

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 650 OF 2021

(Subject:- Expunge of Adverse Remarks)

DISTRICT:-AHAMADNAGAR

Prakash T. Vaichal

Age: 59 years, Occu. Addl. Collector)

Selection Grade), Kausalya Niwas,

Nandanwan Colony, Bhausingpura Road,

Aurangabad -431002.

Contact No: 9422206040

Email Id: prakashtvaichal@gmail.com

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))**APPLICANT**

V E R S U S

1. The State of Maharashtra

Through the Chief Secretary,

Government of Maharashtra,

Mantralaya, Mumbai – 400 032.

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2. General Administration Department,

Through the Addl. Chief Secretary,

(Services), Government of Maharashtra,

Mumbai -400032.

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3. The Revenue & Forest Department,

Through Addl. Chief Secretary,

Mantralaya, Mumbai-400032.

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RESPONDENTS

APPEARANCE : Shri Yashodeep Deshmukh, learned
counsel holding for Shri A.D. Kawre,
learned counsel for the applicant.

: Shri A.P. Basarkar, learned Presenting
Officer for the respondent authorities.

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

RESERVED ON : 26.02.2024.

PRONOUNCED ON : 06.05.2024.

ORDER

Heard Shri Yashodeep Deshmukh, learned counsel holding for Shri A.D. Kawre, learned counsel for the applicant and Shri A.P. Basarkar, learned Presenting Officer for the respondent authorities.

2. By this Original Application the applicant is seeking direction to the respondents to expunge the adverse remarks in the Annual Confidential Report (in short "A.C.R.") for the period of 01.04.2014 to 31.03.2015.

3. Brief facts giving arise to this Original Application are as follows:-

(i) The applicant is appointed as Deputy Collector through Maharashtra Public Service Commission (in short "M.P.S.C.") in the Revenue Service of the State of Maharashtra with effect from 9th March, 1994. After having worked for a period of nine years, he was conferred selection grade of Deputy Collector in the year 2003. In the year 2009, the applicant came to be promoted to the post of Additional Collector and further conferred with the selection grade of the Additional Collector in the year 2016. At present, the applicant is

working as Additional Collector (Selection Grade) and Chairman, District Caste Verification Committee, Ahmednagar.

(ii) It is the case of the applicant that he had applied under the provisions of Right to Information Act, 2005 for information regarding A.C.Rs. between the period of 01.04.2011 to 30.09.2015 vide letter dated 04.12.2018. It is the case of the applicant that the reason for seeking such information was the repeated denial of promotion by nomination to IAS cadre in spite of applicant being in zone of consideration, having requisite seniority and also fulfilling the eligibility conditions. The applicant has received reply under RTI vide letter dated 19.12.2018. Year wise assessment is detailed in paragraph No. 6.3 of the Original Application.

(iii) According to the applicant the ACRs for the period of 19.06.2012 to 14.12.2012 was upgraded to "B" which means "Positively Good". However not being satisfied with same, the applicant has filed an appeal before the Government of Maharashtra and State Government of Maharashtra vide order dated 14.02.2019 had reviewed applicants ACR and

same was upgraded to “A+ (Very Good)” from “B (Good)” by competent authority.

(iv) The applicant further contends that the applicant thereafter sought information under RTI, Act 2005 regarding his year wise ACRs gradation right from the year 2009 -2010 to 2019-2020 and the said information received by the applicant vide letter dated 05.01.2021 from Union Public Service Commission (in short “UPSC”). According to the applicant the reason for seeking such information from UPSC was repeated rejection of candidature of the applicant who was in the zone of consideration for promotion by nomination to IAS cadre from the State service and also senior most. For the first time the applicant came to know about average remarks reflected in his confidential report pertaining to the year 2014-2015. The said average rating was never communicated to the applicant.

(v) The applicant has made representation to UPSC by letter dated 01.02.2021 stating therein his grievance regarding uncommunicated adverse remark of the year 2014-2015 with the request that the same should not be considered. In turn, the UPSC directed the State Government

to look into the matter. Thus the State Government for the first time communicated the ACR of the year 2014-2015 drawn by the Reporting Authority to whom the applicant was regularly working vide letter dated 04.02.2021. The applicant has made the detailed representation against the entries in the ACR and in particular against the grading "B" and also the adverse remarks. It is the further case of the applicant that vide order dated 30.03.2021, as reflected in the Government Resolution dated 30.03.2021 issued by the respondent No.3, it was declared that based on the remarks given by the then Reporting Officer and Reviewing Officer and after the approval of the Competent Authority the ACR of the applicant is upgraded from "B+ (Positively Good)" to "A (Very Good)" for the year 01.04.2014 to 31.03.2015 (Annexure 'A-E').

(vi) The applicant further contends that vide notification dated 12.07.2021 published in Gazette of India a select list of the year 2019 of 9 Officers from Maharashtra State Civil Service selected for promotion to IAS was published and to the shock and surprise of the applicant, he was again deprived of the selection in spite of being senior most. The

applicant has again applied online RTI application dated 14.07.2021 seeking a copy of documents relating to assessment of his ACR's for the years 2014-2015 to 2018-2019 assessed and relied upon by the selection committee of UPSC for preparation of select list of 2019 and the copy of the minutes of Selection Committee meeting held on 18.06.2021 for preparation of select list of 2019. The applicant came to know that UPSC declared applicant "unfit" based on average remarks in ACR of 2014-2015. All other ACRs are very good and otherwise meet the criteria for promotion. Despite order dated 30.03.2021 either the upgraded ACRs are not communicated or adverse remarks not expunged which fact has gone against the applicant. Hence, this Original Application.

4. Learned counsel for the applicant submits that the concerned department i.e. the respondent No.3 has intentionally and deliberately kept the applicant in the dark so that he will not get selected for the Maharashtra Cadre IAS nomination. It was the duty of the competent authority to communicate to the applicant his adverse remarks. Learned counsel for the applicant submits that while upgrading the ACR from "B+ (Positively Good)" to "A (Very Good)" for the

period of 01.04.2014 to 31.03.2015, it was incumbent upon the concerned superior officers/authorities to apply their mind to other entries in the ACR against which the applicant had made grievance and submitted the detailed representation including expunging the adverse remarks. However, the respondent authorities failed to do so resulting in miscarriage of justice as the adverse remarks have continued in the upgrade ACRs.

5. Learned counsel for the applicant submits that the upgradation of ACR to “A (Very Good)” does not stand compatible with the adverse remarks contained in previous uncommunicated ACRs and as such, ought to have been expunged which the Government has failed to do and as such, implied refusal cannot be stand test and reason which is illegal and untenable.

6. Learned counsel for the applicant submits that the respondent authorities have not considered in proper perspective the Very Good ACRs given by retired Justice Bagga to whom applicant was reporting while holding the additional charge and who found the applicant excellent. The said aspect is totally ignored by the respondents and by

superior authorities while deciding the representation of the applicant against the uncommunicated “B” rating ACR which has adverse remarks.

7. Learned counsel for the applicant submits that the implied decision to retain the adverse remarks is most arbitrary, baseless, unreasonable and illegal. The applicant is consistently meritorious with “A and A+” rating in ACRs during his service is made to suffer due to retention of such adverse remarks when his ACR is upgraded rightly to “A”. Learned counsel for the applicant submits that thus the Original Application deserves to be allowed and the respondents may be directed to expunge the adverse remarks in the ACR for the period of 01.04.2014 to 31.03.2015.

8. Learned Presenting Officer for the respondent authorities on the basis of affidavit in reply filed on behalf of respondent Nos. 1 to 3 submits that the applicant while working as Additional Collector, Nandurbar Sardar Sarovar Project, his ACR for the period w.e.f. 01.04.2014 to 31.03.2015 was recorded as “B+ Positively Good” by then Collector, Nandurbar and the same was maintained by the Reviewing Officer i.e. Divisional Commissioner, Nashik. In

view of the said ACR, the applicant was not considered in the select lists for the years 2015 to 2018 for the Indian Administrative Services.

9. Learned Presenting Officer submits that during the said period the applicant was holding the additional charge of the Grievances Redressal Authority headed by Shri A.S. Bagga, retired Justice of Hon'ble High Court of Bombay and then Chairman of the Grievances Redressal Authority who had written the ACR of the applicant for the same period i.e. 01.04.2014 to 31.03.2015 as "A Very Good". The same has not been taken into consideration by the Competent Authority. Accordingly, the applicant has submitted his representation dated 15.02.2021 to upgrade his said "B+ Positively Good" ACR for the year 2014-2015 in the light of ACR "A Very Good" written by then Chairman of the Grievances Redressal Authority. Learned Presenting Officer submits that accordingly, "B+ Positively Good" ACR for the period of 2014-2015 has been upgraded as "A Very Good" vide communication dated 30.03.2021. However, the applicant is aggrieved by the Notification dated 12.07.2021 published in Gazette of India whereby 9 Officers of the State

of Maharashtra selected for promotion to IAS wherein the name of the applicant is not included.

10. Learned Presenting Officer submits that the applicant had filed the Original Application No. 768/2016 before the Central Administrative Tribunal (CAT), Mumbai Bench seeking directions against the respondents therein to hold a Review of the Selection Committee Meeting held on 20.06.2016 and after doing so, appoint the applicant by promotion to the IAS and place him above the respondent Nos. 4 to 6 in the said O.A. Further the applicant had filed another Original Application No. 390 of 2016 before the Central Administrative Tribunal (CAT), Mumbai Bench seeking directions to call a Review of the Selection Committee Meeting and consider the name of the applicant for appointment by promotion to the IAS in the select list of 2017. So also the applicant had filed O.A.No. 426 of 2020 before the Central Administrative Tribunal (CAT), Mumbai Bench for the identical relief for preparation of Select List for the year 2018. The Central Administrative Tribunal, Mumbai Bench by its common judgment dated 29.10.2021 has decided all the above-said Original Applications and thereby held that the decision of the Selection Committee in its

meetings dated 08.07.2016, 27.11.2018 and 07.08.2020, qua the applicant declaring him unfit are quashed and set aside. The respondents are directed to constitute Review Selection Committee for the select list 2015, 2017 and 2018 respectively and to consider afresh the case of the applicant for appointment by promotion to the IAS with some further directions as detailed in paragraph No. 8 of the reply filed on behalf of respondent Nos. 1 to 3.

11. Learned Presenting Office submits that in view of issuance of Government order dated 30.03.2021 thereby upgrading the ACR of the applicant for the period of 2014-2015 from "B+ Positively Good" to "A Very Good" which is marked as Annexure 'E' to the present Original Application and in terms of the common judgment and order delivered by the CAT, Mumbai Bench date 29.10.2021, the present Original Application is not maintainable and is liable to be dismissed.

12. Learned Presenting Officer submits that the UPSC vide letter dated 03.02.2022 addressed to the Chief Secretary, Government of Maharashtra by referring the order dated 29.10.2021 passed by Central Administrative Tribunal (CAT),

Mumbai Bench stated that Tribunal has directed to convene RSCM to reconsider the name of the applicant for promotion to the IAS of Maharashtra cadre for the select list of 2015, 2017 and 2018, taking into account the orders passed by the State Government regarding upgradation of his ACRs and recalling the adverse entries. It is further stated in the said letter that upgradation of ACRs and recalling of adverse entries in ACRs are the domain of the State Government and thus the State accordingly has requested either to challenge the order of the CAT, Mumbai Bench in the High Court of Mumbai or to implement it by taking necessary action accordingly.

13. Learned Presenting Officer submits that vide Government order dated 27.03.2017, the adverse remarks for the period of 19.06.2012 to 14.12.2012 were expunged and grading was assigned as "B + Positively Good" which was further upgraded as "A Very Good" vide Government order dated 14.02.2019. However, by Government order dated 30.03.2021, the adverse remarks for the period of 01.04.2014 to 31.03.2015 were not expunged and only grading was upgraded as assigned as "A Very Good". Learned P.O. submits that in view of submissions made above, the final

prayer clause does not survive for consideration and thus the Original Application liable to be dismissed.

14. In the peculiar facts of the present case, the applicant while working as Additional Collector, Nandurbar Sardar Sarovar Project, his ACR for the period w.e.f. 01.04.2014 to 31.03.2015 was recorded as “B+ (Positively Good)” by then Collector, Nandurbar and the same was maintained by the Reviewing Officer i.e. Divisional Commissioner, Nashik. In view of the said ACR, the applicant was not considered in the Select Lists for the years 2015 to 2018 for the Indian Administrative Services. It is necessary to mention here that the applicant was also given the additional charge of the Additional Collector of Grievance Redressal Authority (GRA), Nandurbar, which was headed by Shri A.S. Bagga, retired Justice of Hon’ble High Court of Bombay who has given the applicant “A (Very Good)” grade for the year 2014-2015. It is the specific case of the applicant that he was kept in dark about the adverse rating for the year 2014-2015 and that those adverse remarks for the said year of 2014-2015 were never communicated to him.

15. Meanwhile, the applicant has also filed the O.A.Nos. 768/2016, 390/2019 and 426/2020 before the

Central Administrative Tribunal, Mumbai Bench seeking direction against the respondents therein to hold Review of the Selection Committee Meeting and consider the name of the applicant for appointment by promotion to the IAS in the select list of 2015, 2017 and 2018 respectively. By common judgment and order dated 29.10.2021, the Central Administrative Tribunal, Mumbai Bench has decided all the aforesaid Original Applications.

16. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent Nos. 1 to 3 submits that in view of said decision dated 29.10.2021 rendered by Central Administrative Tribunal, Mumbai Bench the, the Original Application is not maintainable and it liable to be dismissed.

17. I have careful gone through the common judgment and order passed by the Central Administrative Tribunal, Mumbai Bench in the aforesaid Original Applications. Paragraph No. 25 of the said judgment is reproduced hereinbelow:-

“25. After giving thoughtful consideration to the undisputed material on record, we are of the opinion that the Selection Committee has not considered the case of the applicant for appointment by promotion to

the IAS in just and fair manner. The Selection Committee's decisions in its meetings held for Select List 2015, 2017 and 2018 respectively stand vitiated as these were based on adverse ACRs which were never communicated to the applicant. Admittedly, later on, the adverse remarks have been expunged. The applicant has squarely made out a case for reconsideration of the question of his appointment by promotion to the IAS. In the circumstances, the decision of the Selection Committee in its meetings dated 08.07.2016, 27.11.2018 and 07.08.2020, qua the applicant declaring him unfit are quashed and set aside. The respondents are directed to constitute Review Selection Committee for the Select List 2015, 2017 and 2018 and to consider afresh the case of the applicant for appointment by promotion to the IAS taking into consideration the orders passed by the State Government recalling the adverse entries in the ACR and upgrading the same. If, on such consideration, the applicant is not selected for the Select List 2015, he be considered for the Select List, 2017. Again, if he is not selected, his case be considered for the Select List 2018. If on such reconsideration, the applicant is selected, he shall be entitled to the seniority and all other consequential benefits. The respondents are directed to comply with these directions positively within 8 weeks. In view of the above directions, OA Nos. 768/2016, 390/2019 and 426/2020 stand disposed off. No order as to costs."

18. It appears that the Central Administrative Tribunal, Mumbai Bench has directed the respondents therein to constitute Review Selection Committee for the Select List 2015, 2017 and 2018 and to consider afresh the case of the applicant for appointment by promotion to the IAS taking into consideration the orders passed by the State

Government recalling the adverse entries in the ACR and upgrading the same.

19. Meanwhile, the applicant has made the representation dated 01.02.2021 to U.P.S.C. stating his grievance regarding un-communicated adverse remark of the year 2014-2015 as should not be considered. The U.P.S.C. therefore directed State Government to look into the matter. Only on receiving letter from the UPSC, it appears that the Maharashtra State Government for the first time communicated the ACR of 2014-2015 drawn by the Reporting Authority under whom the applicant was regularly working vide letter dated 04.02.2021. The applicant has made the detailed representation dated 15.02.2021 (Annexure 'D') against the entries in the ACR and in particular against the grading as "B" and also adverse remarks to the State Government.

20. Thus considering the circumstances as above and based on the representation submitted by the applicant dated 15.02.2021 and the remarks received from the then Reporting officer and Reviewing Officer on it, the Government has issued the G.R. dated 30.03.2021. Paragraph No. 4.3 of the said G.R. is reproduced hereinbelow:-

“Government Resolution

Considering the circumstances as above, and based on the representation of Shri P.T. Vaichal dated 15.02.2021, the remarks received from then Reporting Officer and Reviewing Officer on it, as well as the legal opinion given by the Special Counsel, the Government Resolution is taken as per the Instruction No. 35 mentioned in the Annexure A to the Government Resolution dated 01.11.2011 as below:-

“The grading in the Confidential Report of Shri P.T. Vaichal, Additional Collector (Selection Grade) is upgraded from “B+ (Positively good)” to “A (Very good)” for the period of 01.04.2014 to 31.03.2015 which he was working on the regular post of Additional Collector, Sardar Sarovar Project, Nandurbar based on the remarks given by then Reporting Officer and Reviewing Officer and after the approval of the Competent Authority.”

21. It reflects from paragraph No. 4.1 of preamble of the said G.R. that the process of calling for the remarks of the Reporting Officer, Shri Pradeep P. then Collector, Nandurbar and Shri Eknath Dawale, then Divisional Commissioner, Nashik was carried out by the Government vide its letter dated 04.03.2021 based on the said remarks as the Below Benchmark grading was recorded in case of Shri Vaichal by the Reporting and Reviewing officers while he was working on the regular post of Additional Collector, Sardar Sarovar Project, Nandurbar.

22. In terms of paragraph No. 4.2 of the preamble of the said G.R., with reference to the Government letter dated

04.03.2021, Shri Pradeep P. then Reporting Officer and Commissioner, Collegiate and Technical Education Department, Karnataka State (Working on the Inter-state Deputation) vide the E-mail dated 10.03.2021 gave remarks as below:-

“As Collector, Nandurbar, I have assessed Shri Prakash Vaichal with a B+ rating in his annual confidential report for the year 2014-15. Shri Prakash Vaichal has represented to the Government to improve his rating, vide letter dated 15.02.2021. Keeping in mind that Shri Prakash Vaichal was also holding the charge of Additional Collector, Grievance Redressal Authority, in addition to his regular charge of Additional Collector, Sardar Sarovar Project, I am of the opinion that his rating may be improved to A. Accordingly, it is hereby submitted for further necessary action of the Government.”

23. In terms of paragraph No. 4.3 of the preamble of G.R., with reference to the above mentioned Government letter, dated 04.03.2021, Shri Eknath Dawale, then Reviewing Officer and Secretary, Agriculture has given remarks vide the letter dated 12.03.2021 as below:-

“The representation on upgrading the Confidential Reports of Shri Prakash T. Vaichal, presently Additional Collector pertaining to the period of 01.04.2014 to 31.03.2015 is received vide the letter under reference. There is no objection to upgrade the grading in the Confidential Reports of Shri Prakash T. Vaichal to ‘A’ pertaining to the period of 01.04.2014 to 31.03.2015 based on the said representation.”

24. It is thus appears that the grading in the A.C.R. of the applicant is upgraded from “B (Positively Good)” to “A (Very Good)” for the period of 01.04.2014 to 31.03.2015. However, while upgrading the said A.C.R. the other entries recorded in the A.C.R. of the 2014-2015 against which the applicant had made the specific grievance by way of submitting the detailed representation for expunging the adverse remarks, those entries remained as it is and only the upgradation has been done as per the remarks given by the Reporting officer as per para No. 4.2 of the preamble of the G.R. dated 30.03.2021 and as per the remarks given by the Reviewing Officer as per para No. 4.3 of the preamble of the said G.R. dated 30.03.2021.

25. In my considered opinion, this is an un-thoughtful process undertaken and completed by the State Government while issuing the G.R. dated 30.03.2021.

26. On careful perusal of the A.C.R. for the said period of 01.04.2014 to 31.03.2015 in column No. 19; which is about General Assessment it has been specifically remarked that;

“(19) General Assessment : Negative in approach. Needs to be more positive and needs to work on getting work done by the subordinates.”

and Reviewing Officer has accepted the said remarks. Thus by mere upgradation of the A.C.R of the applicant for the period of 01.04.2014 to 31.03.2015 from “B+ (Positively Good)” to “A (Very Good)” is not sufficient and adequate unless those adverse remarks of column No. 19 are also expunged in terms of remarks offered by the Reporting Officer and the Reviewing Officer as per para Nos. 4.2 and 4.3 of the preamble of the G.R. dated 30.03.2021. The Reporting Officer so also the Reviewing Officer both have given weightage that the applicant was holding charge of the Additional Collector, Grievance Redressal Authority in addition to his regular charge of Additional Collector, Sardar Sarovar Project. It appears that both of them were not called to offer their remarks to the extent of column No. 19 for the period of 01.04.2024 to 31.03.2015. In absence of expunging the remarks of the Reporting Officer and Reviewing Officer in this regard, the G.R. dated 30.03.2021 would be incomplete.

27. In view of above, this Tribunal left with no other choice to direct the respondent Nos. 1 to 3 to call upon the remarks afresh from the then Reporting Officer, Shri Pradeep P. and then Reviewing Officer, Shri Eknath Dawale to the

extent of column No. 19 of the A.C.R. for the period of 01.04.2014 to 31.03.2015 and other adverse entries in the A.C.R., if any, in a time bound manner and based upon the same, issue the modified G.R. if no needed. Hence, the following order:-

ORDER

The Original Application is partly allowed in the following terms:-

- (A) The respondent Nos. 1 to 3 are hereby directed to call upon the remarks afresh from the then Reporting Officer, Shri Pradeep P. and then Reviewing Officer, Shri Eknath Dawale to the extent of column No. 19 of the A.C.R. for the period of 01.04.2014 to 31.03.2015 and other adverse entries in the A.C.R., if any, as expeditiously as possible preferably within the period of three weeks from the date of receipt of this order and based upon the remarks of then Reporting Officer, Shri Pradeep P. and then Reviewing Officer, Shri Eknath Dawale, issue modified G.R. about the upgradation of the A.C.R.

for the period of 01.04.2014 to 31.03.2015, if it is so needed within three weeks thereafter.

- (B) In the circumstances, there shall be no order as to costs.
- (C) The Original Application is accordingly disposed off.

MEMBER (J)

Place:-Aurangabad

Date : 06.05.2024

SAS O.A. 650/2021(S.B.)Expunge of adverse Remarks