
(1996) 12 KL CK 0011
In the High Court Of Kerala
Case No : O.P. No. 18699 of 1996-A

George, N.V.

APPELLANT

Vs

Inspector General of Police and Others

RESPONDENT

Date of Decision : 03-12-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 2 KLJ 816

Hon'ble Judges : C.S. Rajan, J

Bench : Single Bench

Advocate : T.P. Kelu Nambair and P.K. Suresh Kumar, for the Appellant;
Alexander Thomas, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

C.S. Rajan, J.—Heard the Senior Counsel appearing for the Petitioner and the Government Pleader.

2. The Petitioner is a Circle Inspector of Police. Disciplinary action was taken against him on certain misconduct and dereliction of duty. By Exhibit P-2 order he was exonerated of the charges, but in Exhibit P-5 annual confidential report for the year ending 31st December 1995 an entry was made on the basis of the above oral enquiry. The offending portion of the above report is as follows:

The officer had shown grave dereliction of duty, indiscipline and insubordination. The matter was brought to the notice of S.P., Idukki vide my special report No. 2132/G2/398/95 K.S.D., dated 12th September 1995. A detailed oral enquiry has been ordered into this incident vide Order No. G3/517/96, dated 2nd January 1996 Hon''ble D.G.P., Kerala.

The Superintendent of Police observed as follows in Exhibit P-5:

Prone to insubordination. Not good as a member of the team: Gives scope for allegations.

The D.I.G. of Police also agreed with the assessment of the A.S.P. and S.P. Against Exhibit P-5 the Petitioner filed Exhibit P-6 representation before the first Respondent. This Court by Exhibit P-7 judgment directed the first Respondent to consider and dispose of Exhibit P-6 representation taking into consideration the order exonerating the Petitioner from the charges. Thereafter Exhibit P-8 was passed by the first Respondent rejecting the representation of the Petitioner and upholding the adverse remarks. Exhibit P-8 is under challenge in this Original Petition.

3. The argument of the Petitioner for expunging the adverse remarks is mainly on the ground that oral enquiry against him ended in exoneration and the adverse remarks, in his confidential report based on the same oral enquiry will not stand against him. Thereafter a strange procedure has been adopted by the first Respondent in calling for fresh reports from the Assistant Superintendent of Police and the Superintendent of Police, who made the remarks in Exhibit P-5. Naturally they reiterated the earlier remarks. Moreover, further incidents were also stated in the report, wherein the Petitioner was involved. Considering all these aspects the first Respondent came to the conclusion that there is no need to expunge the remarks.

4. In this connection the learned Senior Counsel brought to my notice Exhibit P-9 order of the Government wherein detailed instructions were issued as early as 1966 in the matter of preparation of the confidential reports. The relevant portions of the above order are extracted below for easy reference:

4(iii) The reports will, unless otherwise prescribed, be made not in the first instance by the Officer under whose administrative control the Subordinate is working and passed on to the next higher authority, who will satisfy himself that the reports have been prepared in the proper form add his assessment of the subordinate's work and conduct. Every Officer is expected to have detailed information regarding the work and conduct of all his subordinates. The higher officer may have some difficulty in getting to know a large number of employees two grades below him, but he should consider it an essential part of his work to do so, as it would make for efficiency of the public service and for greater contentment of the personnel under him. The judgment of the immediate superior, even though aimed at being as completely fair and unbiased as possible, may sometimes tend to become narrow. It is therefore, particularly emphasised that the official superior of the reporting officer should consider it his duty to form his own judgment of the work and conduct of the reportee. He should exercise positive and independent judgment on the remarks of the reporting officer under the various detailed headings in the form of the report as well as on the general assessment and express clearly his agreement or disagreement with those remarks. This is particularly necessary in regard to any adverse remarks and in these cases it is the higher officer's remarks that shall be taken as the correct assessment. These instructions should not be regarded as limiting the freedom of the reviewing officer to make any additional remarks

touching on points not mentioned by the reporting officer. Such additional remarks would, in fact, be necessary where the report is too brief, vague or cryptic. If however, by any chance, a reviewing officer does not have an idea of the work of any of his subordinates, it should be clearly stated by that authority that he has no knowledge of the subordinate's work. It would not be sufficient for an officer to affix his signature without any comments, such signature without comments would signify endorsement of the views expressed by the Officers below.

(iv) The entries in the confidential reports should be descriptive.

(v) In the case of Last Grade Servants only general descriptive remarks on the personnel with details of adverse remarks, if any, need be entered. The confidential records of these staff need not be passed on for countersignature.

(vi) Reporting officers should not refrain from recording in the confidential reports all relevant observations and opinions which they might have formed, as it is the intention of Government to ensure that the report should represent a frank and full appraisal of the officer's merits and demerits. It is equally essential that all officers who have to record their remarks in the confidential reports should do so with the greatest caution and should not record any remarks lightly or on the spur of the moment. As far as possible, reporting officers should try to advance specific instances of reasons to justify their observations. Colourless entries like "satisfactory", "fair", etc., only defeat the purpose for which confidential reports are maintained and should be avoided as far as possible. Reporting officers should deal with both the good points and shortcomings of the officer in a clear and lucid manner to enable a correct assessment of his character, ability, etc. Appendix gives the details of the authorities who are to initiate, review and keep the confidential reports on the various categories of officials.

(vii) When an officer is transferred during the middle of a year, a report or note should be prepared and forwarded to the officer in whose administrative control the officer is transferred to be completed at the end of the year.

* * *

7. Communication of remarks.-Every employee should know his remediable defects so that he can remove them and improve himself. The best results are achieved only if every reporting officer realises that his duty does not end with recording an objective assessment of his subordinate's work and qualities, but extends also to his tendering whenever indicated the necessary advice, guidance and assistance to correct the faults and deficiencies of his subordinates. The appraisal of the reportee's capacities and potential for higher position is undertaken partly with a view to developing his qualities. If this part of the reporting officer's duty is properly performed, there should be no difficulty about recording adverse entries, because they would only refer to defects which had persisted despite the reporting officer's efforts to have them corrected. While

mentioning any faults/defects, it would therefore be useful if the reporting officer also gives an indication of the efforts he had made by way of guidance, admonition etc., to get the defects removed and the results of such efforts. Where an adverse entry is made, the reporting officer should certify that the defects have been brought to the subordinate's notice.

Exhibit P-10 a Circular Memorandum of the Government cautioned the officers regarding the stipulations in Ext. P-9 and requested to ensure that these instructions are carefully and scrupulously followed in all cases of adverse comments in the confidential reports.

5. If Exhibit P-5 is read as a whole the Petitioner is having a very good record with regard to his personality, intelligence, integrity, power of controlling and preventing crime, patience, tact, courtesy etc. The entry in column 7 of which reference has been made above is based on oral enquiry which resulted in the exoneration of the charges. The opinion of the Superintendent of Police that the Petitioner is prone to insubordination, not good as a member of the team and gives scope for allegations is made merely basing on the same allegation. If it is based on some other allegations, then it is based on no materials.

6. Instructions contained in Exhibit P-9, which are supposed to be followed scrupulously by the officers will go to show that the reporting officers should try to advance specific instances of reasons to justify their observations. The entries in the confidential report must also be descriptive in nature. Thus when the Superintendent of Police observes that the Petitioner is prone to insubordination, at least he must cite the instances of subordination. When the Superintendent of Police says that the Petitioner is not good as member of the team, it also must be supported by specific instances. When he further says that the Petitioner gives scope for the allegation it cannot be accepted without any specific instances.

7. The further report of the Superintendent of Police referred to in Exhibit P-8 did not form part of the confidential report. If such an incident really happened, the Petitioner should have been told about it and his explanation obtained. Therefore, the alleged incident mentioned in the subsequent report of the Superintendent of Police can never be the basis for the adverse opinion of the Superintendent of Police.

8. When Exhibit P-9 specifically emphasis that it is essential that all officers, who have to record their remarks in the confidential reports should do so with the greatest caution and should not record any remarks lightly or on the spur of the moment, the Superintendent of Police may not be right in recording the above vague and unspecified allegation against the Petitioner. The purpose of the adverse entry has also been indicated in Exhibit P-9. Every employee should know his remedial defects so that he can remove them and improve himself. The best results are achieved only if every reporting officer realises that his duty did not end with recording an objective assessment but also to his tendering whenever indicated the necessary advice, guidance and assistance to correct the

faults and deficiencies of his subordinates. That is why it was further instructed in Exhibit P-9 that wherein adverse entry is made, the reporting officer should certify that the defects have been brought to the subordinate's notice. But unfortunately these instructions are followed more in breach than in observance. Under these circumstances, the rejection of the appeal filed by the Petitioner by the first Respondent as per Exhibit P-8 order is illegal and opposed to Exhibits P-9 and P-10. Therefore, Exhibit P-8 is quashed.

9. The above adverse remarks contained in Exhibit P-5 will definitely adversely affect the Petitioner's career because he is due to be considered for promotion as Dy. S.P. When D.P.C. meets and considers the confidential report of the Petitioner for the last three years, the above adverse remarks will definitely stand against him in comparison with confidential reports of his colleagues. Thus, the above adverse entry will be affecting the Petitioner adversely in his career prospects. Therefore, I think this is a fit case where this Court must exercise its jurisdiction under Article 226 of the Constitution of India to expunge those remarks entered into in the confidential reports of the Petitioner.

10. The apprehension of the Petitioner is that the Departmental Promotion Committee is meeting immediately to consider the case of the Circle Inspectors of Police for promotion as Dy. S.P. Therefore, the second Respondent, the D.P.C. is directed to consider the case of the Petitioner for promotion to the cadre of Dy. S.P. without reference to the expunged remarks in Exhibit P-5. If the D.P.C. has already met to consider the same, the case of the Petitioner must be considered again before finalising the select list.

Original Petition is allowed as indicated above.