**(2006) 02 AHC CK 0239**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 8139 of 2003

Surendra Kumar Srivastava APPELLANT

Vs

State of U.P. and U.P. Public Service Commission RESPONDENT

**Date of Decision :** 15-02-2006

**Acts Referred:**

**Citation :** (2006) 3 AWC 2965 : (2006) 3 UPLBEC 2834

**Hon'ble Judges :** V.M. Sahai, J;Barkat Ali Zaidi, J

**Bench :** Division Bench

**Advocate :** S.C. Budhwar, Vikas Budhwar and R.P. Singh, for the Appellant; Neeraj Tiwari and B.N. Singh and S.C., for the Respondent

**Final Decision :** Allowed

## Judgement

V.M. Sahai and Barkat Ali Zaidi, JJ.—The petitioner, who, at present, is posted as Tehsildar, Tehsil Naugarh, District Siddharth Nagar, in the years 1995-96 and 1996-97, with which we are concerned, was posted as Tehsildar Milkipur, District Faizabad. He by his immediate superior i.e. the then Sub Divisional Magisrate, Milkipur, Faizabad for these two years respectively was awarded outstanding annual entries, but when these two annual entries reached for approval before the Reviewing Officer i.e. the Collector of the district, he converted and down graded them from that ?outstanding'' to ?good'' without hearing the petitioner.

2. That is how the petitioner has come up before us by filing this writ petition.

3. Heard Sri Vikas Budhwar, learned Counsel for the petitioner, learned Standing Counsel for respondent Nos. 1 and 2 and Sri B.N. Singh, Advocate has accepted notice on behalf respondent No. 3.

4. The contention of learned Counsel for the petitioner is that the initial entries of outstanding awarded to him could not be converted without giving him a proper opportunity of hearing, which was not done and this conversion will result in detriment to his future career while he will be considered for promotion for the post of Deputy Collector.

 

5. As appears in the counter affidavit filed on behalf of the respondents, the aforesaid conversion of entries as noted above and without giving an opportunity of hearing to the petitioner has not been disputed in anyway, therefore, conversion or down gradation of outstanding entries to good entries in these two years without giving the petitioner an opportunity for the same remains an undisputed fact for the decision of this writ petition.

6. What emerges is that the entries of outstanding awarded to the petitioner were converted and down graded without giving an opportunity of hearing and it is, therefore, apparent the consequences of this act which will follow, will be that while petitioner will be considered for his promotion or other better departmental avenues with his equals, these entries will not have wanted impact which the outstanding entries would have made naturally. It is need less to say that annual entries are the summum bonum in the career of a government servant for his further progress and promotions in the service.

7. Now the question which arises before us for consideration, is that whether the petitioner should have been given an opportunity before converting the entries into good for the two years which were initially awarded as outstanding by his immediate superior, the Deputy Collector in those two years? It has to be answered in affirmative in view of the Supreme Court decision on the point.

8. The apex court in U.P. Jal Nigam and others Vs. Prabhat Chandra Jain and others, while interpreting the service law and confidential report with regard to downgrading of the entry expounded the law as below:-

3. We need to explain these observations of the High Court. The Nigam has rules, whereunder an adverse entry is required to be communicated to the employee concerned, but not downgrading of an entry. It has been urged on behalf of the Nigam that when the nature of the entry does not reflect any adverseness that is not required to be communicated. As we view it the extreme illustration given by the High Court may reflect an adverse element compulsorily communicating, but if the graded entry is of going a step down, like falling from ''very good'' to ''good'' that may not ordinarily be an adverse entry. Since both are a positive grading. All that is required by the authority recording confidential in the situation is to record reasons for such downgrading on the personal file of the officer concerned, and inform him of the change in the form of an advice. If the variation warranted be not permissible, then the very purpose of writing annual confidential reports would be frustrated. Having achieved an optimum level the employee on his part may slacken in his work, relaxing secure by his one time achievement. This would be an un desirable situation. All the same the sting of adverseness must, in all events, not be reflected in such variations, as otherwise they shall be communicated as such. It may be emphasised that even a positive confidential entry in a given case can perilously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true. In the instant case we have seen the service record of the first respondent No reason for the change is mentioned. The downgrading is reflected by comparison.

This cannot sustain. Having explained in this manner the case of the first respondent and the system that should prevail in the Jal Nigam, we do not find any difficulty in accepting the ultimate result arrived at by the High Court.

9. The principles laid down by the Hon. Apex Court in case (Supra) cannot be said to be non applicable or distinguished on this plea of the learned standing counsel that it was a case where the good record of and an employee was slurred substituting in it''s place adverse remarks by the Reviewing Authority, wherein the present case a superlative entry has been down-graded from '' outstanding'' to "good''. Down -grading of an entry from superlative to ''outstanding'' or blemishing a good'' entry by converting it into bad will involve substitution, which, according to the cardinal principles of Natural Justice and Fair Play, can not be allowed unless the employee, is properly heard by the Reviewing Authority and the cogent reasons are, given for its substitution.

10. As will also appear from the counter affidavit of the respondents, the collector has given no reasons whatsoever good, bad or indifferent to minimize petitioner''s entry from ''outstanding'' to ''good''. An annual remark of outstanding is a valuable and precious earning right in earnest which has a statutory sanction, which a government employee gets from his controlling authority by his Ability, Industry, Sincerity, Toil in performance of his official duties whole year. Therefore, it will be unjustifiable and improper that these kudos of a government servant are taken away or wiped off by a Reviewing Officer in whims acting in an arbitrary manner.

11. In yet another case State of U.P. Vs. Yamuna Shanker Misra and another, while propounding the significance and place of Confidential Remarks in a government employee career and laying the yardsticks how and in what manner a superior entry can be turned into an adverse entry by a Reviewing Officer, the Supreme Court held as under :-

It would, thus, be clear that the object of writing the confidential reports and making entries in the character rolls is to give an opportunity to a public servant to improve excellence. Article 51-A (j) enjoins upon every citizen the primary duty to constantly endeavor to prove excellence, individually and collectively, as a member of the group. Given an opportunity, the individual employee strives to improve excellence and thereby efficiency of administration would be augmented. The officer entrusted with the duty to write confidential reports, has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately while giving, as accurately as possible, the statement of facts on an over all assessment of the performance of the subordinate officer. It should be founded upon facts or circumstances. Though sometimes, it may not be part of the record, but the conduct, reputation and character acquire public knowledge or notoriety and may be within his knowledge. Before forming an opinion to be adverse, the reporting officers writing confidentials should share the information which is not apart of the record with the officer concerned, have the information confronted by the officer and then make it part of the record.

 

This amounts to an opportunity given to the erring/corrupt officer to correct the errors of the judgment, conduct, behaviour, integrity or conduct/corrupt proclivity. If despite being given such an opportunity, the officer fails to perform the duty, correct his conduct or improve himself, necessarily the same maybe recorded in the confidential reports and a copy thereof supplied to the affected officer so that he will have an opportunity to know the remarks made against him. If he feels aggrieved, it would be open to him to have it corrected by appropriate representation to the higher authorities or any appropriate judicial forum for redressal. Thereby, honesty, integrity, good conduct and efficiency get improved in the performance of public duties and standard of excellence in services constantly rises to higher levels and it becomes a successful tool to manage the services with officers of integrity, honesty and devotion.

It is seen from the record that the respondent constantly maintained a good record earlier to the adverse remarks made for the aforesaid period. It would appear that subsequently also he had good confidential reports on the basis of which the clouds over his conduct were cleared and he was given further promotion. Mr. Rakesh Dwivedi, learned Additional Advocate General, in fairness, therefore, has stated that since the respondent has been regularised after the subsequent good reports, the dispute does not survive for adjudication on merits. But the counter affidavit made against him by the Secretary were warranted in view of the material on record. He brought to our notice that as on the date when the entries were made, the vigilance enquiry was pending against the respondent and, therefore, the adverse remarks came to be made. The finding recorded by the Tribunal of malice and arbitrariness on the part of the Secretary as affirmed by the High Court are not warranted for two reasons. Firstly, since the Secretary was not eonomine to the proceedings and had no opportunity to explain the position, it would be violative of the principle of natural justice. Secondly, since the vigilance enquiry was pending unless the officer was exonerated and cleared from the cloud, necessarily, the Secretary could not clear the conduct and integrity of the officer. Therefore, the adverse remarks cannot be said to be to smack of arbitrariness.

12. Therefore, it is clear that the entries which were outstanding entries initially awarded to the petitioner by his immediate superior i.e. The Sub Divisional Magistrate would not have been downgraded two steps down by the administrative authority i.e. the Collector of the district without giving the petitioner an opportunity of hearing and in a slip shod manner without reducing any reason for it good, bad or indifferent.

13. For the foregoing reasons, therefore, there should be we have no hitch in holding, that, downgrading of entries two steps down of the petitioner was in violation of principles of Natural Justice and Fair Play, and therefore, the writ petition, deserves to be allowed.

14. A writ of mandamus is issued directing respondents No. 1 and 2 to amend the annual entries for the years 1995-96 and 1996-97 from good to outstanding

 

and to incorporate it in the service record of the petitioner within two months from the day a certified copy of this order is delivered to them.

15. Before we depart, we will hasten to add here that as appears from the petition the initial entry for the year 1997-98 of the petitioner is also missing. It is the bounden duty of the department to place the annual entry of a government servant on the record without fail presumably by the month of June each year. We fervently hope that the department will rise to the occasion and will place the entry for the year 1997-98 too on the service record of the petitioner within the aforesaid time.

16. Costs made easy.

 