
(2004) 02 RAJ CK 0045

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1878 of 2000

Vinod Kumar Agarwal

APPELLANT

Vs

High Court of Judicature for Rajasthan

RESPONDENT

Date of Decision : 11-02-2004

Acts Referred:

Citation : (2004) 3 RLW 1603 : (2004) 2 WLC 293

Hon'ble Judges : Shiv Kumar Sharma, J;F.C. Bansal, J

Bench : Division Bench

Advocate : S.P. Sharma, for the Appellant; Prem Shankar Asopa and Ajay Rastogi, for the Respondent

Final Decision : Dismissed

Judgement

Sharma, J.—The petitioner who was a member of the Rajasthan Higher Judicial Service, in these writ petitions seeks to quash and expunge the adverse remarks made in his ACRs for the year 1995, 1996 and 1997. Prayer has also been made to set aside the orders of the High Court whereby the representations of the petitioner against the adverse remarks were rejected.

2. The adverse remarks that were conveyed to the petitioner were as under:-

For the year 1995 :

"Many complaints against his behaviour at the time of inspection by Hon"ble Inspecting Judge. Reports about integrity were also made, however they could not be substantiated. Over all the officer can be rated below average. Members of bar boycotted his court for a long time."

For the year 1996:

"Integrity not beyond doubt. He is not fair and impartial in dealing with the public and bar. He, is hasty in action and short tempered person and do not maintain judicial restraint. He mixes with litigants and advocates appearing before him and utilises their services about vehicles etc. capacity to files

systematically-zero. Whether judgments on facts and law are on the whole, sound, well reasoned and expressed in good Language No. Control over the office and administrative capacity and tact- zero. There is lot of noises and hot arguments in his court which shows lack of control. Below average. Integrity certificate withheld (May 1996 to 15.10.1996). He is below average officer."

For the year 1997 :

"He is below average officer."

3. In regard to the adverse remarks for the year 1995, petitioner averred that percentage of judicial work done by him in that year was 210% in first quarter, 110% in second quarter, 125% in third quarter and 135% in fourth quarter. The High Court even on judicial side appreciated one judgment delivered by the petitioner. During the petitioner's tenure, at Baran the members of Bar never boycotted his court. No complaint was ever made against the petitioner by the Bar Association as no memorandum was ever issued to the petitioner asking his explanation about any complaint. Thus the adverse remarks entered by the Hon'ble Inspecting Judge were factually incorrect and wholly unwarranted and the order of High Court rejecting the representation of the petitioner was not based on reasons.

4. For the year 1996 the petitioner pleaded that in that year he was posted at two places i.e. as Additional District and Sessions Judge Baran and as Additional District and Sessions Judge, Pratapgarh. The petitioner resumed his duties at Pratapgarh on May 6, 1996 and remained there upto October 15, 1996. Shri Bahadur Singh Chandrawat, the District Judge Pratapgarh had several personal grudges against the petitioner, a request was made by the petitioner to the Hon'ble Chief Justice for not allowing Shri Chandrawat to make entries in the ACR of the petitioner but the request was turned down and Shri Chandrawat was allowed to make entries in the ACR which obviously had to be "adverse". The petitioner submitted detailed representation against the adverse entries so made pointing out instances due to which it could be inferred that ACR had been deliberately spoiled. The petitioner also pointed out fallacy in the remark regarding his judgment and placed on record the letter dated July 15, 1996 of the High Court appreciating his judgment. The petitioner pointed out that his quota of 1st, 2nd, 3rd and 4th quarter was 138%, 180%, 175% and 170% respectively. The representation so submitted was rejected by the High Court without assigning reasons.

5. For the adverse remarks of 1997 the petitioner pleaded that during the entire period of 1997 he had not been given any memorandum by his immediate senior. Between January 1, 1997 to June 30, 1997 the petitioner disposed 44 special sessions cases, 26 sessions cases and 11 appellate criminal cases, 22 criminal revisions and 63 misc. cases, and total disposal of first quarter came to 188.46% and of second quarter was 153.33%. For the period July 14, 1997 to December 13, 1997 his disposal for third and fourth quarter was 131% and 172%

respectively. No audit objection was made during the period 1997 against him. The adverse entry in the year 1997 was made merely because of adversity in the ACR of 1996. Assessment of petitioner's work was not made in accordance with the circular dated June 22, 1995 issued by the High Court. Had it been so, the petitioner would have been placed in "very good" category. The petitioner submitted representation but it was rejected without showing any reason.

6. On behalf of respondent High Court written statements to the writ petitions have been filed seeking to traverse the petitioner's case.

7. Sum and substance of the contentions raised by learned counsel for the petitioner is that the adverse remarks recorded in the service records of the petitioner suffers from the vice of malafides and reasons for rejecting the representations made by the petitioner against the said adverse remarks do not exist on records, therefore adverse remarks deserve to be expunged.

8. Per contra learned counsel appearing for the respondent High Court canvassed that while exercising the power of judicial review merit or grading of an officer cannot be assessed and appraised. It was further contended that decisions on representations of the petitioner which are based on reasons can not be rendered illegal on account of absence of reasons.

9. We have pondered over the submissions and scanned the service records of the petitioner and other material placed for our perusal. Before proceeding further we find it necessary to consider the case law on the subject.

10. Seven Judge Bench of Hon"ble Supreme Court in *Moti Ram Deka v. G.M.N.E.F. Rlys.* (1), indicated that in a modern democratic state, the efficiency and incorruptibility of public administration is of such importance that it is essential to afford to civil servants adequate protection against capricious action from their superior authority. If a public servant is guilty of misconduct, he should no doubt be proceeded against promptly under the relevant disciplinary rules, subject of course to the protection under Article 311(2), but to maintain honesty, straightforwardness and efficiency in permanent civil servants, it was pointed out, from the point of view of the State, that they should enjoy a sense of security which alone can make them independent and truly efficient.

11. In *Delhi Transport Corporation v. D.T.C. Mazdoor Congress* (2), the Constitution Bench of Hon"ble Supreme Court observed that courts should take note of actualities of life that persons actuated to corrupt practices are capable to manoeuvre with higher echelons in diverse ways and also camouflage their activities by becoming sycophants or cronies to the superior officers. Sincere, honest and devoted subordinate officers are unlikely to lick the boots of the corrupt superior officer. They develop a sense of self-pride for their honest, integrity and apathy and inertia towards the corrupt and tend to undermine or show signs of disrespect or disregard towards them. Thereby, they not only become inconvenient to the corrupt officer but also stand as an impediment to the ongoing smooth symphony of corruption at a grave risk to their prospects in

career or even to their tenure of office. The term "efficiency" is an elusive and relative one to the adept capable to be applied in diverse circumstances. If a superior officer develops liking towards sycophant, though corrupt, he would tolerate him and find him to be efficient and pay encomium and corruption in such cases stand no impediment. When he finds a sincere, devoted and honest officer to be inconvenient, it is easy to cast him/her off by writing confidential reports with delightfully, vague language imputing to be "not upto the mark", "wanting public relations" etc. At times they may be termed to be "security risk" (to their activities). Thus, they spoil the career of the honest, sincere and devoted officers. Instances either way are galore in this regard. Therefore, one would be circumspect, pragmatic and realistic to these actualities of life while angulating constitutional validity of wide, arbitrary, uncanalised and unbridled discretionary power of dismissal vested in an appropriate authority either by a statute or a statutory rule."

12. In *State of U.P. v. Yamuna Shanker Misra* (3), their Lordships of the Supreme Court propounded thus:-

"The object of writing the confidential reports and making entries in them 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 endeavour 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 overall assessment of performance of the subordinate officer. It should be founded upon facts and 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 the knowledge of such officer. Before forming an opinion to make adverse entries in confidential reports, the reporting/reviewing officers should share the information which is not a part of the record, with the officer concerned. This amounts to an opportunity given to the erring/corrupt officer to correct the error of the judgment, conduct, behaviour, integrity or corrupt proclivity. If, despite giving such an opportunity, the officer fails to perform the duty or correct his conduct or improve himself, necessarily the same is to be recorded in the confidential report 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 standards of excellence in services constantly rises to higher levels and it becomes a successful tool to manage the services with officers of integrity, honesty, efficiency and devotion."

13. In *M.S. Bindra v. Union of India and Ors.* (4), their Lordships of the Supreme Court held as under :-

"Want of any material is almost equivalent to the next situation that from the available materials no reasonable man would reach such a conclusion. While evaluating the materials the authority should not altogether ignore the reputation in which the officer was held till recently. The maxim "nemo firut repente turpissimus" (no one becomes dishonest all of a sudden) is not unexceptional but still it is a salutary guideline to judge human conduct, particularly in the field of administrative law. The authorities should not keep the eye totally closed towards the overall estimation in which delinquent officer was held in the recent past by those who were supervising him earlier. To infer an officer as one of "doubtful integrity" it is not enough that doubt fringes on a mere hunch. That doubt should be of such a nature as would reasonably and consciously be entertainable by a reasonable man on the given material: Mere possibility is hardly sufficient to assume that it would have happened, there must be preponderance of probability for the reasonable man to entertain doubt regarding that possibility. Only when there is justification to ram an officer with the label "doubtful integrity"."

14. In *Union of India and Ors. v. E.G. Nambudiri* (5), their Lordships of the Supreme Court indicated thus:-

"10. There is no dispute that there is no rule or administrative order for recording reasons in rejecting a representation. In the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a government servant against the adverse entries the competent authority is not under any obligation to record reasons. But the competent authority has no licence to act arbitrarily, he must act in a fair and just manner. He is required to consider the questions raised by the government servant and examine the same, in the light of the comments made by the officer awarding the adverse entries and the officer countersigning the same. If the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons. In the absence of any statutory or administrative provision requiring the competent authority to record reasons or to communicate reasons, no exception can be taken to the order rejecting representation merely on the ground of absence of reasons. No order of an administrative authority communicating its decision is rendered illegal on the ground of absence of reasons *ex facie* and it is not open to the court to interfere with such orders merely on the ground of absence of any reasons. However, it does not mean that the administrative authority is at liberty to pass orders without there being any reasons for the same. In governmental functioning before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion. If the order as communicated to the government servant rejecting the representation does not contain any

reasons, the order cannot be held to be bad in law. If such an order is challenged in a court of law it is always open to the competent authority to place the reasons before the court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence aliunde before the court to justify its action."

15. In *Air Vice Marshal S.L. Chhabra v. U.O.I.* (6), it was held by the Supreme Court that-

"According to us, neither the High Court nor this court can moderate the appraisal and the grading of the appellant for a particular year. While exercising the power of judicial review, a court shall not venture to assess and appraise the merit or the grading of an officer." .

16. In *Anil Katiyar v. UOI* (7), their Lordships of the Supreme Court observed that "Tribunal was in error in going into the questions whether the appellant had been rightly graded as "outstanding" in the ACRS for the year 1990-91 and 1991-92. The observations of the Tribunal that out of the two "outstanding" gradings given to the appellant one "outstanding" grading does not flow from various parameters given and the reports entered therein, cannot therefore, be upheld and are accordingly set aside."

17. *State of M.P. v. Shri Srikant Chaphekar* (8), was the case wherein Hon"ble Supreme Court indicated that the Tribunal fell into patent error in substituting itself for the DPC. The remarks in the annual confidential report were based on the assessment of the work and conduct of the officer and Tribunal was wholly unjustified in reaching the conclusion that the remarks were vague and of general nature.

18. Five Judge Bench of the Hon"ble Supreme Court in *R.L. Butail v. U.O.I.* (9), propounded that whenever a Government servant is aggrieved by an adverse entry he has opportunity of making a representation. Such a representation would be considered by a higher authority, who, if satisfied would either amend, correct or even expunge a wrong entry, so that it is not as if an aggrieved Government servant is without remedy. Making of an adverse entry is thus not equivalent to imposition of a penalty which would necessitate an enquiry or the giving of a reasonable opportunity of being heard to the concerned Government servant.

19. Principles deduced from the aforequoted judicial pronouncements may be summarised thus-

(i) Making of an adverse entry in service record is not equivalent to imposition of a penalty which would necessitate an enquiry or the giving of a reasonable opportunity of being heard.

(ii) While exercising the power of judicial review the court shall not venture to assess or appraise the merit or the grading of an officer.

(iii) No order of an administrative authority communicating its decision, can be rendered illegal on the ground of absence of reasons and it is not open to the court to interfere with such orders merely on the ground of absence of any reasons.

(iv) If the order rejecting the representation is challenged in the court, it is always open to the competent authority to place the reasons before the court which may have led to the rejection of the representation.

(v) The authorities should not keep the eye totally closed towards the over all estimation in which delinquent officer was held in the recent past by those who were supervising him earlier.

(vi) The object of writing the confidential reports and making entries in them is to give an opportunity to a public servant to improve excellence.

(vii) 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 overall assessment of performance of the subordinate officer.

20. Bearing these principles in mind we proceed to consider the following questions that arise for our consideration-

(i) Do the adverse entries recorded in the service book of the petitioner suffer from the vice of malafides and arbitrariness ?

(ii) Whether in exercising the power of judicial review, we can reappraise the grading of the petitioner?

21. Although no statutory rules or guidelines have been drawn by the High Court laying down the procedure for recording the ACRs of the judicial officers, the District Judges, High Court Judges and the Chief Justice have been, from the date of establishment of the High Court, discharging the responsibility and trust to write confidential reports of the subordinate judicial officers objectively, fairly and dispassionately. It is not disputed that remarks recorded in the ACR of subordinate judicial officer have to be reviewed by the High Court Judge (Inspecting Judge) and accepted or modified by the Chief Justice. There are occasional inspections by the District Judge and the Inspecting Judge when the overall performance of a judicial officer is examined from close quarters and the Chief Justice finally adjudges the performance. In the present cases also the remarks were finally recorded by the Chief Justice. It was the report as Finally approved by the accepting authority that had been communicated to the petitioner. In such a situation, the allegations of bias or malafides as levelled by the petitioner do not appear to be well founded. The service record of the petitioner has been basically colourless and if different reporting and reviewing authorities repeatedly assessed the petitioner's overall performance as "below average", it cannot be said even prima facie that the adverse entries so recorded suffer from the vice of malafides and arbitrariness.

22. Still further it deserves mention that the petitioner had submitted representations against the various communications sent to him pointing out that he had been wrongly assessed as below average. These representations were rejected by the Committee of Judges headed by the Chief Justice. There is not even a suggestion of any malafides on the part of the Inspecting Judge and the Chief Justice. We have ourselves scanned the service record of the petitioner placed before us for our perusal and we find that reasons for rejecting the representations do exist.

23. For the reasons aforementioned we do not find any merit in the instant writ petitions and the same stand dismissed without any order as to costs.