2 months from the date of presentation of a certified copy of this order before the High Court.

39. Cost made easy.

**Order Date :- 29.08.2023**

Vinay