

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.330 OF 2017

DISTRICT : PUNE

Shri Shirishkumar R. Gandhi.)
Age : 57 Yrs, Working as Police Inspector,)
Residing at A-902, Pearl Tower, Gadital,)
Hadapsar, Pune 411 028.)...**Applicant**

Versus

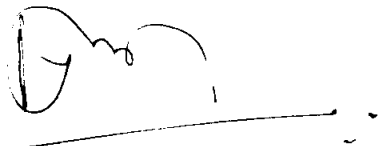
1. The State of Maharashtra.)
Through Chief Secretary,)
Mantralaya, Mumbai - 400 032.)
2. Additional Chief Secretary.)
Home Department, Mantralaya,)
Mumbai 400 032.)
3. The Director General of Police.)
M.S, Shahid Bhagatsingh Marg,)
Colaba, Mumbai 411 001.)...**Respondents**

Mrs. Punam Mahajan, Advocate for Applicant.

Mr. N.K. Rajpurohit, Chief Presenting Officer for Respondents.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 01.08.2017



JUDGMENT

1. The Applicant, a Police Inspector hereby seeks in effect the expunging of adverse remarks in his Annual Confidential Report (ACR) for the period 2013-14.

2. I have perused the record and proceedings and heard Mrs. Punam Mahajan, the learned Advocate for the Applicant and Mr. N.K. Rajpurohit, the learned Chief Presenting Officer (CPO) for the Respondents. The Respondent No.1 is the Chief Secretary of the State of Maharashtra, the 2nd Respondent is the State in Home Department and the 3rd Respondent is the Director General of Police.

3. The facts are uncomplicated and simple. I am so disposed herein to hold that in accordance with the relevant Rules, the adverse remarks were unwarranted and they deserve to be expunged. It is a clearly admitted position that the Applicant was on leave during the relevant period 2013-14. As per the Annexure 'A-6' (Page 44 of the Paper Book (PB), the Additional Director General of Police (Establishment) granted the leave for various break-ups of the period from 10.12.2013 to 31.3.2014. This is one fact established. The impugned adverse



remarks are at Pages 37 and 38 of the PB. The Reporting Authority rated the Applicant as “B+ Positively Good” but the Reviewing Authority i.e. Additional Commissioner of Police, West Region, Thane reviewed it and lowered the rating to “B- Average”. The reasons given were that the Applicant’s health was not good, and therefore, he effected changes in the columns of industry and application, capacity to get work done, general intelligence and administrative ability. Now, it beats my comprehension as to how the health condition of an officer could become the cause adversity to be visited on him in the matter of ACR. But then, that came to pass. The Applicant made a detailed representation, a copy whereof is at Annexure ‘A-8’, dated 10.5.2016 to the Government, but initially on 12.8.2015 Annexure ‘A-7’, the Director General of Police wrote to the Additional Director General of Police informing that the earlier representation of the Applicant was rejected and as far as the 2nd one was concerned, by Annexure ‘A-12’ (Page 68 of the PB), the Government informed the Applicant that his request was turned down.

4. It needs also to be mentioned that the Applicant brought another **OA No.947/2016 (Shri Shirishkumar R. Gandhi Vs. State of Maharashtra and one another, dated 29.9.2016)** whereby the Hon’ble Vice-Chairman was pleased to dispose it of with directions to the Respondents



to take a decision on the representation of the Applicant within a period of one month therefrom and that decision apparently was adverse to the Applicant.

5. The above discussion must have clearly established that the Applicant for the duration of time herein relevant was on leave, and therefore, as per the GAD G.R. No.CFR-1210/Pr.Kra.47/2010/Tera, dated 1st November, 2011, Clause 5 of the first Schedule, the Reporting Authority as well as the Reviewing Authority could not have written the ACR and could not have reviewed the same because the period was not more than three months at a stretch. It is, therefore, very clear that, when no ACR was to be written, the tragedy would get compounded, if adverse ACR was written. Clause 35 of the said Schedule in so far as it relates to the Officers of the rank which the Applicant belongs to lays down that, when a move is made against the adverse report, then for all practical purposes, it is to be forwarded to the Government and the Government could either reject the representation, accept it partly by expunging some adverse remarks, accept the representation and expunge the adverse remarks and finally, to draw conclusion on whether a particular kind of adverse remarks would come in the way of the promotion.

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6. It is very clear that the procedure adopted by the authorities below is completely unknown and contrary to the relevant GR.

7. Mr. Rajpurohit, the learned CPO in strongly canvassing for dismissal of this OA, invited reference to a communication from Additional Commissioner of Police to the Special Inspector General (Establishment) dated 19.9.2014 (Page 79 of the PB). The learned CPO advanced submissions in the same line as per the said document. The sum and substance of his case was that the Applicant was told to go before the concerned Medical Board, but he did not obey the directives, and therefore, the action of the authorities was justified. As to this submission of the learned CPO, I find that, in the first place, the leave had already been sanctioned in whatever manner it was as already discussed above. Secondly, the remarks in ACRs both of Reporting Authority as well as Reviewing Authority is one aspect of the matter which is quite distinct from the alleged dis-obedience. I must hasten to add that, I do not enter any finding against the Applicant that he was disobedient. However, it is very clear that the allegations of disobedience could not have coloured the administrative vision of the concerned authorities in the matter of ACR. I have already expressed my surprise that the health condition of an employee should have becaused the



lowering down of his rating in ACR which was not to be written in the first place. It is not something which can be called to be of common place occurrence. I am, therefore, very clearly of the opinion that the impugned order and the impugned adverse remarks are legally unsustainable and they must be interfered with. There can be no jurisdictional hitch in doing so even by me presiding over this forum of judicial review of administrative action.

8. The orders herein impugned rejecting the representation of the Applicant are quashed and set aside. The adverse remarks for the period hereinabove referred to are expunged. The Respondents are directed to proceed on the basis that there was no adverse remark against the Applicant for the said period. The record be brought in consonance with this determination within a period of four weeks from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-
(R.B. Malik)
Member-J
01.08.2017

Mumbai
Date : 01.08.2017
Dictation taken by :
S.K. Wamanse.