

(1988) 11 KAR CK 0044
In the Karnataka High Court
Case No : W.P. No. 1621/1984

Dinakar C.

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 28-11-1988

Acts Referred:

All India Services (Confidential Roll) Rules, 1970 — Rule 2(A)

Citation : (1989) 2 KarLJ 145

Hon'ble Judges : K. Ramachandriah, J;R. G. Desai, J

Judgement

Desai, J.-This writ appeal is directed against the order dated 23-7-84 made in W.P. No. 10510/84 by the learned Single Judge, rejecting the writ petition,

2. It arises in this way:

The appellant belongs to the Indian Police Service and was working as Deputy Inspector General of Police, CID (Forest) during 1979-80. In his confidential report for the said year, the then Home Secretary who was the reviewing authority as per Annexure-II to Government Order No. DPAR 17 SIS 75, dated 7-11-1977 recorded the following observations: "his relations with his colleagues and particularly public requires improvement". The said remarks were communicated to the appellant by the then Chief Secretary by his confidential letter D.O. No. CS. 39 CR/80 dated 30-9-80, the copy of which is produced as per the original of Annexure-A. The appellant sent a representation as per the original of Annexure-B dated 27-11-1980 for expunging those adverse remarks. After considering his representation, the Government by its letter dated 29-5-1981 as per the original of Annexure-D wrote to the appellant stating, inter alia, that those remarks should not be treated as adverse remarks, but should be considered as observations recorded and communicated to enable him to overcome his defects and failures. Thereafter, the appellant appears to have made a representation to the President of India in the form of a memorial as per the original of Annexure-E. In response to that memorial which was submitted through the Government of Karnataka, the appellant was informed that there

were no grounds for deletion or modification of the adverse remarks as per the original of Annexure-H. Then, the appellant approached this Court under Article 226 of the Constitution with a prayer to direct the first respondent. State of Karnataka, to expunge the said adverse remarks.

3. The learned Single Judge was of the view that as the Government did not consider those remarks to be adverse remarks, the appellant had no justification to make a representation to the Government and that it has been rightly rejected and dismissed the writ petition. Hence, this appeal.

4. The first contention of Mr. Santosh Hegde, learned Advocate for the appellant, is that the then Home Secretary could not have been empowered as the reviewing authority as the reviewing authority could have been only the Inspector General of Police or the Home Minister being the empowered superior officers in the Department to the reporting authority. In support of the contention, he relied upon the decision on the Supreme Court in *State of Haryana v Sri P C. Wadhwa, IPS. Inspector General of Police and another* (MR 1987 S.C. 1201).

5. So, the first point that arises for determination in this appeal is whether the State Government was justified in specifically empowering the Home Secretary as the reviewing authority for the purpose of reviewing confidential report in respect of the appellant who was the Deputy Inspector General of Police then. Section-3 of the All-India Services Act, 1951 empowers the Central Government to make rules for the regulation of recruitment, and the conditions of services of persons appointed to an All-India Service. By virtue of Section 3, the Central Government framed All-India Services (Confidential Roils) Rules 1970. Under Rules 1(3), the Rules shall apply to the writing and the maintenance of the confidential reports on the members of the service. Clauses (e), (f) and (a) of Rule 2 of the Rules are as follows:

"2. Definitions-In these rules, unless the context otherwise requires:

(e) "reporting authority means the authority who was, during the period for which the confidential report is written, immediately superior to the member of the Service and such other authority as may be specifically empowered in this behalf by the Government;

(f) "reviewing authority means the authority who was, during the period for which the confidential report is written, immediately superior to the reviewing authority and such other authority as may be specifically empowered in this behalf by the Government;

(a) "accepting authority means the authority who was, during the period for which the confidential report is written, immediately superior to the reviewing authority and such other authority as may be specifically empowered in this behalf by the Government."

6. According to Rule 2(21) of the Karnataka Civil Services Rules (for short

"KSCRs"), the term "Head of Department" includes the officers mentioned in Appendix I and any others whom the Government may from time to time declare to be Heads of Departments. According to Appendix-I to the said Rules, the Inspector General of Police is the Head of the Police Department (vide SI. No. 16). Thus, it is clear that Inspector General of Police was the Head of the Police Department to which the appellant belonged at the relevant time. It is not disputed that the confidential report for the relevant year was written by the Special Inspector General of Police who was empowered superior of the appellant then. The reviewing authority could have been the officer, immediately superior to the Special Inspector General of police who was the reporting authority. So, the Inspector-General of police as the Head of the Department should have been the reviewing authority, especially, as no notification of the Government declaring the Special Inspector General of police as the Head of the Department is brought to our notice. In WADWA's case, he was working as Inspector General of police at the relevant time. His confidential report was written by the Home Secretary who had been specially empowered by the Haryana Government. It was held that the Home Secretary could not have been empowered, as the Reporting Authority and the Home Minister, who was in-charge of the Police Department, should have been the reporting authority. So, in this case also, even if it is held that the Inspector General of Police could not have been the reviewing authority, the reviewing authority could have been the Home Minister and not the Home Secretary. The result is that the Home Secretary had no authority to review the confidential report of the appellant.

7. The second contention of Mr. Santosh Hegde is that when the Home Secretary stated that he agreed with the observations recorded by the reporting authority, he could not have recorded the impugned observations. In the confidential report of the appellant, the reporting authority had specifically written, inter alia, that the appellant had maintained cordial relations with the subordinates, colleagues and the public. When the reviewing authority stated that he agreed with the said remarks in column No. 2 of Part-III, of the confidential report, he could not have recorded the impugned remarks which are contrary to the said observations of the reporting authority. This shows that the reviewing authority had not properly applied his mind while recording the impugned remarks.

8. The contention of Mr. Jagannath, learned Government Advocate, on behalf of the Government, that the impugned remarks are not at all adverse remarks has no force because, in Annexure-A, the then Chief Secretary has clearly stated that he was communicating the said adverse remarks to the appellant. In Annexure-D also, it is stated that those observations are recorded and communicated to the appellant to enable him to overcome his defects and failures. Thus, it is clear that the said observations of the reviewing authority were meant to point out the defects and failures of the appellant. In Annexure-H also, they are treated as adverse remarks. The letter of the Government of Karnataka stating that they are not adverse remarks has not been sent to the Government of India to which a copy of the confidential report is required to be sent under the Rules. Hence,

those remarks will remain in the confidential report of the officer and they may come in the way of his future advancement in the Department. Be that as it may, as the reviewing authority had no power to record those observations, we think it proper to expunge them.

9. In the result, the appeal is allowed and the order of the learned Single Judge is set aside. The writ petition is allowed and the impugned remarks in the confidential report of the appellant for the year 1979-80 shall stand expunged. Respondent Nos. 1 and 2 are directed to take steps to implement this decision. Respondent Nos. 1 and 2 shall pay the costs of the appellant in this appeal as also in the writ petition. Advocate's fee shall be Rs. 1,000/-.

Writ petition allowed with costs.