

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1048 OF 2018

DISTRICT : MUMBAI

Shri Vijay Maruti Oulkar.)
Age : 59 Yrs, Occu.: Nil, Retired as Senior)
Police Inspector, Aarey Police Station,)
Goregaon (E), Mumbai and R/o. 206,)
Mitra Samuh, Sector-3, Ulwe Node,)
Tal.: Panvel, District : Raigad.)...**Applicant**

Versus

1. The Commissioner of Police, Mumbai))
Through Joint Commissioner of)
Police [Administration], Having office))
at Mumbai Police Commissionerate)
L.T. Marg, Opp. Crawford Market,)
Fort, Mumbai – 400 001.)
2. The State of Maharashtra.))
Through Principal Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
3. The Director General & Inspector))
General of Police (M.S.), Having)
Office at Old Council Hall, Shahid)
Bhagatsingh Marg, Mumbai – 39.)...**Respondents**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 30.03.2021

JUDGMENT

1. The Applicant has challenged the communication dated 08.08.2014 issued by Respondent No.1 – Commissioner of Police, Mumbai as well as communication dated 09.08.2018 issued by Respondent No.2 – Government of Maharashtra thereby rejecting the representation made by the Applicant to expunge adverse entries made in ACRs of the year 2011-2012 and for upgradation of ACRs for the year 2013-2014, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this O.A. are as under :-

The Applicant was serving as Senior Police Inspector, Charkop Police Station, Mumbai. He stands retired on 31.07.2017. While in serving, the ACRs of 2011-2012 were written by Reporting Authority i.e. Assistant Police Commissioner, Malvani Division and Reviewing Authority was Deputy Commissioner of Police, Mumbai. While writing ACRs of 2011-2012, the Reporting Officer has graded his General Assessment as 'B-' (Average) and the same was confirmed by Reviewing Authority. It was communicated to the Applicant on 27.06.2012. The Applicant made representation belatedly on 30.09.2013 as well as 10.07.2014 to Respondent No.1. However, it was rejected by Respondent No.1 by communication dated 08.08.2014. He then again made representation for review by his representation dated 26.12.2015 which seems to have been forwarded to the Government. However, the Government rejected it by communication dated 09.08.2018 which is common communication in respect of ACR for the year 2011-2012 as well as ACR for the year 2013-14.

3. Insofar as the ACRs of 2013-2014 are concerned, the Reporting Authority graded General Assessment of the Applicant as 'B' (Good). The Reviewing Authority also confirmed the same and it was accordingly communicated to the Applicant. The Applicant has made representation

on 30.06.2014 contending that he should have been graded 'B+'. He also raised grievance in representation that in the matter of his colleague Shri Kolhe, he was graded 'B+' though he performed better than Shri Kolhe. However, the Additional Commissioner of Police by his letter dated 11.09.2014 asked the Applicant to make representation addressed to Director General of Police, Mumbai. Accordingly, he made fresh representation dated 20.09.2014 to Director General of Police, Mumbai. Indeed, the Respondent No.1 was the Competent Authority to decide the representation of any grievance in respect of ACR. The learned P.O. also could not point out any rule that representation for upgradation was required to be made before Director General of Police. Later, the Respondent No.1 - Commissioner of Police himself rejected the representation made by the Applicant for upgradation of ACR by communication dated 17.12.2014. The Applicant then requested to review the decision by his representation dated 26.12.2015 and simultaneously, made representation to the Government on 17.02.2016. However, the Respondent No.2 - Government of Maharashtra by common communication dated 09.08.2018 rejected the review applications in respect of ACRs of 2011-2012 as well as ACRs of 2013-2014.

4. Thus, in the present case, there are two issues. First issue pertains to ACRs of 2011-2012, which was graded as 'B-' and the representation against the same has been turned down. The second issue pertains to ACRs of 2013-2014 in which the Applicant was graded as 'B' (Good) and the representation made by the Applicant for upgradation, the same as 'B+' (Positively Good) has been turned down.

5. In respect of ACRs of 2011-2012, Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to contend that the Reporting Officer has made adverse remark and graded the Applicant's performance as 'B-' without complying the provisions of G.R. dated 01.11.2011, particularly Clause Nos.10 and 11 of the said G.R. He has further pointed out that the Respondents has not substantiated the adverse entries taken in the

ACRs by producing/filing ephemeral roll or any other relevant contemporary record. He has further pointed out that detailed representation made by the Applicant was not at all considered and his request to expunge adverse entries has been rejected without assigning any reason simply stating that it is rejected. In this behalf, indeed, he further referred to one appreciation letter issued by Shri Mahesh Patil dated 29.11.2012 who reviewed the Applicant's ACRs for the year 2011-2012 as 'B-'. According to him, this appreciation letter should have been considered while considering the representation made by him to expunge adverse entries in ACR of 2011-2012.

6. As regard ACR of 2013-2014, the learned Advocate for the Applicant submits that the Applicant should have been graded as 'B+', since ACRs of 2012-2013, 2014-2015 and 2016-2017 are 'B+'. As such, according to him, considering the over-all performance of the Applicant, his ACRs for the year 2013-2014 should have been graded as 'B+', but the representation made by the Applicant in this behalf is also turned down without assigning any reason. On this line of submission, he submits that the communication dated 08.08.2014 as well as 09.08.2018 is unsustainable in law and to expunge ACRs of the year 2011-2012 and to upgrade the ACRs of 2013-2014.

7. Per contra, Shri A.J. Chougule, learned Presenting Officer has pointed out that though the ACRs of 2011-2012 was communicated to the Applicant on 27.06.2012, he failed to make representation within 30 days, as specifically provided in Clause No.28 of the G.R. dated 01.11.2011. He made representation after the lapse of 15 months, which was not in consonance with G.R. dated 01.11.2011, and therefore, the same is rightly rejected by Respondent No.1 – Commissioner of Police, Mumbai. As regard adverse entries, he has pointed out that during the period of ACRs, the Applicant was under suspension for alleged misconduct and he was also given punishment of censure. He, therefore, submits that considering the performance of the Applicant, the Reviewing

Authority has rightly considered the relevant aspects and rightly graded the Applicant as 'B-'. As regard ACRs of 2013-2014, he submits that the gradation of 'B' was given considering the performance of the Applicant and only because ACRs of some other period are 'B+', that itself would not entitle the Applicant to claim 'B+' gradation in the year 2013-2014. On this line of submission, he submits that the challenge to the communication of rejection of representation is devoid of merit and prayed to dismiss the O.A.

8. Needless to mention that writing of ACRs is an administrative act, which is always based upon subjective satisfaction of the Reporting Officer which needs to be done in fair and objective manner. The Reporting Officer should write ACR impartially without any prejudice and must eschew making vague remarks. Indeed, detailed instructions are laid down in G.R. dated 01.11.2011. Insofar as interference by Tribunal in the matter of ACR is concerned, the interference is permissible if the Applicant make out a case of bias or unfair treatment. The Tribunal need not enter into arena of factual assessment by the Reporting Officer unless there is substantial record to question the assessment made by Reporting Officer.

9. In the present case, the Applicant has questioned ACRs of 2011-2012 and 2013-2014. In ACRs of 2011-2012, he was graded 'B-', but the representation to expunge the adverse remarks therein are rejected. Whereas, in ACRs of 2013-2014, the Applicant was graded 'B+' and his representation for upgradation as 'B+' is rejected. True, the Applicant stands retired on 31.07.2017, still he persuaded the remedy.

10. In ACRs of 2011-2012, following remarks were made by Reporting Authority.

“Industry and application	...	Average
Capacity to get work done by subordinate	...	Average

Relations with colleagues & public	...	Indifferent
General Intelligence	...	Good
Administrative ability	...	Average
Attitude towards Backward Class	...	Sympathetic
Integrity and character	...	Doubtful
Fitness for promotion	...	Unfit
General Assessment	...	कामचुकार, रुग्ण निवेदन करण्याची सवय, कागदपत्रांचा निपटारा वेळीस करीत नाहीत.
Grading		'B-' [Average]"

11. Dr. Mahesh Patil, who was Reviewing Authority agreed with the remarks given by Reporting Authority and accordingly, it was admittedly communicated to the Applicant on 27.06.2012.

12. As stated above, the Government by G.R. dated 01.11.2011 has issued exhaustive instructions about the manner of writing ACRs, its communication and time limit for making representation, etc. As per Clause 28 of the said G.R, the Applicant was required to make representation within 30 days from the date of communication. It is specifically provided that, if representation is made after lapse of 30 days, it should not be entertained. In the present case, admittedly, the Applicant did not make any representation within 30 days from the communication of ACRs of 2011-2012. He made representation on 30.09.2013 after lapse of 15 months. He again sent reminder belatedly on 10.07.2014. The Respondent No.1 – Commissioner of Police rejected the representation by order dated 08.08.2014 on the ground that the representation was not made within time in terms of G.R. What is material to note that the Applicant did not challenge the communication dated 08.08.2014 within the period of limitation by filing O.A. before the Tribunal. Instead of availing legal remedy by filing O.A, he made application for review to Respondent No.1 on 26.12.2015. The learned Advocate for the Applicant could not point out any statutory provision for

review. Thus, once Respondent No.1 has rejected the representation on the ground that it was not filed within the period of limitation, the Applicant ought to have challenged the communication dated 08.08.2014 by filing O.A. in the Tribunal. However, he made application for review, which is not provided under any Rules.

13. At this juncture, it would be apposite to reproduce Section 21 of Administrative Tribunals Act, 1985 which as under :-

“21. Limitation.- (1) A Tribunal shall not admit an application.-

- (a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made :
- (b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

14. Thus, even assuming that the Applicant was under *bonafide* belief of maintainability of Review Application, he could have filed O.A. within a period of total 18 months as contemplated under Section 21(1)(b) of Administrative Tribunals Act, 1985. However, he has filed O.A. On 29.11.2018 which is clearly barred by limitation.

15. Indeed, cause of action for filing O.A. accrued to the Applicant on 08.08.2014 when Respondent No.1 rejected the representation of the Applicant. However, he failed to avail any such legal remedy and instead of availing legal remedy, made application for review belatedly on 26.12.2015. Thereafter also, he did not file O.A. within the period of 18 months, as contemplated under Section 21(1)(b) of Administrative Tribunals Act, 1985.

16. True, in impugned communication dated 09.08.2018 issued by the Government, there is reference of rejection of representation in respect of 2011-2012 in addition to rejection of representation in respect of 2013.-2014. It seems that the application for review dated 26.12.2015 was forwarded to the Government, as seen from order dated 09.08.2018, and thereafter, the Applicant was communicated that his representation dated 26.12.2015 was also rejected. In this behalf needless to mention that making of such belated representations and order thereon would not extend the period of limitation and would not revive the cause of action accrued to the Applicant on 08.08.2014 itself. Therefore, the submission advanced by the learned Advocate for the Applicant that in view of communication by the Government dated 09.08.2018, O.A. is within limitation holds no water.

17. Thus, the representation made by the Applicant against communication of ACRs of 2011-2012 itself, was not within the period of limitation of 30 days. He made representation after 15 months which was quite belated. In other words, the Applicant seems to have acquiesced, but later after expiration of period of limitation filed representation. This being the position, there is no escape from the conclusion that Applicant's O.A. to expunge adverse remarks of the ACRs of 2011-2012 itself, is barred by limitation and on this point alone, the challenge to ACRs of 2011-2012 fails.

18. Apart, there is nothing to show that Reporting Officer had any bias against the Applicant or there is no fair assessment of his performance. The Reporting Officer has specifically noted tendency of the Applicant to avoid work, to sit over the matter to avail leave frequently, etc. He also noted that the Applicant was suspended on 16.11.2011 and he was also censured. True, later punishment of censure was cancelled in revision by order dated 23.12.2015. However, the fact remains that suspension and punishment of censure were not the only ground for writing adverse entries in ACRs. The submission advanced by the learned Advocate for

the Applicant that Reporting Authority was influenced because of suspension and censure of the Applicant holds no water. In addition to it, the Reporting Authority categorically observed his general performance and graded him 'B-'. On the representation of the Applicant, the remarks of Shri Mahesh Patil, the then Reviewing Authority were called. In his remarks, letter dated 30.06.2016, he has specifically pointed out the lapses on the part of Applicant for which Memos were given to the Applicant on 17.10.2011 and 26.06.2012. The Reviewing Authority has also noted the tendency of the Applicant to avail leave frequently on medical ground and observed that he has no capacity to get the work done. There is also reference of Applicant's failure to remain absent in the meeting called by Deputy Commissioner of Police on 17.10.2011. Suffice to say, the grading of the Applicant as 'B-' for 2011-2012 cannot be said unfounded.

19. Insofar as letter of appreciation dated 29.11.2012 (Page No.46 of P.B.) is concerned, it has been issued by Dr. Mahesh Patil appreciating the work done by the Applicant in the matter of Mahila Daksha Samiti. Thus, it pertained to participation of the Applicant in Mahila Daksha Samiti only. This one letter of appreciation will not outweigh the entries taken by Dr. Mahesh Patil in the ACRs of the Applicant.

20. As regard adverse entries into column of 'Integrity', undoubtedly, there is no compliance of Clause No.11 of G.R. dated 01.11.2011 which *inter-alia* provides that the adverse entry in the column of 'Integrity of a Government servant' should not be taken unless there conclusive material to that effect. In the present case, the Respondents have not produced any such material to substantiate that the integrity of the Applicant was doubtful. However, this aspect is only of academic discussion since O.A. itself is barred by limitation and consequently, no such direction to expunge the same can be issued.

21. Now, turning to ACRs of 2013-2014, the Applicant was graded 'B' (Good), but he made representation for upgradation. His representation was rejected by Respondent No.1 – Commissioner of Police on 17.12.2014. Here, again, the Applicant did not avail the legal remedy by challenging the said communication by filing O.A. Instead of it, he made Review Application before Respondent No.1 – Commissioner of Police on 26.12.2015 which seems to have been forwarded to the Government and the same was rejected by common communication dated 09.08.2018. Here, again, his application for review would not extend the period of limitation, since no provision for filing review is forthcoming. Even assuming that he was persuading the remedy of review under *bonafide* belief, in that event also, he was required to file the O.A. within total period of 18 months, as contemplated under Section 21(1)(b) of Administrative Tribunals Act, 1985. However, he did not avail the legal remedy within a period of limitation and filed the O.A. only after its rejection by the Government by communication dated 09.08.2018. As stated above, this communication dated 09.08.2018 will not revive cause of action and will not extend the period of limitation. The Respondent No.1 had rejected the representation on 17.12.2014, which was the date of accrual of cause of action to file O.A. within a period of one year, as provided under Section 21 of Administrative Tribunals Act, 1985.

22. Needless to mention, in the matter of writing of ACRs, there cannot be comparison of ACRs with colleague Shri Kolhe. The ACRs are written on the basis of assessment of individual Government servant. Therefore, only because ACRs of Shri Kolhe was 'B+', that *ipso-facto* cannot be the ground for Applicant to claim gradation as 'B+'. True, the ACRs of the Applicant of 2012-2013, 2014-2015 and 2016-2017 has written as 'B+'. However, this aspect is of little importance in the present O.A, since O.A. itself is barred by limitation as discussed above. Apart, that itself cannot be the ground to upgrade the ACRs of the Applicant as 'B+' for the year 2013-2014, since it is based on the performance of the year 2013-2014.

23. As stated above, the legal position is fairly settled that writing of ACRs is an administrative act based upon the subjective satisfaction of the authority, which of course need be carried out in objective manner and interference by the Tribunal is permissible in limited scenario where assessment is shown unfair or outcome of bias. In the present case, there are absolutely no allegations of bias against Reporting Authority or Reviewing Authority. Suffice to say, the challenge to the impugned communication holds no water. The O.A. is barred by limitation.

24. The totality of aforesaid discussion leads me to conclude that no interference in impugned communication is required and O.A. deserves to be dismissed. Hence, the following order.

ORDER

The Original Application stands dismissed with no order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 30.03.2021
Dictation taken by :
S.K. Wamanse.

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