

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

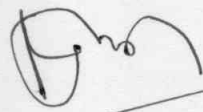
ORIGINAL APPLICATION NO.567 OF 2016

DISTRICT : A'NAGAR

Shri Prakash Balkrishna Dandekar.)
Aged : 57 Years, R/at : H-5/603,)
Gulmohor Co-op. Hsg. Soc, Pratiksha)
Nagar, Sion (E), Mumbai 400 022.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary (Small &)
Medium) of Industries, Energy &)
Labour Department and now)
Secretary (on Foreign Training),)
Hutatma Rajguru Chowk, Madam)
Cama Road, Mantralaya,)
Mumbai - 400 032.)
2. Principal Secretary (Labour &)
Administration), Industries, Energy)
& Labour Department, Hutatma)
Rajguru Chowk, Madam Cama Road,)
Mantralaya, Mumbai 400 032.)
3. Principal Secretary (Industries),)
Industries, Energy & Labour Dept.,)
Hutatma Rajguru Chowk, Madam)
Cama Road, Mantralaya,)
Mumbai 400 032.)



4. Addl. Chief Secretary (Persnnel),)
 General Admn. Department, Hutatma)
 Rajguru Chowk, Madam Cama Road,))...Respondents
 Mantralaya, Mumbai 400 032.

Mr. R.S. Kavle, Advocate for Applicant.

Mr. K.B. Bhise, Presenting Officer for Respondents.

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

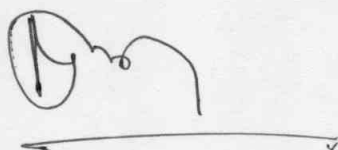
DATE : 20.01.2017

JUDGMENT

1. The Applicant, a Deputy Secretary has brought this Original Application (OA) having been stung by hard-hitting adverse remarks in his Annual Confidential Report (ACR) for the period from 24.9.2012 to 31.3.2013 made by the Respondent No.1 - Secretary (Small and Medium Industries) after getting them reviewed by the Respondent No.3 - Principal Secretary (Industries), I.E. & L. Department.

2. I have perused the record and proceedings and heard Mr. R.S. Kavle, the learned Advocate for the Applicant and Mr. K.B. Bhise, the learned Presenting Officer for the Respondents.

3. The sum and substance of the case of the Applicant is that at the time relevant hereto, he was working as a Deputy Secretary in the Industries Wing of Industries, Energy and Labour Department from 9.9.2010 to 2.5.2013 and was reporting to two Secretaries viz. the Respondent No.1 and Respondent No.3 who was the Principal Secretary (Industries). The Applicant was looking after two Sections viz. Sections 4 and 6. He claims to have received superlative remarks like "Outstanding" etc. for the entire period except the one at issue herein. There is indeed sufficient material on record to bear the Applicant out that he received superlative remarks as just mentioned. As far as the adverse remarks are concerned, the Respondent No.1 gave them in somewhat stinging manner for the period from 24.9.2012 to 31.3.2013. Adverse comments were made with regard to the competence of the Applicant. Now, these remarks were forwarded to the 3rd Respondent - Principal Secretary, Industries and here lies the crux of the matter. The essence of the case of the Applicant is that the 3rd Respondent could never have been a reviewing authority and in fact, in as much as the Applicant was looking after the work of two Sections even the 3rd Respondent was a reporting authority only and he acted as if he was reviewing authority erroneously because in accordance



with the G.R. of 2nd January, 2003 in Marathi pertaining to the maintenance of ACRs, the reviewing authority would be the Chief Secretary. It would be most appropriate if the said G.R. was reproduced in its entirety in Marathi, so as to have a clear focus on the fact at issue.

“मंत्रालयातील सह/उप सचिवांचे
गोपनीय अहवाल जतन करण्याबाबत

महाराष्ट्र शासन

सामान्य प्रशासन विभाग

शासन परिपत्रक क्रमांक गोपअ-१००२/प्र.क./६०/०२/१४

मंत्रालय, मुंबई - ४०० ०३२

दिनांक: २ जानेवारी, २००३

संदर्भ : शासन निर्णय, सा.प्र.वि., क्रमांक सीएफआर:१२९५/प्र.क.३६/९५/तेरा

दिनांक १.२.१९९६

शासन परिपत्रक

शासन निर्णय, सामान्य प्रशासन विभाग, क्रमांक सीएफआर-१२९५/प्र.क.३६/९५/तेरा, दिनांक १.२.१९९६ अन्वये गोपनीय अहवालाबाबत मार्गदर्शन सूचना विहित करण्यात आल्या आहेत.

मंत्रालयीन संवर्गातील सह/उपसचिवांचे गोपनीय अहवाल/ नस्त्या सामान्य प्रशासन विभागाकडे जतन केल्या जात नाहीत. तथापि प्रचलित व्यवस्थेनुसार राजपत्रित अधिका-यांचे गोपनीय अहवाल दोन प्रतीत ठेवले जात असल्याने गोपनीय अहवाल/ नस्त्या देखील दोन प्रतीत ठेवणे शक्य आहे. ही बाब विचारात घेता मंत्रालयातील सह/उप सचिवांचे गोपनीय अहवाल जतन करण्याबाबत खालीलप्रमाणे कार्यवाही करण्यात यावी.

(१) सह/उप सचिवांचे गोपनीय अहवाल शासन निर्णय, सामान्य प्रशासन विभाग, क्रमांक सीएफआर-१२९५/प्र.क.३६/९५/तेरा, दिनांक १.२.१९९६ मधील सूचनांच्या अनुषंगाने संबंधित विभागांच्या सचिवांनी गोपनीय अहवाल विहित मुदतीत प्रतिवेदीत करावेत आणि पुनर्विलोकनासाठी मुख्य सचिवांना सादर करावेत.

(२) मुख्य सचिवांकडून गोपनीय अहवालांचे पुनर्विलोकन झाल्यानंतर विभागानी दिनांक १.२.१९९६ च्या शासन निर्णयातील सूचना क्रमांक ३६ अनुसार त्यातील शे-यांची छाननी करून व शासनाची मान्यता घेऊन शेरे संबंधितांना दिनांक ३० जून पूर्वी कळविण्याची कार्यवाही पूर्ण करावी.

(३) सह/उप सचिवांना त्यांच्या गोपनीय अहवालातील शेरे कळविण्याची कार्यवाही पूर्ण झाल्यानंतर त्याची नोंद घेऊन गोपनीय अहवालाची एक प्रत जनत करण्याकरिता सा.प्र.वि./का.१४ कडे पाठवावी.

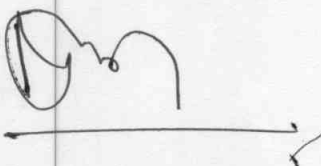
(४) प्रचलित तरतुदीनुसार सह/उप सचिवांच्या गोपनीय अहवालातील प्रतिकूल/सर्वसाधारण स्वरूपाचे शेरे संबंधित अधिक-यांना कळविण्यात आले असल्यास सदर पत्राची प्रत तसेच त्याविरुद्ध त्यांनी अभिवेदन केल्यास त्याची तसेच अभिवेदनावर अंतिमतः घेतलेल्या निर्णयाची माहिती विभागाने सा.प्र.वि./का.१४ ला कळवावी. जेणेकरून संबंधित सह/उप सचिवांच्या गोपनीय नस्त्या अद्ययावत ठेवता येतील.

त्याचप्रमाणे सध्या कार्यरत असलेल्या मंत्रालयीन संवर्गातील सर्व सह/उप सचिवांच्या गोपनीय अहवाल नस्त्या अद्ययावत करून त्याची एक प्रत जतन करण्याकरिता सा.प्र.वि./का. १४ कडे सुपुर्द करण्यात यावी.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,

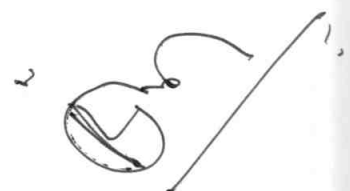
(मा.दा. वाघमारे)
उप सचिव, महाराष्ट्र शासन''

4. The above G.R. would, therefore, make it quite clear that the reviewing authority would not be anybody inferior to the Chief Secretary and it would be the Chief Secretary alone who in case of Deputy Secretaries and Joint Secretary, etc. would be the reviewing authority. In order to wriggle out of a very difficult situation, Mr. Bhise, the learned PO contended that the above quoted G.R. has now been superseded by the G.R. of 1st November, 2011. A copy thereof is there on record from Page 50 onwards of the Paper Book (PB). As many as nine instruments have been mentioned in the column of "read (in Marathi Vacha)". It supersedes the G.Rs. of 1.2.1996, 28.6.1996,



27.3.2002, 4.9.2002, 30.6.2003, 10.11.2011, 12.12.2006, 29.1.2008 and 27.4.2011. It does not specifically mention the G.R. of 2.1.2003. Mr. Bhise, however, told me that the 2003 G.R. itself had in the column of 'Subject (Sandharbha)' mentioned the G.R. of 1.2.1996 and if the G.R. of 1.2.1996 has been superseded by the G.R. of 1.11.2011, it goes without saying that the G.R. of 2.1.2003 will also get superseded. I completely disagree with the learned PO in so far as this argument goes. The G.R. of 2nd January, 2003 specifically deals with Deputy Secretaries and Joint Secretaries and their ACRs. If the Rule maker wanted the G.R. of 2.1.2003 to be superseded, then going by the fact that as many as nine instruments have been clearly set out in the relevant column of the G.R. of 1st November, 2011, the G.R. of 2.1.2003 would also have been clearly mentioned. It is, therefore, very clear that the Rule maker wanted the G.R. of 2.1.2003 to continue to exist despite the supersession of nine other instruments right from 1996 to 2011.

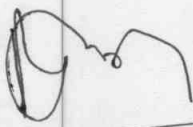
5. From the above discussion, therefore, it would become very clear that in the first place, the 3rd Respondent did not perform his function as reporting authority in so far as the segment of the work of the Applicant under him was concerned and if he acted as



reviewing authority, he had no real authority to do so, and therefore, the adverse remarks given by the 1st Respondent and, "reviewed" by the 3rd Respondent are not worth the paper they have been written on.

6. The case of the Respondent based on the submissions at the Bar and the Office Note, etc. appears to be that by the time, the remarks could be submitted to the Chief Secretary, the incumbent who held that post during the period relevant hereto had already demitted the Office upon retirement. Now, this is not even an apology of justification and the whole thing is quite obvious. In the first place, the outgoing Chief Secretary's attention ought to have been drawn to this particular aspect of the matter and the Rules including in fact, the Rules contained in G.R. of 1.11.2011 provide for such contingencies. Further, in the context of the present facts, even after retirement, the said authority could have been provided with the ACR in question for the purpose of review. That being the state of affairs, I am very clearly of the opinion that the defect herein is such as to go to the root of the matter and the impugned ACRs are for all practical purposes *non-est* and I only will have to declare the same formally as expunged.

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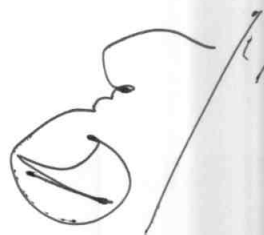


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7. A very detailed delve into the Office Note, etc. is not really necessary and only one point remains to be considered viz. that in the meanwhile, a departmental enquiry (DE) seems to have been initiated against the Applicant and if one has correctly understood the case of the Respondents, according to them, the adverse remarks cannot be tinkered with till such time as the DE gets concluded. Now, DE really has got no direct nexus with the adverse remarks. In Para 5 of the Affidavit-in-reply of Deputy Secretary Ms. Varsha M. Bharose for all practical purposes, the case of the Applicant has been supported. Let me reproduce the said Paragraph 5 :

"I say and submit that General Administration Department, Government circular dated 2nd January, 2003 valid till date stipulates that ACR of Deputy Secretary rank officers are to be reviewed by the Chief Secretary. In the present case both the reporting and reviewing officers holding additional charge appraised and reviewed the said contended ACR as stated in the above said paragraph giving rise to a confusion/doubt hence contradictory stands were taken by Respondent No.2 and Respondent No.3."

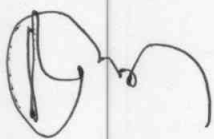
8. In my opinion, the pendency of DE in the context of the present facts would be no impediment in the way of the expunging of the adverse remarks and as a matter of fact, I must repeat times out of number that the said ACR

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is for all practical purposes *non-est*, and therefore, there is no question of allowing them to exist.

9. Mr. Bhise, the learned PO wanted me to make some clarification with regard to what should now be done if I were to go along with the Applicants and expunge the adverse remarks. In my opinion, the scope of this particular OA is what it is, I only have to scrutinize the ACR to determine if the adverse remarks can be allowed to stand. If they cannot be for the afore discussed reasons, then they are to be expunged and struck off. I do not feel called upon to go into any other aspect of the matter and in fact, I am therefore, going to leave undecided the facts at issue falling within Prayer Clauses 9(ii) and 9(iii) of the OA. The effect of the final order would surely affect the communication dated 9th November, 2014 at Page 112 of the PB from Industries, Energy and Labour Department to the Applicant in response to his communication which is at Page 84 of the PB. By a very detailed representation, the Applicant had protested against the adverse remarks. The Office submitted its Note beginning from Pages 92 of the PB and ultimately, the communication at Page 112 just referred to was issued. The sum and substance thereof was that in as much as the then Secretary had demitted Office on retirement, the matter was placed before the

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Government and they had also approved the adverse remarks. Now, the above discussion must have made it very clear that such a stand can surely not be accepted. If the reviewing authority was the Chief Secretary, the review has to be made by the Chief Secretary only and even if the incumbent had retired, that matters not. I have already discussed this aspect hereinabove.

10. For the foregoing, the adverse remarks given by the 1st Respondent and purportedly reviewed by the 3rd Respondent in case of the Applicant for the period from 24.9.2012 to 31.3.2013 stand hereby expunged and the same be removed from the Confidential Report of the Applicant with immediate effect. The communication which is at Page 112 of the PB stands hereby quashed and set aside. Prayer Clause 9(ii) and 9(iii) are left undecided. The Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
20.01.2017

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Mumbai

Date : 20.01.2017

Dictation taken by :

S.K. Wamanse.

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