

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATIONS NO 281 & 282 OF 2015

DISTRICT : RAIGAD

1) ORIGINAL APPLICATION NO. 281 OF 2015

Shri Avinash Balkrishna Mandale,)
Working as A.P.I, Special Branch,)
C.I.D, Mumbai. Having office at C.S.T,)
Station, Mumbai. R/o: Sai Sharan,)
Khanda Colony, New Panvel [W],)
Dist-Raigad.)
Add for service of notice :)
Shri A.V Bandiwadekar, advocate,)
Having office at 9, "Ram Kripa",)
Lt. Dilip Gupte Marg, Mahim,)
Mumbai 400 016.)...**Applicant**

Versus

The Commissioner of Police,)
Mumbai, having office at)
Mumbai Police Commissionerate,)
L.T Marg, Opp. Carwford Market, Fort,)
Mumbai 400001.)...**Respondent**

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2) ORIGINAL APPLICATION NO. 282 OF 2015

Shri Shirish Ramchandra Desai,)
 Working as P.I, Main Control Room)
 N the office of below name Res. No. 1)
 R/o: Bldg no 11/A, Tardeo Police)
 Compound, Mumbai-34.)
 Add for service of notice :)
 Shri A.V Bandiwadekar, advocate,)
 Having office at 9, "Ram Kripa",)
 Lt. Dilip Gupte Marg, Mahim,)
 Mumbai 400 016.)...**Applicant**

Versus

1. The Commissioner of Police,)
 Mumbai, having office at)
 Mumbai Police Commissionerate,)
 L.T Marg, Opp. Carwford Market,)
 Fort, Mumbai 400001.)
2. The Director General & Inspector,)
 General of Police, [M.S], Mumbai,)
 Having office at Old Council Hall,)
 S.B Marg, Mumbai 400 039.)...**Respondents**

Shri A.V Bandiwadekar, learned advocate for the Applicants.

Shri K.B Bhise, learned Presenting Officer for the Respondent.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 31.08.2016

ORDER

1. Heard Shri A.V Bandiwadekar, learned advocate for the Applicants and Shri K.B Bhise, learned Presenting Officer for the Respondents.

2. These Original Applications were heard together and are being disposed of by a common order as the issues to be decided are identical.


3. The Applicant in O.A no 281/2015 is working as Assistant Police Inspector, (API) under the control of the Respondent, while the Applicant in O.A no 282/2015 is working as Police Inspector (P.I) under the Respondent no. 1 (Commissioner of Police, Greater Mumbai). Both the Applicants are challenging the entries in their Annual Confidential Report (ACR) for the year 2012-13 (1.4.2012 to 31.3.2013), which were written by Assistant Commissioner of Police, Girgaon Division, Mumbai and reviewed by the Deputy Commissioner of Police, Zone-II, Mumbai.

4. Learned Counsel for the Applicants argued that both the Applicants are Gazetted Officers. They



were working at D.B Marg Police Station, Mumbai during the relevant period. The Applicants have submitted their self-Assessment Reports on 24.5.2013 / 16.5.2013 respectively in triplicate to the Reporting Officer viz. A.C.P, Girgaon. The Applicants ACRs for the year 2012-13 were rated as 'B'- average. The Applicants on 7.1.2014 and 10.1.2014 respectively represented to the Joint Commissioner of Police (Administration) against the adverse entries in their respective ACRs for the year 2012-13. The Applicant in O.A no 282/2015 also represented to the Respondent no. 2 (the Director General of Police, D.G.P) on 1.10.2014. The Applicants were informed on 13.2.2015 and 18.3.2015 respectively that their respective representations have been rejected

5. Learned Counsel for the Applicants contended that as Gazetted Officers their representations should have been submitted by the Commissioner of Police/D.G.P to the Government for final decision. This is provided in para 44 of the Schedule 'A' to the G.R dated 1.2.1996. The provision in para 35 of the Schedule-A to G.R dated 1.11.2011, which was issued in supersession of G.R dated 1.2.1996 has an identical provision. Learned Counsel for the Applicants argued that as per para 11 of the Schedule 'A' to G.R dated 1.11.2011, if any remarks about 'doubtful integrity' is to be recorded, the procedure prescribed in para 11 has to be followed. That procedure was not followed. Also, the



Applicants had obtained copies of their ACRs under the Right to Information Act (RTI). It is seen that the copies supplied under R.T.I do not match with the original records in the A.C.R files maintained by Commissioner of Police. It is due to the fact that Reporting Officer and Reviewing Officer have changed and replaced original ACRs of the Applicant for the year 2012-13. Learned Counsel for the Applicants argued that adverse remarks in the Applicant's ACRs for 2012-13 may be quashed and set aside along with the orders dated 13.2.2015 and 11.3.2015 (Applicant in O.A no 281/2015) and orders dated 18.3.2015 and 9.3.2015 (Applicant in O.A no 282/2015), which may also be quashed and set aside.

6. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the entries in the ACRs of 2012-13 of the Applicants were taken on the objective assessment of their performance. The Applicants were found wanting in investigation of various crimes and their conduct was found to be suspicious. These facts were clearly noted by the Reporting Officer in their ACRs and approved by the Reviewing Officer. As there was sufficient material available to support the adverse entries, the representations of the Applicants were rejected. Learned Presenting Officer argued that the entries in ACR reflect the assessment of superior officer about the performance of his subordinate officers. This Tribunal cannot substitute its own judgment over the



judgment of the departmental officers. Learned Presenting Officer stated that as per the G.R dated 26.4.2012, issued by the Home Department of the State Government, the decision on the adverse entries in ACRs of the Police Officers is required to be taken by the Appointing Authority as per para 35 of Schedule 'A' to G.R dated 1.11.2011. Accordingly, for the Applicants, whose appointing authority is the Director General of Police, that officer had taken the decision to reject the representation of the Applicants.

7. It is an admitted fact that the State Government had issued instructions regarding writing and preserving ACRs of State Government employees, including Police Personnel by issuing various G.Rs. Procedure to deal with representation against adverse entries in the Annual Confidential Reports (ACRs) was prescribed in para 44 of Schedule 'A' attached to G.R dated 1.2.1996. This G.R was superseded and another G.R dated 1.11.2011 was issued by the Government, which is admittedly applicable to all State Government employees, including the present Applicants. Two important provision to Schedule 'A' to this G.R dated 1.11.2011 are quoted below. Para 11 reads:-

“ शासकीय कर्मचा-यांची सचोटी, वारित्रय ही त्याच्या सेवेतील महत्त्वाची बाब असल्यामुळे या संबंधीच्या रकान्यात प्रतिकूल शेरे लिहिताना प्रतिवेदन अधिका-याने अत्यंत काळजी घेणे आवश्यक आहे. प्रतिकूल शेरे सिध्द करण्याइतपत निश्चित पुरावा



उपलब्ध असेल तरच असे शेरे गोपनीय अहवालामध्ये लिहावेत. जर प्रतिवेदन अधिकारी त्याच्या कनिष्ठ कर्मचा-याची सचोटी प्रमाणित करू शकत नसेल किंवा त्याविषयी त्याला काही शंका असली तर त्याने रकान्यात कोणताही शेरा न लिहिता तो कोरा ठेवावा. आपल्या शंकेबाबतचा सविस्तर अहवाल वरिष्ठ अधिका-याकडे सादर करावा व सचोटी संशयास्पद अहवाल सोबत जोडला आहे असे रकान्यात लिहावे. वरिष्ठ अधिका-याने सादर अहवालावर त्वरित कार्यवाही करावी. जर चौकशीअंती शासकीय कर्मचारी निर्दोष असल्याचे आढळून आले तर त्याची सचोटी प्रमाणित करण्यात यावी व तशी नोंद गोपनीय अहवालामध्ये घेण्यात यावी, व ते गोपनीय अहवालात लिहिण्यात यावे. जर त्याची सचोटी संशयास्पद असल्याचे कायम झाले तर ती गोष्ट देखील गोपनीय अहवालात नमूद करावी. ही कार्यवाही गोपनीय अहवाल ज्याच्या ताब्यात असताना त्यांनी वरिष्ठ अधिका-यांची मान्यता घेऊन करावी.”

Para 35 reads as below:-

“ प्रतिकूल शे-याविरुद्धचे तसचे पदोन्नतीच्या आड येणा-या शे-याविरुद्धचे अभिवेदन प्राप्त झाल्यावर विभाग प्रमुखांनी असे शेरे लिहिणा-या प्रतिवेदन/पुनर्विलोकन अधिका-यांचे अभिप्राय मागवावेत. त्या अनुषंगाने अभिवेदनातील मुद्यांचा सांगोपांग व साधकबाधक विचार करून व वस्तुनिष्ठ परिस्थिती पडताळून ते अभिवेदन अत्यंत काळजीपूर्वक तपासावे. अराजपत्रित कर्मचा-यांच्या बाबतीत विभाग प्रमुखांनी स्वतः निर्णय घ्यावा. राजपत्रित अधिका-यांच्या बाबतीत ते अभिवेदन प्रतिवेदन/पुनर्विलोकन अधिका-यांच्या अभिप्रायांच्या अनुषंगाने तपासून आपल्या शिफारसशीसह आपल्या प्रशासकीय विभागाकडे पाठवावे. प्रशासकीय विभागांनी ते तपासून शासनास सादर करावे. विभाग प्रमुखाने/शासनाने अभिवेदन मिळाल्यापासून साधारणतः ३ महिन्यांचे आत त्यावर खालीलपैकी एक निर्णय घ्यावा. ”

Para 11 is regarding entry in column 'integrity & character' of a Government servant, which is to be filled in column no. 12 of Part IV of the ACR form as per Schedule 'B' of G.R dated 1.1.2011. This entry, if the


integrity of an employee cannot be certified, has to be filled with the approval of the officer, who is senior to the officers, who is custodian of ACRs. It is seen that copies of ACRs of Police Inspectors and A.P.Is are kept in the office of the Commissioner of Police. As per letter dated 2.5.2012 issued by the Director General of Police, one copy each of the three copies of ACRs is to be kept by Reviewing Officer, Accepting Officer (संस्करण अधिकारी), who happens to be Commissioner of Police and D.G.P respectively. This letter is issued by D.G.P in compliance with para 27(b) of the G.R dated 1.11.2011. Para 27(b) of G.R dated 1.11.2011 reads:-

“ (ब) या प्रयोजनासाठी अधिकारी/ कर्मचारी यांच्या विविध प्रवर्गांसाठी संस्करण अधिकारी/कर्मचारी म्हणून विशिष्ट अधिकारी/ कर्मचारी यांना संबंधित प्रशासकीय विभागाने पदनामाने घोषित करावे. जेणेकरून, यामध्ये त्रुटी राहिल्यास त्याची नेमकी जबाबदारी निश्चित करता येईल.”

From para 24 of the aforesaid G.R it is seen that A.C.Rs of Group 'A' officers are to be kept in two copies only. However, for P.Is and A.P.Is, D.G.P's letter dated 2.5.2012 provides for 3 copies of the ACRs to be kept. One of the copies is to be kept by the Reviewing Officer. G.R dated 26.4.2012 issued by the Home Department speaks of Schedule 'B' to that Schedule. However, Schedule 'B' is actually not placed on record. It is, therefore, not clear who is the Accepting Authority for P.Is and A.P.Is. However, in the present case, para 11 of

G.R dated 1.11.2011 assumes importance as ACRs of both the Applicants record that their integrity was found to be doubtful. This para does not talk of 'Accepting Officer'. It talks of officer senior to the officer, who keeps the record of the ACRs. It is already stated by the Respondents that as per letter dated 2.5.2012, one copy of ACR of P.S.I, A.P.I and P.I is kept by Director General of Police. In my view, the adverse entry regarding integrity of these officers can be entered only with the approval of the next higher authority, i.e. the State Government. To show that such approval was obtained, an entry to that effect will be required. In any case the decision to write adverse entry in this column cannot be let to Reporting or Reviewing Officers. In column no. 12 of ACRs of the Applicants for 2012-13, entries have been made by the Reporting Officer, who is not authorized to make such adverse entries about integrity. These entries are unauthorized and cannot be sustained.

8. Coming to other adverse entries including the overall grading, para 35, of G.R dated 1.11.2011, provides that on the representation against entries in ACRs which may adversely affect promotional prospects, decision has to be taken by the Head of Department, in case of non-gazetted employees, while for a gazetted officer, the decision is required to be taken at the Government level. In the present case, A.P.I is a non-gazetted officer, as per the Maharashtra Civil Services



(Revised Pay) Rules, 2009, while P.I is a gazetted officer. Though the Applicant in O.A no 281/2015 claims that as per exception to Rule 2(20) of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981, a Group 'B' officer, who is appointed by Head of Department or Head of office are to be treated as a Gazetted Government servant. So A.P.I is appointed by the D.G.P, who is Head of Department, ~~he~~ is to be treated as a Gazetted Officer. This claim has not been accepted. It is seen that this issue does not need any adjudication as the Maharashtra Civil Services (Revised Pay) Rules, 2009 clearly mention that A.P.I is a non-gazetted post. There is no dispute about the fact that the post of Police Inspector is a Gazetted post. As such, representation against adverse entries, which may adversely affect promotional prospect of an A.P.I are required to be decided by the Head of Department, i.e. D.G.P, while for Police Inspector, the representation has to be decided by the State Government. It is an admitted fact that overall grading of 'B' (average) and other adverse remarks will adversely affect the promotional prospects of officers of the level of A.P.I (next promotion to the post of P.I, a Group 'A' post) and P.I (next promotion to the post of A.C.P). It was, therefore, necessary to consider the representations of the Applicants at the level of D.G.P/State Government level. However that was not done. In case of the Applicant in O.A no 281/2015, his representation was rejected at the level of the

Commissioner of Police, while in the case of the Applicant in O.A no 282/2015, the representation was rejected at the level of D.G.P. This is in violation of provision of para 35 of the G.R dated 1.11.2011.

9. Now the issue of the alleged changes in ACRs of the Applicants for the year 2012-13 is examined. Para 26 of the G.R dated 1.11.2013 reads as follows:-

२६. शासकीय कर्मचा-यांचे/अधिका-यांचे गोपनीय अहवाल लिहिणे व जतन करणे यासाठी वेळापत्रक सोबत (सहपत्र-२) जोडले असून त्यानुसार त्यावर कार्यवाही आवश्यक राहिल. पुनर्विलोकन अधिका-याने अहवाल पुनर्विलोकित करून दिनांक १५ मे च्या आत संस्करणासाठी संबंधित अधिका-याकडे पाठवावेत. संस्करणाच्या वेळी जर ते अहवाल वेळोवेळी दिलेल्या सूचनांनुसार काळजीपूर्वक व तपशीलवार लिहिलेले नाहीत, असे आढळले तर अहवाल संबंधित प्रतिवेदन/पुनर्विलोकन अधिका-यांकडे सुधारून लिहिण्यासाठी परत पाठवावेत. त्याचप्रमाणे गोपनीय अहवाल पुनर्विलोकन झाल्यानंतर त्यामध्ये कोणत्याही स्तरावर भर टाकता येणार नाही वा ते कमी करण्यात येणार नाही, यावर संस्करण अधिका-याने काळजीपूर्वक लक्ष ठेवावे.”

It is clearly mentioned that no changes in ACR can be made, once it is written and reviewed. In the present case, learned Presenting Officer has made available the ACR Dossiers of the Applicants kept in the office of Commissioner of Police, Mumbai for my perusal. The Applicant in O.A no 281/2015 has obtained a copy of his ACR for the year 2012-13 under R.T.I, which is at Exhibit-A, page 27 of the Paper Book. It is seen that his Self Assessment in Part-3 is dated 24.5.2013. It is accepted by the Reporting Officer on the same date on

24.5.2013. The Applicant has produced 'Original Copies' received by him under R.T.I. It is seen that three copies of ACRs have different entries, e.g in column (8), in one copy grading is 'Good', while in two other copies it is 'Average'. In one copy, at column no. 1, it is recorded 'संगणकीय ज्ञान आहे' while in two other copies, that columns left blank. The column 12, the earlier entry is scored off and 'अप्रमाणिक' is entered in all the three copies. The Reporting Officer has signed on 23.5.2013, while self assessment is dated 24.5.2013. The Reviewing officer has not put any date on which he reviewed the ACR. All these facts, leave a doubt that the entries in all the three copies were not written at the same time. At least, it can be said that the ACR were written in a most casual and careless manner.

10. As regards the Applicant in O.A no 282/2015, there is no self assessment by the Applicant himself in the copy of ACR for 2012-13 kept in the office of the Commissioner of Police, Mumbai. However, in the copy of ACR at Exhibit 'A', (page 24 of the Paper Book), it is mentioned that some paper was affixed. Part 3, Self Assessment of the Applicant, is written on 15.4.2013 which is accepted by the Reporting Officer on 16.5.2013. Now, this discrepancy in the copy given to the Applicant which is at page 24-18 of the copy book and other copy at page 28-31 of the Paper Book is not explained by the Respondents. It is quite clear that the Original ACR form

of the Applicant was later changed and a different copy of ACR was kept in the record of the Respondent no. 1. This is in gross violation of all norms, and the provision of G.R dated 1.11.2011. It is quite clear that ACRs of the Applicants for the year 2012-13 were tampered with. Provisions of paras 11, 26 and 35 have been grossly violated while writing their ACRs. The Applicants are, therefore, eligible to get reliefs sought by them in these Original Applications.

11. In O.A no 281/2015, adverse remarks dated 23.5.2013 in the ACR of the Applicant for 2012-13 are ordered to be expunged. Orders dated 13.2.2015 and 11.3.2015 are also quashed and set aside. In O.A no 282/2015, adverse remarks dated 16.5.2013 in the ACR of 2012-13 of the Applicant are ordered to be expunged. Orders dated 18.3.2015 and 9.3.2015 are also quashed and set aside. These Original Applications are allowed accordingly with no order as to costs.

Sd/-
(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 31.08.2016
Dictation taken by : A.K. Nair.