(2004) 10 GUJ CK 0028

In the Gujarat High Court

Case No : Misc. Civil Application No. 257 of 2004 in Special Civil Application No. 2428 of 2000

Ajit Kumar Singh APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 14-10-2004

Acts Referred:

Confidential Reports Rules — Rule 16, 16(2), 17
Constitution of India, 1950 — Article 51A

Citation : (2004) 10 GUJ CK 0028

Hon'ble Judges : J.N. Bhatt, J;Dhirubhai Naranbhai Patel, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; Manish R. Bhatt, for Respondent Nos. 1-6, for the Respondent

Final Decision : Dismissed

Judgement

D.N. Patel, J.—The present application has been preferred for review of an order passed by this Court (Coram : Hon''ble Mr. Justice J.N. Bhatt and Hon''ble Mr. Justice Kundan Singh) dated 29.07.2002 in Special Civil Application No. 2428 of 2000. The party-in-person appearing as applicant mainly submitted that there is a breach of Rule 16 and Rule 17 of the Confidential Reports Rules. This argument though was advanced at the time of hearing, has not been dealt with. Therefore, the order passed by this Court deserves to be reviewed.

2. The second submission of the party-in-person, canvassed in the present Review Application is to the effect that though there was cogent and convincing evidence as to the malafide action on the part of the reporting authority or reviewing authority (of confidential report), the same has not been adjudicated upon by this Court vide order dated 29.07.2002, while deciding Special Civil Application No. 2428 of 2000.

3. We have perused the memo of Special Civil Application No. 2428 of 2000 along with the annexure as well as affidavit-in-reply filed in Special Civil

Application No. 2428 of 2000 and the order passed by this Court. Rule 16 and Rule 17 referred by the applicant reads as under :-

"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 indicated below -

(1) Remarks like "Doubtful character", "complainants 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 remarks is recorded in respect of an official having consistently 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.

"17. Duties of reviewing/endorsing officer:- The following instructions are brought to the notice of the Ministries/departments for information, guidance and compliance:-

(i) Reporting, reviewing and endorsing officers should have been acquainted with the work of the official reported upon for at least three months during the period covered by the confidential Report;

(ii) With a view to enabling the reviewing authority to discharge his responsibility in ensuring the objectivity of the confidential Reports it has been decided that when he is not sufficiently familiar with the work of the officer reported upon so as to be able to arrive at a proper and independent judgment of his own, it should be his responsibility to verify the correctness of the remarks of the Reporting Officer after making such enquiries as he may consider necessary, he should also give a hearing to the person reported upon before recording his remarks.

(iii) While it is expected that the detailed format with alternative answers now prescribed for Confidential Reports would go a long way to minimize cryptic, vague or non-committal remarks being made in the reports, there may be cases where the entries are not sufficiently meaningful. Such reports should be returned to the Reporting Officer for amplification or explanation.

(iv) If the Reporting Officer feels that a prescribed course of training is required by an official in order to equip him better for his duties or to develop his potentialities, he may make a separate recommendation to the appropriate authority on this matter. The Confidential report would not be a proper place for such a recommendation."

4. The observation made by this Court in the judgment delivered in Special Civil Application No. 2428 of 2000 dated 29.07.2002, it was held in para-18 as under:-

"In that respect, in the present case, we observe that the petitioner has been given full opportunity of hearing including personal hearing as such this authority is not applicable to the facts and circumstances of the case."

5. The applicant has objected against the aforesaid part of para-18 of the judgment. Looking to the averments made in the petition as well as affidavit-in-reply and the order passed by Central Administrative Tribunal, the conclusion arrived at by this Court in Special Civil Application No. 2428 of 2000 requires not any review especially for the reason that the petitioner in Special Civil Application No. 2428 of 2000 was given adequate opportunity to make representation against the adverse remarks. It is admitted by the petitioner in para- 2.5 of the memo of the petition that the adverse remarks were communicated to the petitioner and a representation was also made by the petitioner of the present remarks. The said representation was rejected by the Chief Commissioner of Income Tax, Ahmedabad. The said order was challenged by filing O.A. No. 755 of 1997 before the Central Administrative Tribunal, Ahmedabad and the matter was remanded and, thereafter, the applicant was heard by the authority and out of 14 adverse remarks, 9 were expunged of 5 remaining remarks. It was held by the competent authority that one remark may not be treated as adverse remarks and one remark was not acted upon. Thus, three adverse remarks remain. The opportunity was already given to the applicant and there is nothing in the Rule 17 as referred by the applicant that in every case, the applicant should be given an opportunity of hearing before recording of adverse remarks. The reliance was placed upon Rule 17(ii) as referred hereinabove, reveals the words "where he is not sufficiently familiar with the work of the officer reported upon so as to able to arrive at a proper and independent judgment of his own, it should be his responsibility to verify the correctness of the remarks of the Reporting Officer after making such enquiries as he may consider necessary, he should also give a hearing to the person reported upon before recording his remarks." This makes abundantly clear that when reporting, reviewing and endorsing officers are not sufficiently familiar with the work of the present applicant, in that eventuality only the question of hearing may arise and not in all cases. In the present case, the adverse remarks put by the officer was sufficiently familiar with the work of the present applicant at Allahabad. Therefore, the said Rule 17(ii) is not

applicable in the facts and circumstances of the present case. Nonetheless, the facts remained that the opportunity of hearing was given to the present applicant, as per the order passed by the Central Administrative Tribunal and upon giving personal hearing to the applicant, out of 14 adverse remarks, some of there were expunged. So far as applicability of Rule 16 is concerned, the party-in-person submitted that as referred in Rule 16(2)(a), the memo of services should invariably consulted at the time of writing the annual report. It is averred by the applicant that no such memos of services of any of the employees, much less, of present applicant, has been maintained by the respondent and, therefore, the respondent authority has no power, jurisdictional authority to put any adverse remarks in the confidential report of the present applicant. Looking to the Rule 16, the first part reads as "The general principles which are required to be observed by the Reporting Officers for writing annual reports are indicated below". Thus Rule 16 enumerates general guidelines. The memo of services is not sine qua non for writing of confidential report, especially when officer who is writing confidential report is familiar with the work of the officer reported. Memo of services may be necessary with a view to checking only. What is laid down in Rule 16(2)(a) is a procedure. Even if, the case of party-in-person, is taken at its highest pitch, deviation from following procedure, tantemounts to irregularity and not illegality. Even otherwise, also existence or otherwise, of memo of services, of the applicant is a matter of fact. The present applicant has never raised in his petition the contention as to the nonexistence of the memo of services of the applicant before the Central Administrative Tribunal. No such averment has been made before the Central Administrative Tribunal nor the same has been argued before the Central Administrative Tribunal. The submission made by the present applicant for breach of Rule 16(2)(a) requires to be read with the facts to be established by the applicant, the said exercise cannot be permitted to be done in a review application. So far as third allegation of malafide against the reporting , reviewing or endorsing officers, is concerned, it is alleged that though there was sufficient material, and the same has not been considered by this Court, while passing the order in Special Civil Application No. 2428 of 2000.

6. We have perused the order passed in Special Civil Application No. 2428 of 2000 wherein it has been observed by this Court, which reads as under :-

"Thus, from the record it appears that there was no material on record to show that the adverse remarks were made by the reporting authority or the reviewing authority given out of vengence or with malafide intention. The petitioner before us also has not been able to show any material that the certain matters were referred to the petitioner by the respondents No. 5 and 6 to obtain favourable order and the petitioner had refused. In the absence of any material on record, it does not lead us to record the contrary findings recorded by the authority concerned. On the contrary, the authority concerned has inspected certain records and received certain information from the advocates, officers at Varansasi and thus, on the basis of these facts, the adverse remarks were made by the respondents No. 4 and 5 and confirmed by the authority concerned. The petitioner has not been able to show any material that the additional material was not made available to him to defend himself, and the remarks in that connection, are not sustainable in the eye of law as also the opportunity of hearing has not been afforded to the petitioner and they are in violation of rule of principle of natural justice."

7. The words "there is no material on record.... given out of vengence or with mala fide intention" means, these was no sufficient material on record which is necessary for arriving at subjective satisfaction of the Court as to mala fide. The conclusion arrived at in Special Civil Application No. 2428 of 2000, so far as malafide of the reporting, reviewing or endorsing authority is concerned, is true and correct. Argument canvassed by the party-in-person is devoid of any substance, as per both the orders passed by Central Administrative Tribunal as well as by this Court, hence it requires, not any interference in Review Application. Learned advocate for the respondent authority has relied upon the judgement of the Hon''ble Apex Court in the case of State of U.P. Vs. Yamuna Shanker Misra and another, on the basis of the aforesaid judgment, it is insisting by the party-in-person that before writing the adverse report an opportunity of being heard is given to the applicant. We have seen the aforesaid judgement in the provisions as referred hereinabove, there is no provisions of giving an opportunity of being heard prior to the adverse entry in the confidential report. The judgement cited above mainly interprets the object of writing the confidential reports and making entries in them is to give an opportunity to a public servant to improve excellence. Article 51-A(j) (fundamental duty) enjoins upon every citizen the primary duty, to constantly endeavour to prove excellence, individually and collectively, as the member of group. It has been further observed that "........Given an opportunity, the individual employee strive to improve excellence and thereby efficiency of administration would be augmented. 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 overall assessment of performance of the subordinate officer. It should be founded upon facts and circumstances. Though sometimes, it may not be part of the record, but the conduct, reputation and character acquire public knowledge or notoriety and may be within the knowledge of such officer. Before forming an opinion to make adverse entries in confidential reports, the reporting/reviewing officers should share the information which is not a part of the record, with the officer concerned......"

8. Thus, from the aforesaid judgment, it is very clear that before forming an opinion to make an adverse entry in the confidential report, the reporting, reviewing officers should give an opportunity to the concern employee to improve his performance. Thus, if the adverse remark is to be drawn on the basis of the facts on record, the aforesaid judgment is not applicable. In the present case, Commissioner of Income Tax, Ahmedabad has already given, personal

hearing to the applicant.

9. We have not found any mistake or error apparent on the face of the record, requiring a review. Error contemplated, is error on the face of record and not the once, which is to be fished out or searched.

10. Looking to the facts and circumstances of the case, there is no substance in the present Review Application, therefore, the application fails and it is dismissed, with no order as to costs.

