
(2001) 05 DEL CK 0185
In the Delhi High Court
Case No : CWP No. 4933/98

Rajinder Singh Sehrawat

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 24-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 93 DLT 417 : (2001) 59 DRJ 596 : (2002) 1 SCT 743

Hon'ble Judges : M.S.A. Siddiqui, J;B.A. Khan, J

Bench : Division Bench

Advocate : Ms. Avnish Ahlawat and Ms. Vaishalee Mehra, for the Appellant; Ms. Meera Chhibber, for the Respondent

Judgement

M.S.A.Siddiqui, J.—Challenge in this petition filed under Article 226 of the Constitution is to the validity of the order dated 22nd April, 1998 passed by the Central Administrative Tribunal, Principal bench, Delhi (for short "the Tribunal") in O.A.No.1564/97 on a petition filed by the petitioner for quashing some adverse entries made in his Annual Confidential Report (for short "the ACR") for the year 1995-96.

2. The petitioner was appointed as Head Constable (Ministerial) on 2nd June, 1976. On 17th February, 1986, the petitioner was duly promoted to the post of Assistant Sub-Inspector (Ministerial). His earlier for the period from 2nd June, 1976 to 1994-95 have been excellent wherein he has mostly been given "B" grading with an occasional "A". However, respondent No.3, who was the Reporting Officer, made some adverse entries in the petitioner's ACR for the year 1995-96 and these entries were also endorsed by the DCP (respondent No.3). There adverse entries were communicated to the petitioner on 3rd July, 1996. The petitioner filed representation for their expunction, which was rejected on 30th July, 1996. Aggrieved thereby, the petitioner filed OA No.1564/97 before the tribunal for quashing these adverse entries on the ground of being vitiated by bias and arbitrariness, which was rejected by the impugned order.

3. Learned counsel for the petitioner contended that the adverse entries made by the Reporting officer (respondent No.3) in his ACR for 1995-96 and endorsed by the DCP (respondent No.4) are vitiated by bias and arbitrariness. According to the learned counsel, the petitioner had made specific allegations of bias in his petition against respondent Nos.3 & 4, which were not traversed by them and those averments of bias had, therefore, to be deemed to have been admitted, but the tribunal has lost sight of this aspect of the matter and committed a patent illegality in holding that the adverse entries made in the petitioner's ACR are not outcome of any bias or malice. On the contrary, learned counsel for the respondent has strenuously urged that the allegations of bias have been denied by the respondents and further this Court cannot act as an appellate forum in respect of assessment of performance of an official by his superior officer.

4. At the outset, we must make it clear that this Court cannot moderate the appraisal and grading given to an officer/employee. While exercising power of judicial review, Court should not venture to assess and appraise on the grading of an officer/employee. But if the Court finds that adverse entries made in the ACR or grading given to an officer/employee are vitiated by extraneous considerations, the Court must interfere and quash them. It is essential to maintain the integrity and sanctity of the ACR of an officer/employee and the legitimacy of the conclusions relating to his/her overall performance. In this context, we may mention that the object of writing confidential reports or character roll of a Government servant is to afford an opportunity to the officer concerned to remove his deficiencies, if any, to inculcate discipline and to improve quality, excellence and efficiency of public service. The officer writing the confidential report should show objectivity, impartiality and fair assessment without any prejudices whatsoever with the highest sense of responsibility to inculcate devotion to duty, honesty and integrity to improve excellence of the individual officer/employee. State of U.P. Vs. Yamuna Shanker Misra and another, : Swatanter Singh Vs. State of Haryana and others, : Union of India and others Vs. N.R. Banerjee and others, and State of Gujrat and another v. Suryakant Chunilal Shah,]. In the State of U.P. v. Y.S.Misra (supra) it was observed that the officer entrusted with the duty to write confidential report has a public responsibility and trust to write the confidential report objectively, fairly and dispassionately while giving, as accurately as possible, the statement of facts on an overall assessment of the performance of the subordinate officer/employee. It should be founded upon facts or circumstances. Thus, the action of the officer entrusted with the duty to write ACR, in order to survive, must not be susceptible to the vice of arbitrariness.

5. It is the duty of the Reporting Officer and the Reviewing Officer to take care not only that in their assessment of overall performance of a subordinate employee or officer they are not influenced by any personal interest, bias or malice, but to avoid appearance of labouring under such an influence. In other words, it must appear on the face of the record that in assessing overall performance of a giving grade to an officer in his ACR, the authorities had acted

fairly and without any bias in fact.

6. In the instant case, it is an admitted position that in his petition, the petitioner had made specific allegations of bias against respondent Nos 3 & 4. He has specifically pleaded that his earlier ACRs are excellent and the adverse entries made in his ACR for 1995-96 are outcome of bias and malice. Surprisingly, neither respondent no.3 nor respondent No.4 has filed an affidavit to deny the said facts pleaded by the petitioner. The counter reply filed by Dr. Aditya Arya, Deputy Commissioner of Police, Delhi on behalf of the respondents does not help respondent Nos. 3 & 4 to rebut the specific allegations of bias and malice made against them by the petitioner. Consequently, we have no option but to hold that the allegations of bias and malice made by the petitioner against respondent Nos. 3 & 4 should be deemed to have been admitted. That being so, the factum of bias and malice as alleged by the petitioner has been established. It follows that adverse entries made in the petitioner's ACR for 1995-96 by the Reporting Officer (respondent No.3) and endorsed by respondent No.4 are the outcome of bias and malice. The bias and malice as alleged by the petitioner is also borne out by the fact that the Reporting Officer had declined to certify his integrity on the ground of his being negligent. Surely, an officer or employee cannot be held to be dishonest on the ground of has being negligent as negligence and dishonestly have different connotation and meaning. This circumstance, to a great extent, probalises the case of the petitioner that actuated by bias and malice, respondent No.3 had declined to certify his integrity. However, the adverse entries made in the petitioner's ACR for 1995-96 cannot be sustained as they are vitiated by extraneous considerations. It is significant to mention that perusal of para No.5 of the impugned order makes it clear that although the tribunal has taken note of the fact that the adverse entries made in the ACR in question are not in keeping with the petitioner's past excellent record yet the tribunal did not make any attempt to find out the real cause for his sudden down grading in the said ACR. Needless to emphasis that sudden downgrading in the ACR of an official/employee must be informed by discernible reasons.

For the foregoing reasons, the writ petition is allowed. The impugned order and the adverse entries made in the petitioner's ACR for 1995-96 are quashed and expunged from the record. No order as to costs.