

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No. 2037/2007**

Reserved on: 4<sup>th</sup> August, 2008  
%Date of Decision: 20<sup>th</sup> October, 2008

C.V. Ranga Venkatesh  
12-K Central Govt. Housing Complex,  
Vasant Vihar,  
New Delhi – 110057.

...Petitioner

Through: Petitioner in person

versus

1. Union of India  
Through the Secretary,  
Ministry of Communication & I.T.,  
Department of Posts,  
Dak Bhavan, Sansad Marg,  
New Delhi – 110001.
2. The Director (Admn & F.S.)  
Ministry of Communication & I.T.,  
Department of Posts,  
Dak Bhavan, Sansad Marg,  
New Delhi – 110001.
3. Shri S.K. Bahl,  
Assistant Director General (Legal)  
Ministry of Communication & I.T.,  
Department of Posts,  
Dak Bhavan, Sansad Marg,  
New Delhi - 110001

...Respondents

Through: Mr. S.M. Arif, Adv.

**CORAM:**  
**HON'BLE MR. JUSTICE MADAN B. LOKUR**  
**HON'BLE MR. JUSTICE J.R. MIDHA**

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

**J.R. Midha, J.**

The Petitioner had been working as Assistant (Adhoc) in the Legal Cell of Ministry of Communication and Information Technology, Government of India. On 19<sup>th</sup> August, 2004, the Petitioner was sent the copy of ACR for the period 16<sup>th</sup> November, 2003 to 31<sup>st</sup> March, 2004 which contained adverse remarks. The Petitioner made a representation dated 17<sup>th</sup> September, 2004 which was disposed of by an order dated 27<sup>th</sup> April, 2005 whereby the remarks against Items No. 1, 2 and 14 were expunged to the extent indicated therein and the rest of the remarks were upheld.

The Appellate Authority examined the objections filed by the Petitioner and expunged certain remarks in respect of which the Petitioner could furnish explanation. The reasons for upholding the remaining remarks have been discussed in detail by the Appellate Authority in its order dated 27<sup>th</sup> April, 2005. The ACR contained adverse remarks against Items No. 1 to 10 and 14. In his representation dated 17<sup>th</sup> September, 2004, the Petitioner did not raise any objection to

the adverse remarks made against Item No.7 of the ACR, where it was recorded that quality of Petitioner's work was poor and though he has ability to apply the rules and regulations, he does not apply the same and he does not possess the capacity to examine the cases thoroughly. It was further recorded that Petitioner's quality of noting and drafting was not good and he was not prompt in disposal of work. The Petitioner also did not submit any specific objection to remarks made against Item No.8 where it was recorded that the Petitioner was not amenable to discipline and that he picks up quarrels with the officers quite off and on. The Petitioner also did not refute the remarks made against Item No.9 where it was recorded by the Reporting Officer that the Petitioner was not punctual in attendance. The Appellate Authority recorded in its order dated 27<sup>th</sup> April, 2000 that the Petitioner has not refuted the remarks made in the aforesaid items, especially Items No.8 and 9. Since, no objection was made to remarks made against Items No.7, 8 and 9, the Appellate Authority did not expunge the said remarks.

With respect to Items No.1, 2 and 14, the Appellate Authority partially accepted the representation of the Petitioner and expunged the remarks mentioned therein. The remarks still in dispute are against Items No.3 to 6 and 10. The remarks against Items No. 3, 5 to 6 were based on his official performance. The Petitioner did not furnish evidence in support of his objection about quantity and quality of work, if any, done by him. With regard to the remarks against Item No. 4,

explanation given by the Petitioner in relation to his irresponsible and unconventional behavior as also lack of respect for office decorum was not found justified. The remarks against Item No.10 were held to be based upon facts and contention of the Petitioner that he was the lone staff in the office was found not convincing.

The case of the Petitioner is that the learned Tribunal failed to appreciate that the sweeping remarks were made by the Reporting Officer due to malice. We find that the remarks are based on the performance of the Petitioner. The Tribunal has well considered this ground and has given a finding that the remarks are based upon the performance of Petitioner and not out of malice. It has been next contended by the Petitioner that he was never confronted with any shortcomings in his work thereby depriving him to know his shortcomings and, therefore, the adverse remarks should be expunged on this ground. This could not be a condition precedent for recording of the ACR and, therefore, this objection is devoid of any merit. The Petitioner has next contended that the remarks “not fit for promotion” were unwarranted and shows malice of the Reporting Officer. The aforesaid remark has already been expunged. The Petitioner appears to have made a complaint dated 14<sup>th</sup> June, 2004 against the Reporting Officer which according to him was not placed before the appellate authority and the appellate authority based its decision on the report submitted by the Reporting Officer without taking note of the complaint against the

Reporting Officer. This by itself cannot be made a ground of challenge as the appellate authority was considering performance of the Petitioner and not of the Reporting Officer. Next ground of challenge is that the Reporting Officer was made a party by name, who failed to file any reply or enter appearance in the OA which proves the charge of mala fide. The learned Tribunal held that Respondent No.3 against whom the allegations of mala fide were made, has not filed his reply affidavit, but that does not mean that allegations made, in the circumstances, can be deemed accepted. We may also note that allegations of mala fide have to be established by the Petitioner and cannot be deemed accepted. We agree with the findings of the learned Tribunal in this regard. The order of the Appellate Authority is neither perverse nor arbitrary. The Tribunal has examined the entire matter and has come to the conclusion that the order dated 27<sup>th</sup> April, 2005 has been passed with due application of mind after analyzing all the aspects of the case and contentions raised before the authorities. We do not find any infirmity in the impugned order.

The present case does not call for exercise of writ jurisdiction by this Court. The writ petition is accordingly dismissed.

**(J.R. MIDHA)**  
**JUDGE**

**(MADAN B. LOKUR)**  
**JUDGE**

October 20, 2008  
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