

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.263 OF 2018

DISTRICT : MUMBAI

Shri Sanjay Margu Jadhav.)
Age : 55 Yrs., Working as Police Inspector,)
SB-1, C.I.D, Mumbai, Crawford Market,)
Mumbai – 400 001 and residing at E-1/15,))
Marol Police Camp, Andheri (E),)
Mumbai – 400 059.)...**Applicant**

Versus

1. The Director General & Inspector)
General of Police, M.S, Mumbai,)
Having office at Old Council Hall,)
Shahid Bhagatsingh Marg,)
Mumbai – 400 039.)
2. The Commissioner of Police.)
Mumbai, having Office at Mumbai)
Police Commissionerate, L.T. Marg,)
Opp. Crawford Market, Fort,)
Mumbai – 400 001.)
3. The State of Maharashtra.)
Through Principal Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)...**Respondents**

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

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 14.10.2019

JUDGMENT

1. The Applicant has challenged the impugned orders dated 19.04.2017 and 06.04.2017 pertaining to expungement of entries in Annual Confidential Reports for the years 2004-2005 and 2005-2006 invoking jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this Application are as follows:-

The Applicant joined service as Police Sub Inspector by way of nomination in 1988. He was promoted to the post of Assistant Police Inspector on 08.08.2011 (deemed date w.e.f.16.04.2001) and later promoted to the post of Police Inspector on 10.04.2012. In the years 2004-2005 and 2005-2006, he was Police Sub Inspector at Andheri Police Station. He belongs to Reserved Category viz. VJ(A). In the years 2004-2005 and 2005-2006, his Annual Confidential Reports were written by the then Reporting Officer – Assistant Commissioner of Police and Deputy Commissioner of Police was the Reviewing Authority. As regard ACR of 2004-2005, he contends that though he rendered good service, he was rated 'B-' (Average). The Reviewing Authority also agreed with the rating given by Reporting Officer. In respect of ACR of 2005-2006, the Reporting Officer rated him 'B' (Good). However, the Reviewing Authority downgraded rating as 'B-' (Average) without recording any reasons. The Applicant contends that the ACR of 2005-2006 was not communicated to him. He was due for promotion in select list of 2007 for the post of Assistant Police Inspector but due to ACRs of 2004-2005 and 2005-2006, he was denied the promotions.

3. The Government by G.R. dated 13th February, 2014 took police decision to afford an opportunity to the Government servants who

have been denied promotions on account of adverse entries in ACRs from the select list prepared on 12.05.2008 or thereafter. In terms of the said decision, the ACRs of 2004-2005 and 2005-2006 were communicated to the Applicant and his representations were called, if so desire. Accordingly, on receipt of communication of ACRs of 2004-2005 and 2005-2006, the Applicant made representation for upgradation of ACRs as well as for deemed date of promotion. However, the Respondent No.1 – Director General of Police (DGP) by impugned communication rejected representations of the Applicant. Being aggrieved by it, the Applicant has filed the O.A. to expunge the adverse entries in ACRs to upgrade the same and to grant further consequential service benefits.

4. The Respondents resisted the application by filing Affidavit-in-reply thereby *inter-alia* denying the entitlement of the Applicant to the relief claimed. The Respondents sought to justify the entries made in the ACRs of 2004-2005 as well as 2005-2006. As regard ACR of 2004-2005, the Respondents contend that the Reporting Officer on assessment of the performance of the Applicant rated him as 'B-' (Average) and the same was confirmed by Reviewing Authority. It was communicated to the Applicant on 17.08.2005. The Applicant did not make any representation against it. As regard ACR of 2005-2006, the Respondents contend that though the Reporting Officer rated the Applicant as 'B' (Good), however, the Reviewing Authority downgraded it as 'B-' (Average) having regard to the performance of the Applicant. The Respondents in this behalf further contend that in the year 1990, an offence under Sections 409, 420, 166, 218 of Indian Penal Code was registered against the Applicant. He was suspended on 03.09.1990 and was placed under suspension. However, the suspension was revoked in 1996 and he was reinstated. Later, he was acquitted in Criminal Case on 31.12.2007. The Respondents thus contend that considering the service record of the Applicant, an assessment was made by the Reporting Officer as well as by

Reviewing Authority. As regard communication of ACR of 2005-2006, the Respondents state that no record is available about its communication. It is not in dispute that in terms of G.R. dated 13.02.2014, the Applicant has made representation to upgrade the ACR. The Respondents in this behalf submits that those were considered and having regard to the performance of the Applicant, representations found without merit and rejected. With this pleading, the Respondents prayed to dismiss the O.A.

5. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail the impugned communication on the ground that the ACRs are not written correctly. His emphasis was on G.R. dated 07.01.1961 whereby the Government of Maharashtra granted some concession to the members of Backward Class in the matter of promotion. By the said G.R, it was instructed to the concerned that the Government servant belonging to Backward Class should be judged with special sympathy and promotion should not be denied to them unless they are considered unfit for promotion or unless promotion is withheld as a measure of punishment. According to learned Advocate for the Applicant, no such special sympathy was shown by the Respondents while considering his case for promotion. As regard, the ACR of 2004-2005, he has pointed out that the entries therein are contradictory in respect of integrity and character of the Applicant and urged that the rating 'B-' (Average) given to the Applicant is incorrect and it needs to be upgraded having regard to the Government decision dated 07.01.1961 which *inter-alia* provides for special sympathy towards the Government servant belonging to Backward Class. As regard ACR of 2005-2006, he has pointed out that though Reporting Officer graded the Applicant as 'B' (Good), the Reviewing Authority down-graded it as 'B-' (Average) without recording any reasons. He urged that in terms of G.Rs, the Reviewing Authority is obliged to record reasons, if he does not agree with the grading recorded by Reporting Officer. However, in the present case, no

reasons whatsoever are recorded, and therefore, down-grading of ACR as 'B-' (Average) is unsustainable in law. He has further pointed out that the ACR of 2005-2006 was not communicated to the Applicant though mandatory in terms of G.Rs. In support of submission, the learned Advocate for the Applicant referred to certain decisions, which will be referred during the course of discussion.

6. Per contra, Smt. A.B. Kololgi, learned Presenting Officer submits that the Applicant has already promoted, and therefore, now the grievance raised about the ACRs of 2004-2005 and 2005-2006 cannot be agitated. She further submits that the G.R. dated 07.01.1961 for special sympathy towards Government servant belonging to Backward Class is not relevant in the present matter, as it pertains to promotion only and not for upgradation of ACR. She maintained that the representations made by the Applicant on 07.11.2016 were rightly considered and found no substance therein, it was rightly rejected.

7. It is well settled that the object of making adverse remarks is to assess the competence of an Officer on merit and performance, so as to grade him to various categories and the Competent Authority as well as Reviewing Authority have to act fairly and objectively in assessing the character, integrity, performance, etc. of the incumbent. The object of communication of adverse remarks to employee is to afford an opportunity to improve himself. In other words, the purpose of communication of FIR is to forewarn the Government servant to mend his ways and to improve his performance. That is why, it is obligatory to communicate the adverse entries to the concerned Government servant. Later, the Hon'ble Supreme Court in **2008(2) SCC 771 (Dev Dutt Vs. Union of India)** directed for communication of ACR of good rating also to the public servant for transparency in public administration.

8. In the present O.A, the Applicant has questioned the adverse entries in ACRs of 2004-2005 as well as 2005-2006. Firstly, I would like to deal with ACR of 2004-2005. In ACR for 2004-2005, the following are the remarks :-

Industry & Application	Average
Capacity to get work done by Subordinate	Average
Relations with colleagues and Public	Indifferent
General Intelligence	Average
Administrative ability including judgment initiative and drive	Average
Integrity & Character	सचोटी चांगली
Whether powers delegated are fully utilized	No
Fitness for promotion	Unfit
State of Health	Not Good
Fitness in field work	No
Willing to work on computer	Not seen
General Assessment	गुन्हे तपासांत घाणेरडा, साधारण उदयोगप्रियता साधारण कार्यतत्परता साधारण, उदासिन, कर्मचा-यांकडून काम करून घेण्याची तसेच निर्णयशाली, बुद्धीमत्ता साधारण, कामाची आवड नाही. १९९८ पासूनची प्रकरणे, गुन्हे कागदपत्र प्रलंबित आहेत. सचोटी चांगली नाही. पदोन्नतीसाठी अयोग्य.
Grading	'B-'

Thus, the Reporting Officer has given grading as 'B-' (Average) which is consistent with the other remarks mentioned by him in the aforesaid columns. Furthermore, while writing General Assessment, some specific observations were made about inefficiency of the Applicant. The Reviewing Authority agreed with the grading given by Reporting Officer as 'B-' (Average) and admittedly, it was

communicated to the Applicant. The Respondents have also placed on record its communication by letter dated 17.08.2005 (Page No.45 of P.B.).

9. True, in the Column of 'Integrity & Character', the Reporting Officer first mentioned it as "चांगली नाही" and later scored it and written "सचोटी चांगली" and put his initial there. Whereas in Column No.18 while writing General Assessment, the Reporting Officer has mentioned "सचोटी चांगली नाही". Adverting to this self-contradictory remarks, the learned Advocate for the Applicant sought to contend that the ACRs are not written objectively. He further contends that there is no record in the form of ephemeral role or otherwise to substantiate the remarks viz. "सचोटी चांगली नाही". True, no documentary evidence in the form of ephemeral role or otherwise is forthcoming to show as to on what basis, the Integrity "सचोटी चांगली नाही" was taken. However, there is no denying that the said ACR was communicated to the Applicant in 2005 itself by letter dated 17.08.2005 and there being no representation against it, it was confirmed.

10. Here, material to note that while writing ACR of 2004-2005, the Reporting Officer in Part III of ACR (Page No.29 of P.B.) has specifically mentioned that several Memos were issued to the Applicant. In 'Self-assessment Column' all that Applicant stated that he had performed duties as PSI and followed directions of Superior. However, the Reporting Officer disagreed with him with a specific mention that he is not agree with the assessment made by the Applicant because of several Memos dated 04.03.2005, 08.01.2005, 23.04.2005, 06.04.2004 and 03.04.2005 were issued to the Applicant about his performance. As such, this is not a case where General Assessment was made without taking note of the record. It is also reflected while making General Assessment in Column No.18. As such, it was the opinion of Reporting Officer under whom the Applicant was working and having seen his performance as well as

Memos issued to him, the Reporting Officer has written ACR giving grading 'B-' (Average). Only because in the Column of 'Integrity & Character', it is shown 'Good' and then again shown 'Not Good' in General Assessment that *ipso-facto* cannot be the ground for expunging adverse entries made in General Assessment as well as grading given to him. It is the outcome of assessment of his entire work on the backdrop of several Memos issued to him. The Applicant has not produced any record in respect of those Memos issued to him, so as to counter the same. Earlier, the Applicant has not submitted any representation in respect of ACR of 2004-2005 though it was communicated to him. However, later he made representation on 07.11.2016 in terms of G.R. dated 13.02.2014. It has been rejected by impugned order dated 19.04.2017 whereby the Respondent No.1 rejected the representation filed by the Applicant for upgradation of ACR considering Applicant's service record in the light of entries made by Reporting Officer as well as Reviewing Authority.

11. In so far as G.R. dated 07.01.1961 which *inter-alia* provides for sympathy to the Government servant belonging to Backward Class is concerned, it is restricted to the matter of promotion. As per this G.R, the Government has granted concession to the members of Backward Class in the matter of promotion stating that the Government servant belonging to Backward Class should be judged with special sympathy and promotions should not be denied unless he is considered for unfit for promotion or unless promotion withheld as a measure of punishment. The G.R. further states that a special sympathy be shown in case of Government servant belonging to Backward Class with regard to standard of efficiency but in so far as character, integrity and the fitness criteria is concerned, it should be applied with equal strictness to all Government servant irrespective of whether or not the Government servants belong to Backward Class. As such, the G.R. dated 07.01./1961 cannot be construed for

upgradation of ACR. It is restricted to the matter of promotion only. In so far as the ACR is concerned, the said G.R. is not relevant.

12. Thus, what transpires that the Reviewing Authority has written ACR having regard to the assessment of performance of the Applicant and the same has been confirmed by Reviewing Authority. Needless to mention, such ACR written in fact situation cannot be interfered with by the Tribunal in its power of judicial review unless it is established that the ACR is shown written without objective assessment of the performance of the Government servant. The Applicant has miserably failed to establish that the grading given in ACR of 2004-2005 is wrong and he was deserving upgrading in ACR of 2004-2005.

13. Now turning to ACR of the year 2005-2006, the Reporting Officer graded the Applicant as 'B' (Good), however, the Reviewing Authority did not agree with the grading given by Reporting Officer and has mentioned "I do not agree with the entries made by Reporting Officer in Column Nos. 4 to 8. He is 'Average' in 4 to 8." Accordingly, he down-graded the gradation from 'B' (Good) to 'B-' (Average). In so far as the entries in Column Nos.4 to 8 are concerned, those are as follows :-

Industry and application	Good
Capacity to work done by subordinates	Good
Relations with colleagues and public	Helpful
General Intelligence	Good
Administrative ability including judgment initiative and drive.	Good

Thus, the Reviewing Authority disagreed with the aforesaid entries and down-graded as 'B-' (Average). However, while doing so, he has not recorded any reason. Secondly, the ACR of the year 2005-2006 was not communicated to the Applicant. There is admission from the

Respondents as seen from Page No.47 i.e. information sought under Right to Information Act by the Applicant, to which he was informed that the Office do not have record to show communication of ACR of the year 2005-2006 to the Applicant. As such, what transpires from the record that the Reviewing Authority while down-grading the ACR, has not assigned any reason whatsoever and secondly, there is no communication of ACR to the Applicant, so as to give him an opportunity to make representation for upgradation of ACR. Later, in terms of G.R. dated 13.02.2014, the Applicant again filed representation on 07.01.2016 for upgradation of ACR on the ground of non-recording of reasons while down-grading the ACR and secondly, for non-communication of the same. However, the Respondent No.1 rejected the representation by impugned order dated 06.04.2017. In this respect, the Applicant contends that he was denied promotion in seniority list of 2007 due to said ACR. However, the Applicant's request for deemed date of promotion in select list of 2007 has been rejected by order dated 21.09.2017 on the ground that he was unfit for promotion in waiting list of 2007. Needless to mention that it is for Departmental Promotion Committee (DPC) to see the suitability and fitness of the Applicant for promotion. However, in so far as the ACR of 2005-2006 is concerned, the grievance of the Applicant seems justified.

14. The learned Advocate for the Applicant has rightly pointed out that the stages required to be complied with in the matter of writing and maintaining ACRs of Government servants in terms of G.R. dated 01.02.1996. It mandates that the Reporting Officer should write ACR in objective manner and without any uncertainty. As far as Reviewing Authority is concerned, Clause 9 of G.R. is as follows :-

“९. पूर्णविलोकन अधिका-यांनी परिशिष्ट (भाग-५) मध्ये आपले अभिप्राय लिहिण्यापूर्वी 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.”

15. Clause 10 of G.R. mandates maintenance of ephemeral role and its use while writing ACRs of the Government servants. Whereas, Clause 12 says that while writing ACRs of Backward Class Officials, the approach of authorities should be fair and objective. Suffice to say, exhaustive instructions have been issued by G.R. dated 01.02.1996. In the present matter, we are concerned with Clause 9 which mandates that where Reviewing Authority disagree with the opinion/gradation given by Reporting Authority, then he should give reasons for the same. However, in the present case, in ACR of 2005-2006, the Reviewing Authority has not assigned any reason whatsoever while down-grading ACR of the Applicant. As such, there is no compliance of the instructions given in G.R, and therefore, down-grading of ACR without assigning any reason cannot be countenanced in law. There is absolutely not a single word or any material on record to show on what basis or material, the Reviewing Authority had down-graded the ACR of Applicant. This being the position, the impugned action of down-grading the ACR by Reviewing Authority is nothing but arbitrary and unsustainable in law.

16. The learned Advocate for the Applicant in this behalf rightly referred to decision passed by this Tribunal in **O.A.274/2017 (Girijashankar R. Popalghat Vs. State of Maharashtra) decided on 23.06.2017** where in similar situation for not recording reasons by Reviewing Authority, the O.A. was partly allowed and matter was remitted to the concerned Reviewing Authority for fresh review. In **O.A.274/2017** (cited supra), this Tribunal relied on the decision rendered by the Tribunal earlier in **O.A.423/2015 (Sharad Pawaskar Vs. State of Maharashtra) decided on 12th December, 2014** which was confirmed by Hon'ble **Writ Petition No.3631/2015 decided on 8th July, 2015**. Besides, while deciding **O.A.274/2017**, the Tribunal also referred the decision of Hon'ble Delhi High Court in **Devraj Singh Vs. Union of India (Writ Petition No.8578/2010) decided on 6th July, 2011**, the decision of Central Administrative

Tribunal, Guwahati Bench in **2006 (91) SLJ 262 (Subodhkumar Vs. Union of India and Ors.)**. As such, in view of these decisions, it is no more **res-integra** that where the Reviewing Authority wish to disagree with the grading given by Reporting Officer, then he must record reasons for doing so and in case of absence of reasons, such ACR of down-grading gradation of the employee is not sustainable in the eye of law.

17. The totality of aforesaid discussion leads me to sum-up that in so far as the ACRs of 2005-2006 is concerned, the impugned order dated 06.04.2017 is liable to be quashed. Only because subsequently, the Applicant was promoted to the post of API and P.I. that itself cannot be the ground to non-suit him, as the impugned action of Reviewing Authority down-grading the gradation of the Applicant in the ACR of 2005-2006 is unsustainable. The O.A, therefore, deserves to be allowed partly. Hence, the following order.

ORDER

- (A) The Original Application is partly allowed.
- (B) The impugned order dated 19.04.2017 in respect of ACR of 2004-2005 is maintained.
- (C) The impugned order dated 06.04.2017 in respect of ACR of 2005-2006 is hereby quashed and set aside.
- (D) The Respondent No.1 – Director General of Police is directed to ensure compliance of proper review of ACR of 2005-2006 by concerned Reviewing Officer either by forwarding it to same Reviewing Officer or to take another appropriate step in the matter of appropriate review of ACR of 2005-2006 within two months from today.
- (E) The Respondent No.1 or the Authority to whom the matter is assigned, as state above, shall take proper decision in the matter within two months from today and

its decision/outcome shall be informed to the Applicant within two weeks thereafter.

(F) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 14.10.2019

Dictation taken by :

S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2019\10 October, 2019\O.A.263.18.w.10.2019.Expunging of ACR.doc