
(2007) 03 MP CK 0023

In the Madhya Pradesh High Court

Case No : Writ Petition (S) No. 3950 of 2006

P. Bhargava

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 23-03-2007

Acts Referred:

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

Citation : (2007) 3 MPLJ 150

Hon'ble Judges : R.K. Gupta, J;Dipak Misra, J

Bench : Division Bench

Advocate : Sheel Nagu, for the Appellant; O.P. Namdeo, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Gupta, J.

The present petition has been filed challenging the order passed by the Central Administrative Tribunal which is Annexure P/5 to the petition.

The petitioner filed Original Application before the Central Administrative Tribunal for the quashment of the adverse remark for the year 1998-99. The said application was registered as O.A. No. 631/04.

The petitioner is a member of the Indian Administrative Service and belongs to M.P. Cadre of 1973 batch. The grounds raised by the petitioner was that prior to the year 1998-99 the petitioner was graded to be "good" and "very good" but only for the year 1998-99, confidential report of the petitioner was adverse. It was also the case of the petitioner that confidential report of the petitioner for the subsequent years had also been very good. The application filed by the petitioner before the tribunal was opposed. The tribunal after hearing the parties came to the conclusion that the confidential report which has been communicated to the petitioner since is based upon the material, therefore, the same is not liable to be quashed. Consequently the Original Application filed by the petitioner was dismissed. The petitioner has challenged the said order.

Learned counsel for the petitioner submitted that prior to the year 1998- 99 the confidential report of the petitioner was "very good" and on that basis counsel for the petitioner relying upon the order passed in the case of State of U.P. Vs. Yamuna Shanker Misra and another, contended that in the present case the performance of the petitioner for the year preceding to 1998-99 and subsequent to 1998-99 had been excellent, so the shortfalls were liable to be communicated to the petitioner so that there would have been a chance to improve.

The matter with regard to the confidential report and its method of writing and the communication is governed by the All India Service (Confidential Rolls) Rules, 1970. These rules have been framed by the Central Government in exercise of powers conferred by Sub-section (1) of Section 3. Under Sub-rule (B), Rule 2, the confidential rolls has been defined which means the compilation of the confidential report written on a member of the service and includes such other documents as may be specified by the Central Government, by general or special order, in this behalf.

Learned counsel referred to the Government of India's Orders wherein the documents to be included in the confidential roll. As per Sub-clause (ii), Clause (b) of Rule 2 of the Rules, 1970, it is stated that copy of the communication addressed to a member of the service warning him or conveying the displeasure or reprimand of Government, to which a reference is made in the Confidential Report for the relevant period.

On this basis, learned counsel for the petitioner submitted that as per the aforesaid Government of India's Orders which was issued in pursuance of Clause (b) of Rule 2 of All India Services (Confidential Rolls) Rules, 1970, warning is a document which was to be included in the confidential rolls and since nothing has been shown in the confidential rolls with regard to warning, in the absence of inclusion of such a document, the confidential report deserves to be set aside.

In this regard the confidential report communicated to the petitioner is reproduced below:

The officer is very intelligent, smart and has a good grasp of the subject matter. However, his performance during the year was far from satisfactory. His behaviour smacked of insubordination. He never discussed with me or consulted me on any policy matters nor did he share any relevant information voluntarily. Even after being pressed, he would give piece-meal information reluctantly. He kept me in the dark on many matters. Communication was wanting on his part. Decisions taken by me were distorted/changed substantially without informing me, thus putting me to embarrassment. In the meetings chaired by me, he invariably started cross discussion with subordinates diverting attention from the main discussion and shooting off instructions to them ignoring my presence and belittling my authority. I got no willing co-operation or support from him. Notings on the files left much to be desired. Most of the notes were half baked without checking the full facts and without linking properly with previous references or

files. Even after pointing out deficiencies, files came back without proper rectification. His approach was casual and negative. Most of the time he acted like a postman. There was no depth or quality in the notings, sometimes only cryptic remarks were made. He often challenged my authority on file as well as in public. Took independent decisions on policy matters unilaterally without consulting me. On the whole, his performance was not of the standard expected of a Joint Secretary to Government of India. I had sought his transfer, however, he was given an opportunity to improve after being warned orally about his functioning. There was no improvement.

On the basis of the same it is clear with regard to general assessment of the petitioner. It is not the case that warning was given by the Reporting Officer. The aforesaid is the general assessment by the Reporting Officer which has also been accepted by the Accepting Officer. It is stated therein that the performance of the petitioner during the relevant period was far from being satisfactory. It is also stated that transfer of the petitioner was proposed and the petitioner was given an opportunity to improve after being warned orally about his functioning. The other aspects of the general assessment which is referred to therein does not deal with issue of warning but it deals with regard to performance of the petitioner during the said year and the assessment i.e. general assessment with regard to performance of the petitioner.

Even assuming but not accepting the submission so made by learned counsel for the petitioner that the warning was required to be incorporated as a document in the compilation of confidential report, that alone is not the basis of general assessment of the petitioner by the Reporting Officer. It is only a part of the same but keeping in view the other part of the performance which are referred to hereinabove from the confidential report, it cannot be said that there was no basis for assessment of the Officer in that year so that it could be said that there are mala fides. In the present case, petitioner does not alleged any mala fides against the Reporting Officer or against the Accepting Officer. In the absence of any allegation of mala fide, the performance which has been assessed by the Accepting Officer cannot be said to be arbitrary.

In this context it would be profitable to refer to the scope of judicial review in such matters. The Apex Court in *State of M. P. and Ors. v. Vishnu Dutta (VS) Dubey and others*, 1995 (Supp) 4 SCC 461 has laid down that the Court cannot rewrite the confidential report, the performance has to be assessed by the Officer, in the hierarchy of the administration. The Courts exercising the powers of judicial review also cannot act as an appellate authority over the assessment of performance of an incumbent.

Thus, scope of judicial review in the case of confidential report is very limited. While exercising the powers of judicial review the Courts have to see that arbitrarily any officer should not be punished because of the mala fides of the Reporting Officer or Accepting Officer. The confidential report shows that the petitioner has never discussed that the Reporting Officer had consulted him on

any policy matters nor he shared any relevant information voluntarily. petitioner also changed the decision taken by the Reporting Officer and destroyed/changed substantially without informing him.. There are certain other comments which are mentioned and the reading of the whole of the general assessment by the Reporting Officer with regard to performance of the petitioner indicates that his performance was not satisfactory.

The submissions so made by learned counsel for the petitioner that for the previous years his confidential reports were good, that by itself would not be sufficient to interfere in case of confidential report. This Court finds that general assessment by the Reporting Officer has been clearly assessed, the Reporting Officer has found the petitioner to be an intelligent, smart having good grasp of the subject but in spite of the same certain shortfalls with regard to performance and working of the petitioner were noted by the Reporting Officer.

As this Court directed the respondents to produce the record for the relevant year, therefore, the record was made available to us by the counsel for the respondents.

On perusal of the confidential report for the relevant year 1998-99, we have seen that that it was not graded as "adverse*" but it was treated to be "average".

The file reached the Cabinet Secretary, the Dy. Prime Minister and the Prime Minister. All the authorities have agreed with regard to performance of the petitioner as reported by the Reporting Officer and accepted by the Accepting Officer. On a perusal of the record it is clear that the Reporting Officer, within the prescribed time limit, has written the confidential report but order sheets show that the Reporting Officer was relieved on 16-8-1999 and his remarks were written on 13-8-1999, three days prior to his retirement. The contention of learned counsel for the petitioner that in view of the noting in the relevant file which has been perused by us does not substantiate the argument of the petitioner that the remarks were written by the Reporting Officer after his retirement. The relevant file further mentions the fact that the Reporting Officer recorded the confidential report on 13- 8-1999 and against the same a representation was submitted by the petitioner wherein he has stated that same was received by him on 22-9-2000. On this basis, it is urged that there has been delay of about ten months in communicating the adverse remarks. The said delay was found to be the delay caused by the Ministry of Department. No other reason was attributed to it.

As we have carefully perused the file, we are of the view that the matter with regard to petitioner's consideration was considered at the level of Cabinet Secretary, Dy. Prime Minister and Prime Minister and at all levels the remarks have been approved. We do not find that all the authorities could have any mala fide against the petitioner particularly when writing of the confidential report in the present case series of officers were involved. Petitioner in the present case has also not alleged any mala fide against the Reporting Officer. In the absence

of any mala fides or otherwise, the remarks which have been approved at all levels at the time of considering the representation also, the confidential report of the petitioner, the same was confirmed and was not directed to be expunged.

The tribunal while passing the order has also taken note of all the aforesaid aspects. Therefore, we do not find any error or illegality committed by the tribunal and accordingly the present petition fails and is hereby dismissed. There is no order as to costs.

Petition dismissed.