

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.213 OF 2017**

**DISTRICT : SOLAPUR**

Smt. Aparna Sudhakar Gitay. )  
Age : 35 Yrs., Working as Deputy )  
Commissioner of Police, Solapur City and )  
R/at "Avishkar Bungalow", RDC Corner, )  
Gandhi Nagar, Vikas Nagar, Solapur. )...**Applicant**

**Versus**

1. The Director General and Inspector )  
General of Police, M.S, Mumbai and )  
having office at Old Council Hall, )  
Shahid Bhagatsingh Marg, )  
Mumbai - 400 039. )

2. The State of Maharashtra. )  
Through Addl. Chief Secretary, )  
Home Department, Mantralaya, )  
Mumbai - 400 032. )...**Respondents**

**Mr. A.V. Bandiwadekar, Advocate for Applicant.**

**Ms. S.P. Manchekar, Chief Presenting Officer for Respondents.**

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

**DATE : 02.02.2021**

**JUDGMENT**

1. The Applicant has invoked the jurisdiction of the Tribunal under Section 19 of Administrative Tribunals Act, 1985 challenging the adverse entries made in her ACR for the year 2010-2011, particularly for the period from 10.08.2010 to 31.03.2011.

2. The Applicant is lady Police Officer, who joined as Deputy Superintendent of Police (direct recruit) in 2007. She joined the post of Sub-Divisional Police Officer, Vaijapur, District Aurangabad (Rural) on 05.03.2010. Her ACRs for the period 2008/2009 and 2009-2010 were 'Good', for the year 2011-2012, 2012-2013 and 2013-2014 were "Positively Good". However, in so far as the ACR for the period 2010/2011, particularly written for the period from 02.08.2010 to 31.03.2011 were communicated to her as adverse by communication dated 24.08.2011. Shri Manoj Lohia, the then Superintendent of Police was Reporting Officer and Special Inspector General Range Aurangabad was reviewing authority. On receipt of communication of ACR, she had submitted detailed representation running into 279 pages to the Respondent No.2, but the same was not decided for more than three years and belatedly, it came to be rejected by order dated 16.03.2016 simply informing her that her representation is rejected without assigning any reason. The Applicant has, therefore, challenged the communication dated 16.03.2016 to expunge the adverse remarks written in her ACR.

3. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail impugned communication dated 16.03.2016 on following grounds :-

(i) Non-compliance of Circular dated 01.02.1996 which is re-affirmed by Circular dated 10.11.2016 whereby detailed instructions in the manner of writing ACR, time limit for writing ACR, its communication, time limit for making representation as well as time limit for decision on the representation, etc. are exhaustively laid down. According to the learned Advocate for the Applicant, due to non-compliance of time limit, serious prejudice has been caused to the Applicant, as it resulted in denial of promotion at appropriate time.

(ii) No ephemeral roll was maintained by Shri Manoj Lohia, Reporting Officer, but he prepared anti-dated note dated 14.04.2011 by making interpolation and additional in original ACR while re-submitting ACR to Reviewing Officer Shri Sanjay Kumar, Special Inspector General of Police, Aurangabad.

(iii) Note dated 14.04.2011 doubting integrity of the Applicant on the basis of which adverse entry was made in ACR was not supplied to the Applicant along with copy of ACR, so as to enable her to make appropriate representation and there is breach of principles of natural justice.

(iv) Applicant had submitted detailed representation running into 279 pages against adverse entries, but it was not even looked into by Respondent No.1 and it has been simply rejected by single line order of rejection without giving any reasons, which shows total non-application of mind and arbitrariness.

(v) All ACRs except in question are 'Good' and 'Positively Good', which clearly demonstrates that the Applicant is good Police Officer whose performance could not have been dropped for one year, so as to write adverse remark against her.

4. Per contra, Ms. S.P. Manchekar, learned Chief Presenting Officer submits that the entries made in ACR is outcome of objective assessment of Reporting Officer, who had an opportunity to oversee the performance of the Applicant and he had no reason or bias to make incorrect entries in the ACR. She has further pointed out that during the period of said ACR, various Memos were given to the Applicant pointing out deficiencies in her performance, and therefore, entries taken in ACR cannot be said arbitrary or illegal. She tried to contend that note dated 14.04.2011 was remained to be appended to ACR inadvertently and the allegation that it was prepared antedated later on, is totally incorrect. However, she fairly concedes that the said note dated 14.04.2011 was not supplied to the

Applicant along with ACR, but sought to contend that since the Applicant had received the same availing the provisions of Right to Information Act and after getting the same only, she had made representation, there is no question of breach of principles of natural justice. In respect of non-reasoned order of rejection of representation, she fairly concedes that not a single reason is recorded, but sought to justify the impugned order contending that considering remark of Reporting Officer as well as Reviewing Authority obtained on the representation, the Respondent No.1 – Government did not find any substance in representation, and therefore, not recording of reason is inconsequential. As regard delay in deciding representation, she submits that the record was destroyed in fire and was required to be reconstructed. On this line of submission, she submits that the challenge to the impugned order is devoid of merit.

5. It is fairly settled that writing of ACR is an administrative act based upon subject to satisfaction of the Reporting Officer, which must be made on objective fair assessment. The Reporting Officer should write ACR impartially without any prejudice and must eschew making vague remark. The Reporting Officer is also required to maintain ephemeral roll of an employee by taking entries of the deficiencies as well as shortcomings he noticed and ACR is always to be written on the basis of such ephemeral roll. True, the Tribunal or judicial forum need not enter the arena of appreciation of factual elements. However, it must be shown that the ACR is written in fair and transparent manner and where adverse entries are made, it is supported by sufficient material. It is more so where adverse entry about integrity of an employee is made in ACR. Indeed, detailed instructions are given in G.R. dated 01.02.1996 as to how to write and maintain ACR.

6. **As to Ground No. (i) :-**

As stated above, the G.R. dated 01.02.1996 which has been reaffirmed by Circular dated 10.11.2006 and consolidated G.R. dated

01.11.2011 laid down detailed instructions. Para Nos.8, 9, 10, 11 and 44 of G.R. dated 01.02.1996, are material in this behalf, which are as follows :-

८. प्रतिवेदन अधिका-याने गोपनीय अहवालामध्ये आपले शेरे वस्तूनिष्ठपणे आणि निःसंदिग्ध शब्दात लिहावेत. वैयक्तिक व मोघम स्वरूपाचे शेरे गोपनीय अहवालामध्ये लिहण्याचे टाळावे.

९. पुनर्विलोकन अधिका-यांनी परिशिष्ट (भाग-९) मध्ये आपले अभिप्राय लिहण्यापूर्वी स्वतःचे स्वतंत्र निश्चित मत बनविणे आवश्यक आहे. आवश्यकता वाटल्यास त्यांनी प्रतिकूल शे-यांच्या संदर्भात प्रतिवेदन अधिका-यांबरोबर चर्चा करावी व नंतरच आपले अभिप्राय लिहावेत. प्रतिवेदन अधिका-यांच्या अभिप्रायाशी सहमत नसल्यास त्याची कारणे देणे आवश्यक आहे.

१०. गोपनीय अहवालामध्ये प्रतिवेदन कालावधीमधील कर्मचा-यांच्या /अधिका-यांच्या कार्यालयीन कामातून दिसून आलेल्या कार्यक्षमतेचे व चारित्र्याचे खरेखुरे व वस्तूनिष्ठ मूल्यमापन केले असले पाहिजे. कर्मचारी / अधिकारी यांच्या कामाचा सर्वसाधारण आढावा घेणे शक्य व्हावे म्हणून प्रतिवेदन अधिका-यांनी त्यांनी ज्यांचा गोपनीय अहवाल लिहावयाचा आहे, अशा प्रत्येक कर्मचारी/अधिका-यांच्या संदर्भात कच्चे टिपण (Ephemeral Roll) ठेवावे. हे टिपण परिशिष्ट - क मध्ये विहित केलेल्या तक्त्यात ठेवण्यात यावे. या टिपण्यात कर्मचारी/अधिकारी यांच्या बदल वेळोवेळी आढळून आलेल्या उल्लेखनीय गोष्टी किंवा प्रतिकूल गोष्टी यांची संदर्भासहीत नोंद घ्यावी. गोपनीय अहवाल लिहीताना या टिपणीतील नोंदीच्या आधारे त्यामध्ये शेरे लिहण्यात यावेत.

११. शासकीय कर्मचा-यांची सचोटी, चारित्र ही त्याच्या सेवेतील महत्त्वाची बाब असल्यामुळे या संबंधीच्या रकान्यात प्रतिकूल शेरे लिहिताना प्रतिवेदन अधिका-याने अत्यंत काळजी घेणे आवश्यक आहे. प्रतिकूल शेरे सिध्द करण्या इतपत निश्चित पुरावा उपलब्ध असेल तरच असे शेरे गोपनीय अहवालामध्ये लिहावेत. जर प्रतिवेदन अधिकारी त्याच्या कनिष्ठ अधिका-याची सचोटी प्रमाणित करू शकत नसेल किंवा त्याविषयी त्याला काही शंका असली तर त्याने रकान्यात कोणताही शेरा न लिहिता तो कोरा ठेवावा व आपल्या शंकेबाबतचा सविस्तर अहवाल वरिष्ठ अधिका-याकडे सादर करावा व सचोटी संशयास्पद अहवाल सोबत जोडला आहे असे रकान्यात लिहावे. वरिष्ठ अधिका-याने सादर अहवालावर त्वरीत कार्यवाही करावी. जर चौकशी अंती शासकीय कर्मचारी निर्दोष असल्याचे आढळून आले तर त्याची सचोटी प्रमाणित करण्यात यावी व ते गोपनीय अहवालात लिहण्यात यावे. जर त्याची सचोटी संशयास्पद असल्याचे कायम झाले तर ती गोष्ट देखील गोपनीय अहवालात नमूद करावी. ही कार्यवाही गोपनीय अहवाल ज्यांच्या ताब्यात असतात त्यांनी वरिष्ठ अधिका-यांची मान्यता घेवुन करावी.

४४. प्रतिकूल शे-या विरुद्धचे अभिवेदन प्राप्त झाल्यावर विभागप्रमुखांनी प्रतिकूल शेरे लिहिणा-या प्रतिवेदन / पुनर्विलोकन अधिका-यांचे अभिप्राय मागवावेत व त्याअनुषंगाने अभिवेदनातील मुद्दयांचा सांगोपांग व साधकबाधक विचार करून व वस्तूनिष्ठ परिस्थिती पडताळून ते अभिवेदन अत्यंत काळजीपूर्वक तपासावे. अराजपत्रित कर्मचा-यांच्या बाबतीत विभागप्रमुखांनी स्वतः निर्णय घ्यावा व राजपत्रित अधिका-यांच्या बाबतीत ते अभिवेदन प्रतिवेदन /पुनर्विलोकन अधिका-यांच्या अभिप्रायांच्या अनुषंगाने तपासून आपल्या शिफारशीसह आपल्या प्रशासकीय विभागाकडे पाठवावे. प्रशासकीय विभागांनी ते तपासून शासनास सादर करावे. विभागप्रमुखांनी / शासनाने अभिवेदन मिळाल्यापासून साधारणतः ३ महिन्यांचे आत त्यावर खालीलपैकी एक निर्णय घ्यावा :-

- (अ) अभिवेदन फेटाळणे (To reject the representation)
- (ब) प्रतिकूल शे-यांची तीव्रता कमी करणे (To turn down the adverse remarks)
- (क) अभिवेदन स्विकारून प्रतिकूल शेरे काढून टाकणे (To accept the representation and to expunge the adverse remarks)
- (ड) अभिवेदन अंशतः स्विकारून काही प्रतिकूल शेरे काढून टाकणे (To accept the representation partially and to remove some of the adverse remarks)

7. The adverse entries of ACR were communicated to the Applicant by Respondent No.1 – Director General and Inspector General of Police by letter dated 24.08.2011 (Page No.22 of P.B.) which was received by the Applicant on 06.09.2011 and on receipt of it, within two months, she

made detailed representation running into 279 pages on 31.10.2011. As such, the representation was made within two months from the date of receipt of communication as required by Para No.42 of G.R. dated 01.02.1996. Whereas, as per Para 44 of the said G.R, the representation was required to be decided within three months from the date of receipt of representation. However, in the present matter, it was decided after undue delay of three years and five months by impugned communication dated 16.03.2016. The learned CPO sought to contend that there was an incident of fire in Mantralaya wherein voluminous record was gutted in fire, and therefore, the file of the Applicant got reconstructed, and thereafter, decision was taken. Thus, she sought to justify the delay on account of destruction of record in fire. There is no denying that fire broke out in Mantralaya on 21.06.2012. Here, material to note that the representation was made to Respondent No.2 – Government on 31.10.2011 which was received by the Department on the same day. Thus, the period of three months expired on 31.01.2012. Whereas, the fire broke down on 21.06.2012. As such, the incident of fire had taken place much later i.e. after eight months from the date of making representation. In terms of G.R. dated 01.02.1996, it was obligatory to decide the representation upto 31<sup>st</sup> March, 2012. However, no such step was taken and Respondent No.2 sat over the matter for another six months. This being the position, the Respondent No.2 cannot take the advantage of the incident of fire occurred on 21.06.2012 and it is nothing but lame excuse. Thus, there was an inordinate and huge delay of three years and five months in deciding the representation of the Applicant, which is in contravention of G.R. dated 01.02.1996 and also has caused serious prejudice to the Applicant in the matter of promotion.

8. As rightly pointed out by the learned Advocate for the Applicant undue and abnormal delay in deciding the representation made by the Applicant was obstacle in the way of Applicant to get promotion and she was compelled to file O.A.No.193/2015. That O.A. was filed raising grievance that she was not considered for promotion in select list of

2013-2014 on the ground that her ACRs were not up to the mark, particularly in view of present ACR of 2010-2011, which was adverse to her. The Tribunal while deciding O.A.No.193.2015 by Judgment dated 28.09.2016 held that even if ACR of 2010-2011 (present ACR) is ignored and her remaining ACRs are considered in the light of G.R. dated 07.01.1961 which *inter-alia* provides for special sympathy in respect of candidates belonging to reserved category, the Applicant was eligible for promotion and directions were given to convene DPC meeting and to take appropriate decision. Thus, it is on the basis of decision rendered by the Tribunal, the Applicant got promotion belatedly. Had the representation made by the Applicant was decided within time, probably she would have got promotion much earlier. Suffice to say, this is not a case where no prejudice is caused to the Applicant because of delay in deciding the representation.

9. Now turning to the aspect of ephemeral roll as per detailed instructions given in G.R. dated 01.02.1996 as well as dated 01.11.2011, the Reporting Officer was under obligation to maintain ephemeral roll of a Government servant taking entries of the performance and on the basis of said ephemeral roll, the entries were required to be made in ACR in fair, transparent and objective manner. Besides, it is specifically provides that utmost care needs to be taken while making adverse entries about the integrity and character of a Government servant and it should not be written so unless substantial material of definitive character is available on record. The Instruction No.11 as reproduced above, further makes it clear that if Reporting Officer has doubt and cannot certify integrity of a Government servant and has any doubt about integrity, then he should not make any comment in the column of 'Integrity and Character' and should submit independent report to his superior. Such superior Officer was to take necessary steps and on enquiry, necessary entries, as the case may be, are required to be taken. Suffice to say, the Reporting Officer was required to be very very careful

while taking adverse entry about the integrity or character of a Government servant.

10. Now turning to the facts of the present case, it is necessary to deal with the contentions raised by the learned Advocate for the Applicant about interpolation, addition as well as preparation of note dated 14.04.2011 (ephemeral roll) which was admittedly not appended to ACR initially. As stated above, Shri Manoj Lohia along with his letter dated 21.04.2011 sent ACR of the Applicant to Special Inspector General, Range Aurangabad. On receipt of it, Special Inspector General, Range Aurangabad had noticed serious infirmities in ACR, and therefore, returned the said ACR to Shri Manoj Lohia pointing out that while taking adverse entries of integrity and character of the Applicant, the provision/Instruction No.11 in G.R. dated 01.02.1996 (referred to above) was totally ignored, and therefore, he asked Shri Manoj Lohia to comply the Instruction No.11 of G.R. dated 01.02.1996 and to re-submit the same (letter of Special Inspector General, Range Aurangabad dated 30.04.2011 to that effect is at Page No.134 of Paper Book).

11. It is on receipt of letter dated 30.04.2011 from Special Inspector General, Range Aurangabad, the Reporting Officer viz. Manoj Lohia resubmitted ACR to him with note dated 14.04.2011.

12. Shri Bandiwadekar, learned Advocate for the Applicant vehemently urged that the note dated 14.04.2011 was prepared later on anti-dated only to justify the adverse entries made in ACR. He has further pointed out that interpolation in ACR is *ex-facia* visible. In order to appreciate the contention advanced, it would be apposite to have photo-state copy of re-submitted ACR along with appended note dated 14.04.2011 as well as entries in ACR by initial communication vide letter dated 24.08.2011 (Page No.22 of P.B.). The learned CPO tried to contend that note dated 14.04.2011 is in the form of ephemeral roll on the basis of which adverse entries were taken in ACR.



13. Initially, the Respondent No.1 – Director General of Police communicated adverse remarks in ACR to the Applicant by letter dated 24.08.2011 (Page No.22 of Paper Book) and the contents are as follows:-

“महोदया,

शासनाने त्यांचे गृहविभाग पत्र क्र.रापोसं ३६११/प्र.क्र. ३९९/पोल-१ अ, दिनांक ११ ऑगस्ट २०११ अन्वये निर्देश दिल्याप्रमाणे आपल्या सन २०१०-११ (दि. ०२.०८.२०१० ते ३१.०३.२०११) च्या गोपनीय अहवालात नमूद केलेले खालील प्रतिकूल/चिकित्सक शेरे आपणांस कळविण्यांत येत आहे:-

४. उदयोप्रियता व कार्यतत्परता : साधारणपेक्षा कमी.
५. हाताखालील कर्मचा-यांकडून काम करून घेण्याची क्षमता: साधारण.
६. सहकारी व जनता यांच्याशी असलेले संबंध : अमैत्रीपूर्ण.
८. निर्णयशक्ती, उपक्रमशीलता व धडाडी यासह कार्यक्षमता: साधारण.
१२. सचोटी व चास्त्रि : No comments about character but integrity is suspicious.
१४. पदोन्नतीसाठी पात्रता : अयोग्य.
१७. क्षेत्रीय स्तरावर काम करण्याची योग्यता : नाही.
१९. सर्वसाधारण मूल्यमापन : Poor command and control over the working of the subdivision, Visitations were ineffective. Poor supervision, approach is casual.
२०. प्रतवारी : ब-साधारण.
२. उपरोक्त प्रतिकूल/चिकित्सक शे-याविरुद्ध आपणांस अभिवेदन सादर करावयाचे असल्यास ते आपण हे अर्ध शासकीय पत्र मिळाल्यापासून दोन महिन्यांच्या आत चार प्रतीत अपर मुख्य सचिव, गृहविभाग , मंत्रालय, महाराष्ट्र राज्य, मुंबई यांना उद्देशून या कार्यालयामार्फत सादर करावे.”

14. Here, it would be opposite to have photo-state copy of ACR resubmitted by the Reporting authority to the Reviewing Authority, which is as under :-

## परिशिष्ट "ब" (भाग-४)

गट "अ" ते गट "क" च्या अधिकार्यांचो/कर्मचार्यांची सर्वसाधारण योग्यता व चरित्र यासंबंधी अभिप्राय  
Estimate of General Ability and Character of Grade 'A' to Grade 'C' officers/Employees'

(१) नाव	:	श्री/श्रीमती/कुमारी							
(1) Name	:	Shri/Smt./Kum.	Aparna Sudhakar Geete						
(२) प्रतिवेदनाचा कालावधी	:	पासून	दिवस	महिना	वर्ष	पर्यंत	दिवस	महिना	वर्ष
(2) Period of Report	:	From	Date	Month	Year	To	Date	Month	Year
			01	04	2010	to	31	03	2011
(३) धारण केलेले पद/पदे	:	Sub-Divisional Police Officer, Vijapur							
(3) Post/Posts held	:	Sub-Divisional Police Officer, Vijapur							
(४) उद्योगप्रियता व कार्ये तत्परता	:	अत्युत्कृष्ट	उत्कृष्ट	चांगले	साधारण	साधारणपेक्षा कमी			
(4) Industry & Application	:	Outstanding	Very Good	Good	Average	Below Average			
(५) हाताखालील कर्मचार्यांकडून काम करून घेण्याची क्षमता	:	अत्युत्कृष्ट	उत्कृष्ट	चांगली	साधारण	साधारणपेक्षा कमी प्रश्न उद्भवत नाही			
(5) Capacity to get work done by subordinates	:	Outstanding	Very Good	Good	(Ave)	Below Average	Question does not arise		
(६) सहकारी व जनता यांच्याशी संबंध	:	सहकार्याचे	सौजन्याचे	उदासीन	उदासीन	अप्रीयपूर्ण			
(6) Relations with colleagues & Public	:	Co-Operative	Courteous	Helpful	Indifferent	unfriendly			
(७) सर्व साधारण बुद्धीमत्ता	:	अत्युत्कृष्ट	उत्कृष्ट	चांगली	साधारण	साधारणपेक्षा कमी			
(7) General Intelligence	:	Outstanding	Very Good	(Good)	Average	Below Average			
(८) नियंत्रणशक्ती, उपक्रमशीलता व धडाडी यासह कार्यक्षमता	:	अत्युत्कृष्ट	उत्कृष्ट	निश्चित चांगले	चांगली साधारण	साधारणपेक्षा कमी			
(8) Administrative Ability including judgment, Initiative and drive	:	Outstanding	Very Good	Positively Good	Good	(Average)	Below Average		
(९) तांत्रिक/व्यावसायिक कार्यक्षमता (संबंधीत असेल तेथे)	:								
(9) Technical/Professional ability (Where relevant)	:								
(१०) मागासवर्गीयांवाकडचा दृष्टिकोन	:	मदतीचा	सहानुभूतीचा	असहानुभूतीपूर्ण	तटस्थ				
(10) Attitude towards backward class	:	Helpful	(sympathetic)	Unsympathetic	Neutral				
(११) विशेष कल	:								
(11) Special Attitude	:								
(१२) सधेटी व चरित्र	:	No comments about character but integrity is doubtful. separate note attached.							
(12) Integrity & Character	:	No comments about character but integrity is doubtful. separate note attached.							
(१३) प्रदान करण्यात आलेल्या शक्तींचा पूर्णपणे वापर करतात काय ?	:	होय	अंशतः	नाही					
(13) Whether powers delegated are fully utilised ?	:	(Yes)	partly	No					
(१४) पदोन्नतीसाठी पात्रता	:	अयोग्य	जेव्हा त्सा योग्य						
(14) Fitness for Promotion	:	(Unfit)	Fit in Normal course (According to seniority)						
(१५) प्रशिक्षणासाठी आवश्यक क्षेत्र	:	येथे आवश्यक त्या क्षेत्राचा उल्लेख करावा.							
(15) Areas of training required	:	येथे आवश्यक त्या क्षेत्राचा उल्लेख करावा.							
(१६) प्रकृतीमान	:	चांगले नाही	उत्कृष्ट	उत्कृष्ट					
(16) State of Health	:	Not Good	(Good)	Very Good					
(१७) क्षेत्रीय सततवर काम करण्याची योग्यता	:	आहे	नाही	संबंधित नाही					
(17) Fitness for field work	:	Yes	(No)	Not relevant					

(नंदगुमार खंडेकर)  
कार्यालय अधिकांक (आस्थापना)  
राज्य मुख्यालय विभाग,  
महाराष्ट्र राज्य, मुंबई

(१८) Willingness to work on Computer	: 3	ठी नाही	संबंधित नाही
(१९) सर्वसाधारण मूल्यमापन	: (१)	ben	Not relevant
(19) General Assessment	Poor command and control over the working of the subdivision. Visitation were ineffective. Poor supervision. Approach is casual. Integrity, <sup>note,</sup> and copy of e-roll attached here with.		
(२०) प्रतवारी (हाताने लिहायी)	: अ+उत्कृष्ट,	उत्कृष्ट,	ब+निश्चित चांगली,
20) Grading	: A+Outstanding,	A- Very Good,	B+ Positively Good,
(Write in handwriting)	ब-साधारण,	क-साधारणपेक्षा कमी.	B Good,
	B-Average,	C-Below average	
ठिकाण	:	B - Average	
Place	:	Aurangabad	
दिनांक	:		
Date	:	14.4.11	

The note submitted by Reviewing Officer along with ACR, is material in the present context, which is as under :-

“Brief note about integrity of Mrs. Aparna Gite, SDPO, Vaijapur, Dist. Aurangabad (R) for the period 1.4.2010 to 31.3.2011.

Mrs. Aparna Gite is working as SDPO, Vaijapur since 5th March, 2010. Ever since she took over the charge as SDPO Vaijapur. As a supervisory officer, I always had suspicious about her conduct and integrity. One Police Naik/145 M.S. Shrivastava who was posted at Gangapaur and having bad reputation, so far as corruption is concerned, was frequently being called by Mrs. Aparna Gite. During her tenure illicit Petroleum business started in Vaijapur, which was raided by Shri Sandeep Jadhav, Dy. S.P. (Hq.), Aurangabad (R). It was also noticed that on 28.2.2011 three trucks overloaded sand were brought to P.Stn. Virgaon under instructions from Mrs. Aparna Gite, but later on they were released without any action under her instructions only. Later on 6.3.2011 and 9.3.2011 similar kind of things happened in Vaijapur P.Stn. There are diary entries made in the Station diary of P.Stn. Vaijapur on these dates respectively.

Explanation of Mrs. Aparna Gite was called vide No.PA/Memo/Gite/2011/41, dtd. 5.4.2011, however, the said officer did not bother to submit the explanation till the date of writing of ACRs.

Date : 14.4.2011.”

15. As such, one need to scrutinize the ACR initially written and communicated to the Applicant by letter dated 24.08.2011 by Respondent NO.1 and photo-state copy of re-submitted ACR as reproduced above. The perusal and comparison *ex-facie* reveals certain additions and interpolation. In Column No.12 of ACR communicated by letter date 24.08.2011, in the Column of Integrity and Character, it is written "No comments about character but integrity is suspicious". Whereas, in re-submitted ACR, the Column No.12, it is stated "No comments about character but integrity is doubtful. Separate note attached". Here, important to note that earlier integrity is shown suspicious whereas in re-submitting ACR, it is stated "Integrity is doubtful". Apart suffix "Separate note attached", which is found in re-submitted ACR does not find place in initial communication of ACR by letter dated 24.08.2011. It is nowhere stated in Column No.12 of the said ACR that "Separate note attached". This is one aspect of the matter.

16. Apart, in Column No.19 of initial communication of ACR by letter dated 24.08.2011, it is stated "poor command and control over the working of sub-division, visitations were ineffective, poor supervision, approach is casual". Whereas in re-submitted ACR, it is supplemented by suffixing "Integrity note and copy of e-roll attached herewith". As such, in initial ACR, the wording "Integrity note and copy of e-roll attached herewith" is missing. Thus, *ex-facie*, certain additions were made in ACR while re-submitting the same to Special Inspector General, Range Aurangabad.

17. In view of above, opportunity was given to the Respondents to explain the above circumstances and at the fag end of hearing, the Respondents have filed Affidavit of Shri Manoj Lohia twice which are at Page Nos.662 to 667 and at Page Nos.698 to 708 of P.B. The relevant contents of Affidavit are interesting. In Para No.3.6 of first Affidavit dated 19.10.2020, Shri Manoj Lohia sought to tender the explanation in following words.

**“3.6** With reference to page no.134 of the O.A. filed by the applicant I say and submit that it true that because of unsatisfactory performance noticed during the period 1.4.2010 to 31.03.2011, I had also initiated /submitted a proposal for mid-tenure transfer of the applicant herein on 21.4.2019 though the then Spl.I.G. of Police, Aurangabad Range, Aurangabad, i.e. (Shri Sanjay Kumar. While scrutinizing my proposal dated 21.4.2019 by him about mid-tenure transfer of the applicant, he had noticed that I have not appended the “E” roll to the A.C.R. It is true that although I had prepared E Roll, i.e. note about Integrity of the applicant, it was remained to be appended to the A.C.R. for the aforesaid period of the applicant inadvertently, which was written me on 14.4.2011, hence that was appended to the A.C.R. of the applicant for the aforesaid period. I say that what has been noted in the said E Roll is purely on merits and nothing else. In my view, this cannot be said to be addition/interpolation at all.”

18. Whereas, in Para No.2, the relevant portion of second Affidavit filed on 23<sup>rd</sup> November, 2020 is as under :-

**“2.** At the outset, I say and submit that the period, when the A.C.R. of the applicant were initiated by me as “Reporting Officer” in the capacity of the Supdt. of Police, Aurangabad Rural, at the point of time the practice that was followed was as such that three copies of same A.C.R. were required to be prepared. Out of such three copies of same A.C.R., one is kept with the Unit Office, i.e. in the Office of the S.P. Aurangabad Rural, two copies are sent t the D.G.P., M.S, Mumbai. Then, out of that two copies, one copy is kept in the office of the D.G.P, M.S, Mumbai and one copy was used to be sent to the State Government. Hence, while writing such three copies of one A.C.R. of the applicant herein (which are now impugned in this O.A.), there has been variation in using the words, such as “the integrity of the applicant is Doubtful”, or “integrity of the applicant is suspicious.” It is respectfully submitted that the word “suspicious” is synonyms of the word “Doubtful”. This error crept in by me is bona-fide and nothing else, is my respectful submission. I say and submit that this point was remained to be clarified by me in my earlier reply.”

19. This is nothing but an attempt to salvage the damage. In so far as his Affidavit that there was practice of preparing three copies of same ACR is concerned, it is totally unknown. The Respondents have not produced any Government Resolution, Circular or instruction that ACRs were required to be prepared in three copies. Indeed, there has to be only one original ACR and this theory canvassed is totally unknown. Apart, even assuming for a moment that there was any such practice and he prepared three copies of ACR, in that event also, needless to

mention that all ACRs should be replica of each other without any modification. His explanation that one place he has written the word 'doubtful' and at another place he has written the word "suspicious" being synonymous itself shows that no proper care was taken while writing of ACR and the same was written in casual manner.

20. Now it comes note dated 14.0-4.2011 which was admittedly not appended to ACR when it was earlier submitted to Reviewing Authority. In Affidavit, Shri Manoj Lohia sought to explain that the note was remained to be appended to ACR inadvertently. Even accepting for a moment this explanation, in that event also, the word 'Separate note attached' as added in Column No.12 and addition that 'integrity note and copy of e-roll attached herewith' as added in Column No.12 of re-submitted ACR would have found place in original ACR. However, it is not so. If only note dated 14.04.2011 remained to be appended, then there would have been mentioned in original ACR itself that 'Separate note is attached'. This necessarily shows that it is only after receipt of ACR from Reviewing Authority, the above additions are made in ACR. It is very difficult to digest that such senior and experienced officer would forget to attach such important Note to ACR. Thus all these aspects indicate that the note dated 14.04.2011 was prepared later on while re-submitting ACR to Reviewing Authority.

21. As stated above, the entries in ACR were required to be taken on the basis of ephemeral roll written from time to time noticing any lapses in the performance of a Government servant. This being the position, note dated 14.04.2011 cannot be considered as ephemeral roll, as required to be maintained during the year of ACR.

22. The adverse entry about integrity and character is *ex-facie* solely based upon the note dated 14.04.2011. Shri Manoj Lohia seems to have formed that opinion about the Applicant, as she was found frequently calling one Police Naik Mr. Shrivastava, who had bad reputation. The

second aspect of forming the opinion was seems to be releasing of three overloaded sand trucks by Virgaon Police under instruction from the Applicant without taking legal action against the wrongdoer. As per note dated 14.04.2011, Shri Manoj Lohia issued Memo to the Applicant on 05.04.2011, but she did not submit the explanation till the date of writing of ACR. The Applicant has produced Memo dated 04.05.2011 along with her detailed reply, which are at Page Nos.393 and 394 of P.B. She had submitted the reply on 17.05.2011. By letter dated 05.04.2011, she was called upon to as to why no action was taken against overloaded trucks. True, the Applicant submitted reply late by her letter dated 17.05.2011. However, fact remains that in her explanation dated 17.05.2011, she has categorically denied to have given instruction to Virgaon Police Station for releasing the trucks. It is further stated in reply that in fact, she had given notice to PSI Kokane on 05.03.2011 for not taking suitable legal action against the wrongdoer. She has further pointed out that in Station Diary, PSO had made interpolation that the trucks were released under her order. However, without waiting for the reply of the Applicant, Shri Manoj Lohia had resent ACR with note dated 14.04.2011. This explanation dated 17.05.2011 was, therefore, required to be considered at least by Reviewing Authority or Respondent No.1 while considering her representation. At any rate, before coming to any such jumping conclusion, some enquiry ought to have been made by Reporting Officer before taking note of adverse entry in the column of integrity and character.

23. Admittedly, during the period of ACR or at any point of time, no Memo or Notice was issued to the Applicant about her integrity and character. Shri Manoj Lohis seems to have found opinion about the Applicant because of her frequent calling to Police Naik Shrivastava. The Applicant has explained in letter as well as in reply that it was her first posting and Police Constable Shrivastava was being there for some time, she was taking inputs/local instruction from him. It being her first posting, it is quite natural and probable to have some rapport with Police

Personnel, who were at Station for a long time. Therefore, only because Applicant was frequently calling Police Naik, one should not jump to the conclusion that the Applicant's integrity was doubtful. It is nowhere the case of the Respondents that at any point of time, any such complaint of corruption of Applicant was received by Reporting Officer or by Reviewing Authority. As state above, the Reporting Officer ought to be very extra cautious while taking entry about the integrity of a Government servant in ACR. The adverse entry about integrity should not be taken so lightly. It should not be taken unless there is substantial and acceptable material to form an opinion about the integrity of a Government servant. However, in the present case, entry of integrity doubtful is taken only on assumption and surmises which have serious implications and consequences upon entire career of the Applicant.

24. Indeed, it was expected from Reporting Officer to call the Applicant and to caution her, if she was in contact with one Police Personnel of doubtful character, it being Applicant's first posting. Such adverse entry about integrity and character could be taken, if the concerned Government servant could continue relation with unscrupulous persons and refused to improve his or her behavior.

25. In view of above, I have no hesitation to sum-up that the entry in the column of integrity and character is taken without ascertaining the facts. It is nothing but based on certain assumption and surmises.

26. As regard other entries, it is true that Shri Manoj Lohia appears to have issued some Memos to the Applicant about her visitation, detection of crime, supervision, etc. for which Applicant had submitted reply/explanation from time to time. None of the Memo was pertaining to integrity or character. There is nothing to show that the Reporting Officer was not satisfied with the explanation given by the Applicant.



27. The Applicant had submitted the detailed representation running into 279 pages along with the copies of explanation given by her from time to time as well as showing her performance in each respect i.e. capacity to get the work done from subordinates, the relation with public, administrative ability including judgment, initiative and drive which were graded as 'Average' by Reporting Officer. However, surprisingly, her representation was rejected with one line order of rejection. The Respondent No.1 even did not look into exhaustive representation made by the Applicant against adverse entries made in her ACR. When she had made such exhaustive representation on each point rebutting the entries made in ACR and has demonstrated how the adverse entries are incorrect, the Respondent No.1 was under obligation to consider the same in fair and transparent manner. No doubt, detailed reasons are not expected but fairness and transparency requires serious consideration of the representation and some reasons for not expecting the same. However, apparently, it was not even looked into and simply rejected which shows non-application of mind and arbitrary functioning.

28. As stated above, except ACR in question, all other ACRs of the Applicant are good and positively good. It is, therefore, difficult to believe that such Official's performance would suddenly drop down only for one year so as to write adverse entries in her ACR. Indeed, subsequently, the Applicant was promoted to higher rank on the basis of her remaining ACRs.

29. Apart, the representation of the Applicant which was required to be decided within three months was not decided for more than three years. Besides, no consideration much less serious was given to the exhaustive representation made by the Applicant. The integrity and character is said doubtful without any verifiable or cogent material.

30. At this juncture, it would be apposite to refer the decision of Hon'ble Supreme Court in **1996 SCC (L & S) 1141 (Sukhdeo Vs.**

**Commissioner, Amravati Division, Amravati & Anr.)** wherein a Government servant was compulsorily retired in view of adverse entries in ACR. The Hon'ble Supreme Court in Para No.6 cautioned that Reporting Officer must be very careful and shall collect correct and truthful information while making adverse remarks against the subordinate officer whose career prospects and service would be in jeopardy and quashed the order of compulsory retirement which was based on unsubstantiated adverse entries in ACR. Para No.6 is as under:-

*“6. It is settled law that when the Government resorts to compulsorily retire a government servant, the entire record of service, particularly, in the last period of service is required to be closely scrutinised and the power would be reasonably exercised. In State Bank of India v. Kashinath Kher 1996 8 SCC 762 (JT at p. 578 para 15), this Court has held that the controlling officer while writing confidential and character roll report, should be a superior officer higher above the cadres of the officer whose confidential reports are written. Such officer should show objectivity, impartiality and fair assessment without any prejudice whatsoever with highest sense of responsibility to inculcate in the officer's devotion to duty, honesty and integrity so as to improve excellence of the individual officer, lest the officers get demoralised which would be deleterious to the efficacy and efficiency of public service. In that case it was pointed out that confidential reports written and submitted by the officer of the same cadre and adopted without any independent scrutiny and assessment by the committee was held to be illegal. In this case, the power exercised is illegal and it is not expected of from that high responsible officer who made the remarks. When an officer makes the remarks he must eschew making vague remarks causing jeopardy to the service of the subordinate officer. He must bestow careful attention to collect all correct and truthful information and give necessary particulars when he seeks to make adverse remarks against the subordinate officer whose career prospect and service were in jeopardy. In this case, the controlling officer has not used due diligence in making remarks. It would be salutary that the controlling officer before writing adverse remarks would give prior sufficient opportunity in writing by informing him of the deficiency he noticed for improvement. In spite of the opportunity given if the officer/employee does not improve then it would be an obvious fact and would form material basis in support of the adverse remarks. It should also be mentioned that he had given prior opportunity in writing for improvement and yet was not availed of so that it would form part of the record. The power exercised by the controlling officer is per se illegal. The Tribunal has not considered this aspect of the matter in dismissing the petition. The appellant is entitled to reinstatement with all consequential benefits. The appeal is accordingly allowed with exemplary costs quantified at Rs 10,000 recoverable by the State from the officer who made the remarks.”*

The principles enunciated in this Judgment are squarely attracted to the present case.

31. The totality of aforesaid discussion leads me to sum-up that the adverse entries made in the ACRs for the period from 10.08.2010 to 31.03.2011 are required to be quashed and O.A. deserves to be allowed. Hence, I proceed to pass the following order.

**ORDER**

- (A) The Original Application is allowed.
- (B) The impugned communication dated 16.03.2016 is quashed and set aside.
- (C) The adverse entries made in ACRs of the Applicant for the period from 10.08.2010 to 31.03.2011 are hereby expunged.
- (D) No order as to costs.

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

Mumbai

Date : 02.02.2021

Dictation taken by :

S.K. Wamanse.

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