

(1984) 11 GUJ CK 0015

In the Gujarat High Court

Case No : Spl. C.A. No. 3410 of 1980 and 3452 of 1984

S. Tripathi

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 29-11-1984

Acts Referred:

Administrative Service (Pay) Rules, 1954 — Rule 5

Citation : (1985) 2 GLR 616 : (1986) 1 LLJ 16

Hon'ble Judges : R.A. Mehta, J;N.H. Bhatt, J

Bench : Division Bench

Judgement

N.H. Bhatt, J.—His Lordship after stating the facts narrated in the petition, further observed:

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2. The above Rules (Indian Administrative Service (Pay) Rules 1954) and particularly Rule 5 make it clear that the confidential report is mooted

for the purpose of assessing the four attributes of a public service, namely, his performance, his character, his conduct and his qualities. As

observed during the course of the period under report from the very nature of things also these are four conceivable heads under which an officer's

performance can be assessed and adjudged. If an Officer is to be adjudged meritorious or otherwise, it would be on the basis of these four broad

factors and none other. It is in consonance with common sense also. If no arbitrariness is to be allowed to have its play, if personal likes and

dislikes in the assessment of the merit or otherwise of a public officer are to be avoided, the assessment of an Officer's worth has to be based on

these four well-known criteria. Whoever certifies a public servant as a man of good performance, character, conduct and qualities, has to do so on

the basis of some objective material. Similarly, if he devalues him for the purpose of judging his suitability for the post or for some higher post or grades, that also ordinarily would be by these very yardstick. If there is any attempt to judge a person on the criteria other than these four well-known conceivably reasonable data, that exercise can be brandished as arbitrary, capricious and, therefore, violative of the rule of law, which in its turn is enshrined in Art. 14 of the Constitution of India read with Art. 16 with specific reference to the public service. It is in the light of these settled legal position that the cases are to be viewed by the concerned authorities. We are not oblivious of the fact that this High Court cannot arrogate to itself the powers of a super-administrator. Its jurisdiction is highly hedged and it is confined to watching the confinement by the public authorities to the limits of law or rather keeping watch over the transgression of those limits. If in a given set of circumstances, the administrative decision, including the assessment of the merits or otherwise of the public servant can be possibly reasonably true, this High Court has no power to interfere even though the High Court on its own may be inclined to take a different view of the matter. Being conscious of these limits on our powers, though proverbially stated to be very wide, we are examining this case only from that angle and no further.

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3. A question may arise whether "not yet fit" is an adverse remark. As emphasised by us earlier, a man's merits or de-merits are to be judged on the basis of four factors as per the Rules already referred to by us, the four factors being (i) the performance of his duties; (ii) his overall general character; (iii) his conduct in the discharge of his duties vis-a-vis his subordinate officers; and (iv) the quality of his performance. If these are found to be above normal by the officers who had the direct contact with the petitioner, flinging of such remarks without any factual foundations by a man like the Chief Secretary can hardly be countenanced in a society governed by the rule of law and not by caprice. It cannot do to say that the Chief Secretary while reviewing or countersigning is not bound to base his conclusion on those four factors. If such a bald exposition is to be entertained, it would amount to putting a seal of approval on rank arbitrariness, caprice, whim or prejudices.

4. This takes us to the subsequent period of 1978-79 and 1979-80, which possibly appeared to have swayed the judgment of the authorities. In

the year 1978-79, we have already stated, Mr. Ram Murti, who was the Reporting Officer, certified the petitioners to be quite knowledgeable,

having good knack for organisation, displaying good deal of industry, accepting his responsibility for the job entrusted to him while maintaining his

relations with subordinate and Mr. Capoor generally agreed with the assessment on those factors, but he still said, without any rhyme or reason

that the petitioner was ""not yet fit"". Whether a man is fit or not is a conclusion based on the Officer's performance, conduct, character and

qualities. It is not sheer ipse dixit. If the remarks in that confidential report of the year 1978-79 at page 502 seem to have conceivably swayed the

judgment of Mr. Capoor, his action can be said to be unjustified for the simple reason that that was an ex-parte assessment without any

opportunity having been extended to the petitioner to explain the ex-parte comments, if adverse, made by Mr. Ram Murti, the Reporting Officer,

viz. ""as per the note appended"". Similar is what we would like to observe for the confidential report for the year 1979-80 to be found at page 506.

Very Mr. Ram Murti was the Reporting Officer. Though Mr. Ram Murti was conscious that the petitioner had directly not to supervise the work

relating to compilation of the work of Gazetteers, excepting for the work of organisation, Mr. Ram Murti readily certified the petitioner to be a man

of ability to organise. He found him to be industrious, ready to accept responsibility and capable of taking decisions as and when occasions arise.

Again, Mr. Capoor figures here as a Reviewing Authority. He generally agrees with the assessment made by Mr. Ram Murti. What made him

depart then to a smaller extent ""exceptionally"" as contradicted with ""generally"" there is no material on the record. Still, he sung his old song that the

petitioner was ""not yet fit"" for promotion to higher grades. On this occasion and only one earlier occasion, this conclusion showing why the

petitioner was not fit, however, was communicated to the petitioner. Idea behind communicating adverse remarks to any officer like the petitioner

is to apprise him of two things. Firstly, if the adverse remarks are unjustifiable, he may make a representation against the same. Secondly, if there is

base for the same, he on knowing all those lapses on his part, might be more

vigilant and try to improve his performance. To tell a man simply that he is "not yet fit," can serve neither of the two purposes, but Mr. Capoor by then became wiser and had thought fit to communicate that particular conclusion of his in these two years 1978-79 and 1979-80. To the ill-luck of the petitioner, his representation also came to be considered ostensibly by the State Government, but substantially, if not wholly by very Mr. Capoor. He became both a Prosecutor and a Judge. We had requested Mr. Advocate General to furnish us with the information as to who had acted for the Government for those two years. For the year 1978-79, the very Officer Mr. Ram Murti and Mr. Capoor followed by the Adviser to the Governor and the Governor were there. For the year 1979-80, very two officers followed by Mr. Madhavisnh Solanki, against whom the petitioner has much to say, were the three personalities to consider his representation. Again on query, Mr. Advocate General stated that barring those materials on the record, there was no other material except the performance as watched by Mr. Capoor or by Mr. Madhavisnh Solanki or both of them. It is easy to say that representations are "fully considered" and it is quite different to find whether there was any effectively fruitful consideration. It was expected of these personalities to disclose how they considered the representations, particularly when the petitioner was in cudgels against the authorities ever since the year 1969, on most of the occasions for no fault of his, because whatever was arranged against him in the course of this decade was either dropped or frowned upon by other authorities. On one occasion, the carcass was disinterred from the grave. The petitioner had purchased some articles by making payments by cheques and at the relevant time he had already informed the authorities that he had spent those meagre amounts of Rs. 2600/-; Rs. 1030/-; Rs. 3200/- and Rs. 5760/-. It was in the year 1974 and 1975 that he had purchased those articles, viz. Sterio set, records, furniture materials and a set of encyclopaedia Britanica and two volumes of Oxford Dictionary. For this, a notice was given to him in the year 1977 and that is why we say that the files were dug out, in order to find out something against the petitioner. Even though nothing could be done in the matter, the petitioner complains that while closing the chapter, an adverse note was made against him that he had not shown his personal record prior to 1974. This also

makes us hold that the petitioner unfortunately was a personal non-grata in this department and the way in which Mr. Capoor handled the things

year-after-year amply bear the testimony to the serious allegations made against him.

5. The rest of the judgment is not material for the reports.