

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.701 OF 2018

DISTRICT : MUMBAI

Shri Rajkumar Vishnu Kothmire.)
Occu.: Police Inspector at Anti Extortion)
Cell, Thane Crime Branch and residing at)
602, Vallab Heights, Opp. Pornima Talkies,))
Murbad Road, Kalyan (W), District : Thane.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Home Department, Mantralaya,)
Mumbai - 400 032.)
2. The Director General of Police,)
Shahid Bhagat Singh Marg, Colaba,)
Mumbai - 400 001.)
3. The Special Inspector General of)
Police, Kolhapur Range, Kolhapur.)
4. Mr. Yashasvi Yadav (IPS),)
C/o. Director General of Police,)
M.S, Mumbai.)
5. Mr. Jaywant Deshumukh.)
Retired Dy.S.P, Kolhapur and)
Residing at Adharva Vishwa Soc.,)
Flat No.1, 1st Floor, Near Pitali)
Ganpati, Tarabai Park, Kolhapur.)...**Respondents**

Mr. K.R. Jagdale, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents 1 to 3.

Respondent No.4 though served not appeared.

Shri Shailesh Chavan, Advocate for Respondent No.5.

W. S. Chavan

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

DATE : 19.03.2020

JUDGMENT

1. The Applicant has filed the present Original Application to expunge adverse remarks made by Respondent No.4 in ACR for the year 2010-2011 and to set aside the impugned communication dated 16.02.2018 whereby his representation to expunge ACR was rejected by Respondent No.2 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

The Applicant joined service on the post of Police Sub-Inspector (PSI) as direct nominee through MPSC in 1992. During the course of service, he was promoted as Assistant Police Inspector (API). At the relevant time of ACR of 2010-2011, he was Incharge of Gandhinagar, Police Station, Taluka Karveer, District Kolhapur. That time, the Respondent No.4 - Shri Yashasvi Yadav was Superintendent of Police, Kolhapur and Respondent No.5 - Shri Jaywant Deshmukh was Sub-Divisional Police Officer, Karveer Division. As such, for writing ACR of the Applicant, the Respondent No.5 was Reporting Officer and Respondent No.4 was Reviewing Authority. The Applicant contends that the Respondent No.5 being reporting authority was to write his ACR but the Respondent No.4 illegally usurped the authority of Respondent No.5 and out of bias and prejudice, the Respondent No.4 took adverse entries in the ACR of 2010-2011 for the period from 31.05.2010 to 31.03.2011. He further contends that the writing of adverse ACR was fall out of incident occurred on 08.09.2009 at Uchgaon within the jurisdiction of Gandhinagar Police Station and the complaint/representation

made by him against Respondent No.4 – Shri Yashasvi Yadav, who was holding the post of Superintendent of Police, Kolhapur. On 08.09.2009 in the night, some miscreants had pelted stones on Masjid at Uchgaon and fled away. As soon as the Applicant came to know about the incident, she rushed to the spot. By that time, the Respondent No.4 also rushed there. The Applicant contends that the Respondent No.4 pick-up some villagers and assaulted them, which resulted in physical injuries to them. However, the Respondent No.4 registered FIR against villagers for the offence under Sections 295, 353, 307, 143, 147 of I.P.C. read with Section 135 of Maharashtra Police Act. He further contends that the villagers, against whom offences were registered came to be arrested and produced before the Judicial Magistrate 1st Class, Kolhapur. They made complaint of ill-treatment and physical assault to them at the hands of Respondent No.4. The enquiry was conducted by Chief Judicial Magistrate, Kolhapur who in turn after summary enquiry submitted report to the District and Sessions Judge, Kolhapur. The incident was widely reported in local newspaper alleging physical assault to the villagers by Police Force under the leadership of Respondent No.4.

3. The Applicant contends that in the night of 08.09.2009, when he was trying to control the situation, the Respondent No.4 abused and humiliated him in front of Police Personnel stating that he is fool and cannot control the situation. Therefore, the Applicant made complaint/representation dated 18.01.2010 to Respondent No.3 – Special Inspector General of Police, Kolhapur Range, Kolhapur disclosing humiliation at the hands of Respondent No.4 apprehending that the Respondent No.4 could spoil his ACR. The Applicant thus contends that because of this episode and his complaints dated 18.01.2010 and 16.11.2010 (Page Nos.51 and 64 of P.B.), the Respondent No.4 nurtured bias against him.

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4. In the meantime, the Respondent No.4 out of bias and prejudice issued Show Cause Notice to the Applicant (Page No.70 of P.B.) dated 27.06.2010 alleging misconduct on the ground that on 26.06.2010, due to Gram Panchayat Election, he was required to remain present in Police Station, but he attended one function at Kolhapur without permission of Competent Authority, which was held to celebrate Jayanti of Raje Shree Chatrapati Shahu Maharaj. He was asked as to why his next increment for two years should not be withheld. He submitted explanation for the same. However, the Respondent No.4 by order dated 04.01.2011 imposed punishment of withholding of one increment for two years without cumulative effect. Being aggrieved by it, the Applicant had filed an appeal against the order of punishment before Respondent No.3 – Special Inspector General of Police, Kolhapur Range, Kolhapur, which was allowed by order dated 20.05.2011 and the Applicant was exonerated from the charge.

5. On the above background, the Applicant contends that Respondent No.4 had nurtured bias against him, and therefore, took adverse entries in his ACR of 2010-2011 for the period 31.05.2010 to 31.03.2011. The Respondent No.4 made following adverse remarks :-

"Industry & application	: Average.
Capacity to get work done by subordinates	: Average.
General intelligence	: Average
Administrative ability including judgment, initiative & drive	: Average.
Integrity & character	: Doubtful.
Whether powers delegated are fully utilized ?	: No.

Fitness for promotion	: Unfit.
Willingness to work on computer	: No. Not sincere and prone to indiscipline.
Grading	: Average"

The aforesaid adverse entries were communicated to the Applicant by letter dated 16.02.2011 (Page No.55 of P.B.). The Applicant made representation to Respondent No.3 (Page No.75 of P.B.) on 05.03.2012 to expunge the remark. However, it was not responded by Respondent No.3. The Applicant, therefore, made representation to Respondent No.2 – Director General of Police on 24.11.2016 (Page No.109 of P.B.). However, the Respondent No.2 by communication dated 16.02.2018 (Page No.116 of P.B.) rejected the representation. Being aggrieved by it, the Applicant has filed the present O.A.

6. Before going further, material to note that Respondent No.4 Shri Yashasvi Yadav, who was Superintendent of Police, Kolhapur at the relevant time is made Respondent in the present O.A. by name in view of personal allegation of bias against the Applicant. However, the Respondent No.4 though served did not appear.

7. The Respondent No.5 – Shri Jayant Deshmukh, who was Sub-Divisional Officer and Reporting Officer for writing ACR of the Applicant is also made Respondent in personal capacity since retired from service. The Respondent No.5 appeared through Counsel and filed Affidavit-in-reply (Page Nos.189 and 190 of P.B.) *inter-alia* supporting the Applicant's contention that he being Sub-Divisional Police Officer at the relevant time, was appropriate authority to write ACR of the Applicant but his authority has been usurped by Respondent No.4. He further supports the Applicant's contention that the relation between Applicant and Respondent No.4 were strained, and therefore, later recorded adverse entries in ACR of the

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Applicant. Following portion of Affidavit is material which is as follows :-

(a) It is factual aspect that while I was working as Dy. S.P. at Karveer Division, Dist. Kolhapur at the relevant time, the Respondent No.4 was Superintendent of Police, and he was my immediate superior and competent reviewing authority in the matters of gradation of ACRs of the post of API as per the provisions of GR dated 01.02.1996 and GR dated 19.03.1999.

(b) I further say and submit that while I was working as a Dy.S.P. at Karveer Division the relations between the Applicant and the Respondent No.4 were strained and therefore the Respondent No.4 had recorded the ACRs of the Applicant though I was the reporting officer. I again humbly submit that Respondent No.4 had once orally directed me to send default report against Applicant whenever possible to spoil his record.

(c) Under the above said circumstances the Respondent No.4 himself deliberately recorded the ACRs of the Applicant for the period of 31.05.2010 to 05.01.2011 overstepping his jurisdiction.

8. Whereas the Respondent No.2 filed Affidavit-in-reply (Page Nos.180 to 188 of P.B.) and again filed Additional Affidavit at Page Nos.195 to 198 of P.B. *inter-alia* denying that the adverse entries were recorded out of bias or prejudice. According to these authorities, the Respondent No.4 observed the performance of the Applicant and recording of ACR is outcome of his subjective satisfaction. As regard the authority of Respondent No.4 to write ACR of the Applicant, it is sought to be contended that the Respondent No.4 being Reviewing Authority can write ACR of the Applicant in terms of Clause 6 of G.R. dated 1st February, 1996.

9. Heard Shri K.R. Jagdale, learned Advocate for the Applicant, Shri A.J. Chougule, learned Presenting Officer for Respondents 1 to 3 and Shri Shailesh Chavan, learned Advocate for Respondent No.5. The Respondent No.4 served but not appeared.

10. The claim for expungement of adverse entries recorded in ACR by Respondent No.4 and challenge to the rejection of representation is on following grounds.

(i) For writing ACR of the year 2010-2011 for the period mentioned therein (31.05.2010 to 31.03.2011), the competent Reporting Authority to write ACR was Respondent No.5 – Shri Jayant Deshmukh, the then Sub-Divisional Police Officer, but Respondent No.4 Shri Yashavi Yadav, the then Superintendent of Police, Kolhapur usurped the authority illegally, and therefore, writing of ACR itself is unauthorized and illegal for want of authority.

(ii) The Respondent No.4 had nurtured bias and prejudice against the Applicant and intentionally made adverse entries in ACR.

(iii) Except adverse entries in ACR of 2010-2011, remaining ACRs of entire period of the Applicant is excellent which has been completely ignored by Respondent No.4, which also indicates extent of bias and prejudice nurtured by Respondent No.4.

(iv) The delay of near about six years in deciding the representation made by the Applicant.

11. Needless to mention that the Confidential Reports of Government servant is very crucial report and the authority who is entrusted with the writing of Confidential Reports needs to act fairly

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and objectively. The purpose of writing Confidential Report is primarily to forewarn the employee to mend his ways and to improve performance. The Confidential Reports are being maintained to assess the suitability of the concerned Government servant for promotion, etc. and it has potential for shaping future career of the employee. Therefore, the concerned authority must eschew of making vague remark causing jeopardy to the service of concerned subordinate officer and is required to act fairly and objectively while making entries in Confidential Reports. The judicial intervention is permissible rather imperative where action of writing ACR suffers from vice of arbitrariness, unreasonableness, malice or without authority.

12. Indisputably, at the relevant time i.e. at the time or writing of ACR of 2010-2011, the Respondent No.4 Shri Jayant Deshmukh, the then Sub-Divisional Police Officer was Reporting Officer, and therefore, it was for Respondent No.5 to write ACR of the Applicant and Superintendent of Police was Reviewing Authority. However, in the present case, admittedly, it is Respondent No.4 who was in fact Reviewing Authority had written ACR of the Applicant bypassing Reporting Authority i.e. Respondent No.4 – Shri Jayant Deshmukh, Sub-Divisional Police Officer, Karveer. There is no denying that Respondent No.5 was very much available and admittedly, the Applicant was in his direct supervision. Material to note that the impugned entries in the ACR of 2010-2011 was made by Respondent No.4 on 27.07.2011 while he was Superintendent of Police, CID Crime, Nagpur. Page Nos.130 and 131 of P.B. is the ACR in question. It is thus admitted position that the Respondent No.4 though supposed to act as Reviewing Authority, he himself took on the role of Reporting Authority and thereby usurped the power of Reporting Authority.

13. Shri A.J. Chougule, learned Presenting Officer in reference to Clause No.6 of G.R. dated 01.02.1996 sought to contend that the Respondent No.4 was entitled to write ACR of the Applicant. This submission advanced by the learned P.O. is totally misconceived and fallacious, as the situation contemplated under Clause 6 of G.R. dated 01.02.1996 is totally different and not applicable to the present case. Clause No.6 of G.R. dated 01.02.1996 is as follows :-

“जेव्हा प्रतिवेदन अधिकारी एखाद्या अधिका-याच्या/कर्मचा-याचा अहवाल त्या अधिका-याने/कर्मचा-याने त्याच्या हाताखाली ३ महिन्यांपेक्षा कमी काम केल्यामुळे लिहू शकत नसेल तेव्हा पुनर्विलोकन अधिकारी जर त्याने त्या कर्मचा-याचे /अधिका-याचे काम ३ महिने किंवा अधिक कालावधीसाठी पाहीले असेल तर त्या कर्मचा-याचा/अधिका-याचा गोपनीय अहवाल लिहू शकेल. हा अहवाल पुनर्विलोकीत करण्याची आवश्यकता नाही.”

14. It is thus explicit from Clause No.6 that it is applicable where the Reporting Officer is unable to write ACR of the concerned employee because of less than three month's work by the concerned employee under his supervision but if the Reviewing Authority has observed or seen the work of the concerned employee for three months or more, in that event, the Reviewing Authority itself can write ACR of such Government servant and in that event, there would be no requirement of Review. As such, Rule 6 is attracted, if there is any disability on the part of Reporting Officer because of less than three month's work by the concerned employee under him. This is for the obvious reason that the concerned employee must have worked at least for three months under the concerned Reporting Authority.

15. Now turning to the facts of the present case, indisputably, the Respondent No.5 was SDPO at the relevant time and the Applicant has worked under him for more than three months. The Respondent No.5 was SDPO at Karveer from 14.06.2010 to 29.05.2013 whereas the Applicant's tenure at Gandhinagar Police Station was from 31.05.2010 to 31.10.2010. On 31.10.2010, he was transferred to Rajarampuri Police Station, Kolhapur. These

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factual aspects of the period of service of the Applicant as well as period of tenure of Respondent No.5 as SDPO is matter of record, which is not disputed by the learned P.O. If this is the position that Respondent No.5 very much there under whom the Applicant had worked for more than three months, then the question of writing ACR by Reviewing Authority i.e. by Respondent No.4 does not survive. It is thus explicit that the Respondent No.4 had usurped the authority of Respondent No.5 and wrote the ACR of the Applicant. As Respondent No.4 himself had written ACR, it was not reviewed putting finger on Clause No.6 of G.R. dated 01.02.1996, which itself is not applicable here. There is nothing on record to indicate that the Respondent No.4 was asked to write ACR of the Applicant. No official correspondence in this regard is placed on record. Be that as it may, the fact remains that the Respondent No.5 had usurped the authority of Respondent No.4. This action of usurpation of power to write ACR of the Applicant perhaps is the indication that Respondent No.4 had nurtured some bias against the Applicant, and therefore, took on himself the work of writing adverse ACR. The aspect of bias will be dealt with little later. Presently, suffice to say that the present situation does not fall within Clause 6 of G.R. dated 01.02.1996 and the Respondent No.4 usurped the authority of Respondent No.5. This is unsustainable in law.

16. Now turning to the allegation of bias, it is matter of record that while the Applicant was API at Gandhinagar Police Station, there was incident of riot at Uchgaon on 08.09.2009 within the jurisdiction of Gandhinagar Police Station. It appears from the record that some miscreants pelted stones on Masjid and Police were required to resort to lathi charge as well as air firing. The Applicant as well as Respondent No.4 being Superintendent of Police of District, rushed there to control the situation. For that incident, the offences under Sections 295, 353, 307, 143, 147 of I.P.C. read with Section 135 of Maharashtra Police Act were registered against

villagers and they were arrested. It further appears from the record of Judicial Magistrate (Page Nos. 31 to 35 of P.B.) that those accused (villagers) made complaint to Judicial Magistrate alleging that they were assaulted by Respondent No.4 and other Police Personnel. The learned Judicial Magistrate recorded the statement of accused and forwarded his report to District and Sessions Judge for further appropriate action. Here we are not concerned with the outcome of the said enquiry but relevant to note that some riot had taken place at Village Uchgaon, and therefore, the Respondent No.4 naturally was unhappy with the Applicant, as the incident had taken place within the jurisdiction of Police Station headed by the Applicant. The Applicant contends that the Respondent No.4 was annoyed and humiliated him in presence of Police Personnel stating that he is fool and unable to control the situation. The Applicant contends that he was thus humiliated and insulted in presence of Police Personnel on the date of incident himself. The Applicant, therefore, apprehended harm to his career at the behest of Respondent No.4, and therefore, lodged complaint with Respondent No.3 – Special Inspector General of Police, Kolhapur on 18.01.2010, which is at Page No.51 of P.B. In complaint, the Applicant claimed protection against any such unwarranted action at the hands of Respondent No.4. The Applicant contends that in pursuance of said representation, some enquiry was conducted by Respondent No.3 – Special Inspector General of Police, and therefore, the Respondent No.4 got annoyed and nurtured bias against him, which ultimately led Respondent No.4 to make adverse entries in ACR of 2010-2011. This contention of the Applicant cannot be brushed aside.

17. Here, it would note to out of place to mention that, in the meantime, the Respondent No.4 issued Show Cause Notice on 27.06.2010 to the Applicant for alleged misconduct and called his explanation. As per Show Cause Notice (Page No.70 of P.B.), it was alleged that on 26.06.2010, the Applicant attended one function at

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Kolhapur, which was held to celebrate Raja Shri Chhatrapati Shahu Jayanti though he was required to remain present in Police Station on account of Gram Panchayat Election. The Applicant submitted his explanation. However, by order dated 04.01.2011, the Respondent No.4 held him guilty for the said misconduct and withhold next increment for two years without cumulative effect. The Applicant challenged the order of punishment by filing appeal before Respondent No.3 who was pleased to allow the appeal and punishment was set aside vide order dated 20.05.2011. The date of imposition of punishment by Respondent No.4 and the date of order of Appellate Authority are material. The ACR in question was written by Respondent No.4 on 27.07.2011. As such, the punishment imposed by Respondent No.4 for alleged misconduct was already set aside by the Appellate Authority and thereafter, ACR in question was written. Perhaps, this was also one of the circumstance suggestive of some bias nurtured by Respondent No.4 against the Applicant.

18. Now let us see what was the material before Respondent No.4 so as to write adverse remarks in ACR of the Applicant. On representation made by the Applicant to expunge adverse entries as per procedure, remarks of Respondent No.4 were called. The Applicant has made representation well within time but it was not decided for near about six years for want of remark of Respondent No.4, though as per instructions in G.R. dated 1st February, 1996, the representation needs to be decided by the competent authority within three months from the date of representation. Whereas, in the present case, the Respondent No.4 did not bother to submit his remark despite several reminders to him by Respondent No.2 as seen from the noting on the file of Respondent No.2 (Page Nos.136 to 151 of P.B.).

19. Indeed, while writing ACR of the Applicant, the Respondent No.4 did not specify the reason or ground on the basis of which adverse entries are made. An Officer writing ACR needs to maintain ephemeral role about the shortcomings deficiencies he found in the performance of the Government servant, so that at the time of annual assessment, appropriate entries are taken. However, no such, ephemeral role is forthcoming. Needless to mention that ACRs are required to be written in impartial manner without any prejudice whatsoever and it should be written by next superior Officer of higher rank and there should be another Officer in the rank above the Reporting Officer as Reviewing Authority. In the present case, the Respondent No.5 was Reporting Authority, but Respondent No.4 usurped the authority of Respondent No.5 and resultantly, the ACR in question was left without review, which certainly caused prejudice to the Applicant.

20. Be that as it may, it would be relevant to see the remark offered by Respondent No.4 belatedly. As per remark offered by Respondent No.4, he seems to have made adverse entries in the ACR of Applicant for two reasons. First reason mentioned in the remark is that though instructions were given to the Applicant to keep strict vigil on illegal activities of gambling, sale of illicit liquor, etc., on 23.06.2010, special squad led raid and seized cash of Rs.1,750/- and articles of gaming from the accused and offence under Section 12-A of Maharashtra Gambling Act was registered. Therefore, the Show Cause Notice dated 24.06.2010 was issued and his explanation was called. In this respect, the Applicant contends that he had already submitted his explanation to Respondent No.4 by letter dated 01.07.2010 (Page No.161 of P.B.) and explained that he had taken enough precaution and registered several offences against the persons found involved in gaming and in the business of illicit liquor. In explanation dated 01.07.2010, he has given the details of offences registered against the accused. In explanation, he further

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stated that on 23.06.2010 also, he did patrolling duty and was taking ample precaution to curb gaming and other offences. He, therefore, requested to accept the explanation. Material to note that there is no communication of any order to the Applicant as regard Show Cause Notice dated 24.06.2010 and about the explanation submitted by the Applicant. As such, in my considered opinion, this solitary incident can hardly be enough so as to took adverse entries in the ACR of the Applicant considering that there is no rejection to his explanation and particularly in the light of consistent good/very good ACRs of remaining period.

21. Second reason mentioned in the remark to write adverse entries in the ACR is punishment of withholding two increments imposed upon the Applicant by Respondent No.4 himself by order dated 27.06.2010. Indeed, this punishment of withholding of one increment for two years without cumulative effect has been already set aside by Appellate Authority on 20.05.2011. As such, the punishment was not at all in existence on the date of writing of ACR which was written by Respondent No.4 on 27.07.2011. Thus, once punishment is set aside, it obliterates the stigma and this aspect could not have been legally used by Respondent No.4 to make adverse entries in the ACR of the Applicant.

22. The adverse entry in the ACR taken by the Applicant that his integrity and character is doubtful is without any supporting record or material to that effect. There is absolutely nothing to indicate as to on what basis, the Respondent No.4 found integrity and character of the Applicant doubtful. Needless to mention that there should not be any such vague and sweeping remark in ACR, unless it is preceded by some material. Other entries made by Respondent No.4 that general intelligence, capacity to get work done by subordinate, administrative ability is average are also not supported by specific material.

23. As regard remark about integrity and character, it would be pertinent to take note of Clause No.11 of G.R. dated 01.02.1996, which is as follows :-

“११. शासकीय कर्मचा-यांची कसोटी, चाखी ही त्याच्या सेवेतील महत्वाची बाब असल्यामुळे यासंबंधीच्या रकान्यात प्रतिकूल शेरे लिहितांना 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 अनिष्ट कर्मचा-याची सचोटी प्रमाणित करू शकत नसेल किंवा त्याविषयी त्याला काही शंका असली तर त्याने रकान्यात कोणताही शेरा न लिहिता तो शेरा ठेवावा व आपल्या शंकेबाबतचा सविस्तर अहवाल वरिष्ठ अधिका-याकडे सादर करावा व सचोटी संशयास्पद अहवाल सोबत जोडला आहे असे रकान्यात लिहावे. वरिष्ठ अधिका-याने सदर अहवालावर त्वरित कार्यवाही करावी. जर चौकशीअंती शासकीय कर्मचारी निर्दोष असल्याचे आढळून आले तर त्याची सचोटी प्रमाणित करण्यात 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 ज्यांच्या ताब्यात असतात त्यांनी वरीष्ठ अधिका-यांची मान्यता घेऊन करावी.”

24. However, there is no compliance of these specific instructions issued in G.R. dated 01.02.1996. Thus, the remark that integrity and character of the Applicant is doubtful is made without observance of the instructions contained in G.R. and no such material to substantiate the same is forthcoming. This being the position, the remark that integrity and character is doubtful is nothing but sweeping remark and it cannot be termed objective assessment of the performance of the Applicant.

25. Shri K.R. Jagdale, learned Advocate for the Applicant has pointed out that except ACR in question, the ACR of remaining period during the entire service period of the Applicant are excellent and his work is appreciated by his superiors. In Para 7.2 of O.A, the gradation of ACR of the Applicant is mentioned as below for which there is no denial.

Year	Gradation
2007-2008	A+
2008-2009	A+
2009-2010	A
2010-2011	B-
	(which is under challenge in present)

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	O.A.)
2011-2012	A+
2012-2013	A+
2013-2014	A+
2014-2015	A+
2015-2016	A+
2016-2017	A+

Gradation 'A+' denotes excellent/outstanding performance and 'A' denotes that the performance of the concerned is very good whereas 'B-' denotes that the performance is average.

26. Besides, the Applicant has produced letter issued by Respondent No.2 – Director General of Police which exhibits that the performance of the Applicant was appreciated and Police in signia was awarded to him on 01.05.2017 (पोलीस महासंचालक सन्मानचिन्ह). Besides he has also produced letter of appreciation issued by Respondent No.2 dated 16.05.2017 for best investigation of Crime No.173/2016 for the offence under Section 395, 397, 342, 506(2) of IPC as seen from Page Nos.110 to 115 of P.B. As such, it was a matter of record that except impugned ACR of 2010-2011, the Applicant's service record is excellent.

27. In view of these consistent excellent confidential reports, it is difficult to digest that there was anything substantial so as to downgrade the ACR of the Applicant for the period from 31.05.2010 to 31.03.2011. It is incomprehensible that the Government servant, whose performance is consistently graded as excellent would suddenly fall to such an extent, so as to down-grade his gradation only for short period. This is something inconceivable.

28. Now, let us see the reasons recorded by the Respondent No.2 while rejecting the representation of the Applicant. Performance of note-sheet (Page 150 of PB) reveals that the Respondent No.2 rejected the representation on the ground that there is delay in making representation and secondly though the Respondent No.2 cautioned the Applicant, he did not improve. Interesting to note that the Applicant had made representation addressed to Respondent No.3 – Special Inspector General of Police, Kolhapur Range on 05.03.2012 within the period of two months from receipt of communication of ACR as provided in G.R. dated 01.02.1996. Suffice to say, the representation was within limitation. As the Respondent No.3 did not respond to the representation, the Applicant was constrained to make representation addressed to Respondent No.2 on 24.11.2016. Thus, it was because of failure of Respondent No.3 who was competent authority to decide the representation, the Applicant made representation to Respondent No.2 on 24.11.2016. This being the position, the reason recorded by the Respondent No.2 that representation is belated is totally unsustainable and shows non application of mind. Second reason for rejection of representation is that the Respondent No.4 had cautioned the Applicant many times but he did not improve. Indeed, there is no such caution letter. The Respondent No.4 in his remark recorded adverse entry on the basis of show cause notice dated 24.06.2010 and punishment of withholding of one increment for two years which could have been the reason for taking adverse entry in the ACR of the Applicant as discussed above. The Respondent No.2 did not advert to a single ground out of various grounds mentioned by the Applicant in his representation. The Respondent No.2 lost sight of consistent outstanding gradation of the ACR and mechanically rejected the representation.

16/11/16

29. As stated above, in terms of G.R. dated 01.02.1996, the decision on the representation of the Government servant made for expunging the remark is required to be taken within three months from the receipt of representation. In the present case, the Applicant made representation on 05.03.2012 but it was kept pending for six years for want of remark of Respondent No.4. The Respondent No.4 submitted his remark to Respondent No.2 belatedly by his letter dated 30.12.2017. Thereafter, the Respondent No.2 mechanically rejected the representation by impugned order dated 16.02.2018. As such, there is no observance of the instructions contained in G.R. dated 01.02.1996 and there is inordinate and unexplained delay to decide the representation made by the Applicant. The very purpose of writing ACR of Government servant is to forewarn him to make his ways and to improve performance. This is for this reason, the detailed instructions are issued by G.R. dated 01.02.1996 thereby fixing time limit to decide the representation. If representations are kept pending for years together without any proper explanation to explain the delay, then such belated communication would frustrate the very object of writing ACR. Suffice to say, there is inordinate and unexplained delay of six years for deciding the representation of the Applicant.

30. As such, the contention of the Applicant that Respondent No.4 has nurtured bias against him because of complaint made by him on 18.01.2010 and out of bias, adverse remarks were made in the ACR of 2010-2011 cannot be brushed aside. The Respondent No.4 seems to have nurtured grudge against the Applicant. He usurped the authority of Respondent No.5 to write ACR of the Applicant and made adverse entries which ultimately found not substantiated. Such adverse entries are, therefore, required to be quashed.

31. The totality of aforesaid discussion leads me to sum-up that the adverse entries made by Respondent No.4 in the ACR of the Applicant needs to be expunged and impugned order dated 16.02.2018 deserves to be quashed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The order dated 16.02.2018 rejecting the representation of the Applicant is quashed and set aside.
- (C) The adverse entries in ACR of the Applicant for the year 2010-2011 are hereby expunged.
- (D) No order as to costs.

Sd/-

^{WV}
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 19.03.2020
Dictation taken by :
S.K. Wamanse.

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