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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3631 OF 2015

The State of Maharashtra
through the Additional Chief Secretary
Home Department, Mantralaya,
Mumbai – 400 032.

... PETITIONER

VERSUS

Shri. Sharad Balkrishna Pawaskar,
Under Secretary,
Agricultural Department,
Mantralaya, Mumbai.

... RESPONDENT

Mr. Vagyani, GP a/w A. I. Patel, AGP for petitioner/State
Mr S. R. Borulkar a/w Mr D. S. Mhaispurkar, Advocate for respondent

CORAM : **ANOOP V. MOHTA &
V. L. ACHLIYA, JJ.**
DATE : **8th JULY, 2015.**

ORAL JUDGMENT : - (PER V. L. ACHLIYA, J.)

. Rule. Rule made returnable forthwith. By consent, taken up for final hearing.

2. Being aggrieved by order dt. 12.12.2014, passed by Maharashtra Administrative Tribunal, Mumbai in O.A. No. 423 of 2014, whereby the Tribunal allowed the application filed by respondent herein, the petitioner/State has preferred this petition.

3. Before appreciating the submissions advanced, it is necessary to consider the few facts which leads to filing of the present petition are as

under:

Respondent herein is working as Under Secretary to the Government of Maharashtra. He holds qualification as B.Sc. LL.M. He joined the Government Service on 13.08.1984 as Assistant (Class – III). In the year 1995, he was promoted as Desk Officer and in the year 2005, promoted as Under Secretary. Considering service record and the qualification of the respondent, he was posted as Under Secretary with the Home Department of the State Government. He worked there in that capacity from the year 2005 to 13.8.2012. It is the case of the respondent that, throughout his service tenure i.e. since the year 1994 to 2010, he was rated as 'Excellent'. His work was appreciated by all his superior officers during the period from 2005 to 2012. He was given Grade A or A+ during the period 2005-06 to 2012-13 except for the period from 2010-11 to 4.8.2012. It is the say of the respondent that in the month of August-2012, he was transferred to Agriculture and Husbandry Department and in the C.R. of the respondent for the period 4.8.2012 to 31.3.2013, the Head of the Department i.e. Additional Chief Secretary has rated him outstanding awarded grade A+. The review in respect of confidential reports written by the reporting officer of the period from 1.4.2011 to 31.3.2012 and 1.4.2012 to 4.8.2012 was made by Principal Secretary in the year 2013. The overall assessment of the respondent/orig. applicant which the reporting officer has assessed as outstanding (A+), the reviewing officer has downgraded the same as 'below average'. Not only the overall assessment has been downgraded, the reviewing officer has also recorded the following adverse remark.

“I do not agree with the D.S., because serious matters like detention under COFEPOSA were not dealt properly. His behaviour was irresponsible. He is not fit to be promoted”.

The respondent (original applicant) communicated with the

above quoted adverse remarks recorded in his confidential report vide communication dated 9.7.2013. Respondent being surprised with the adverse remarks, submitted representation dated 6.9.2013 for expunging those adverse remarks. However, the respondent was communicated that his representation has been rejected on 14.3.2014. Being aggrieved by the said order, the respondent preferred O.A. No. 423 of 2014 before MAT on various grounds as set out in the said application.

The petitioner (original respondent) filed affidavit-in-reply on 7.7.2014 and justified the order passed in the matter. Though the petitioner has not disputed the fact that except the disputed period the respondent was graded as outstanding and very good, tried to justify its action. However, no justification was given for downgrading the officer as well as recording adverse remarks. So also, no material was placed to support the action of the reviewing authority to downgrade the overall assessment of respondent/orig. applicant. It appears that, during the course of hearing, the additional affidavit was filed, pursuant to order dt. 1.8.2014, passed by the Tribunal to explain factual basis of adverse remarks recorded against the applicant (respondent herein). By way of additional affidavit, first time disclosed that the applicant has furnished certain information as PIO under R.T.I. Act regarding the certain guidelines issued by the Central Government with regard to the procedure of safeguard to be observed for effective implementation of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. It is stated that though those guidelines were for the use of department and confidential in nature, still the respondent herein has furnished the said information pursuant to the application received under RTI. This fact was disclosed on receipt of a letter dt. 6.9.2012 from Ministry of Finance, Government of India, and therefore the reviewing officer has downgraded the overall assessment of the respondent.

4. On due appreciations of the submissions advanced in the matter, the Tribunal has found the overall action on the part of the reviewing authority as patently illegal, perverse and not sustainable in law. The order passed on the representation made by the respondent also found to be unsustainable. In the result, the Tribunal has quashed and set aside the impugned communication and further pleased to expunge the above quoted adverse remarks recorded in the confidential report of the years 2010-11, 2011-12 and 2012-13 (part) as that of respondent/orig. applicant. Being aggrieved by the said order, the petitioner/State has preferred this writ petition.

5. We heard the learned GP appearing on behalf of the petitioner/State and learned Counsel for the respondent. We have carefully considered the submissions advanced by the learned Counsel appearing on behalf of the respective parties. We are of the view that the order passed by the Tribunal is well reasoned and there is absolutely no perversity exists in the order so as to interfere with in exercise of writ jurisdiction.

6. Learned GP strenuously contended that the reviewing authority was perfectly justified in recording the adverse remarks in view of the fact that the respondent has furnished the confidential and classified information in an application received under RTI Act. It is contended that the respondent being handling the sensitive department dealing with COFEPOSA, information of such nature should not have been furnished under the provisions of Right to Information Act. It is contended that the Tribunal has erred in observing that the stereo type remarks have been recorded belatedly by the authority and before recording the adverse remarks, the explanation of the respondent should have been obtained. It is lastly contended that the Tribunal should not have expunged the remarks recorded against the respondent.

7. On the other hand, the learned Counsel representing the respondent (original applicant) has supported the order passed by the Tribunal. Learned Counsel has pointed out that, it is the same reviewing officer, who has rated the respondent (original applicant) as outstanding with grade A+ for the period 23.9.2009 to 31.3.2010 while reviewing the C.R. on 3.8.2010. The learned Counsel has submitted that as per the procedure laid down by the General Administration Dept., the C.R. of the particular year is to be reviewed by the reviewing officer immediately after the same is submitted for review. The review of the confidential report of the period 1.4.2010 to 13.8.2012 and downgrading the assessment and recording of adverse remarks by the officer belatedly without any material or justifiable cause, is not sustainable in law. The learned Counsel has pointed out that while deciding the representation, there is reference mention about the alleged communication of providing information under RTI Act, referred in the order. The reason for recording the adverse remark was first time disclosed while filing the affidavit pursuant to the direction given by the Tribunal. Learned Counsel has submitted that for the alleged act of disclosing the so called information regarding the guidelines framed for dealing with the matters under the COFEPOSA Act, as a PIO under RTI Act, the Department has conducted the full-fledged departmental enquiry. The Enquiry Officer appointed to conduct the detailed departmental enquiry has submitted the report of enquiry in which he has found the charges against the respondent are proved. It is submitted that the order passed by the Tribunal has been passed on due appreciation of entire material before the Tribunal and in absence of any perversity being shown in the order passed, the order passed by the Tribunal is not liable to be interfered in exercise of writ jurisdiction.

8. We have carefully considered the submissions advanced in the light of the order passed by the Tribunal. We are of the view that the order passed by the Tribunal is well reasoned order and passed on due consideration

of rival contentions as well as the guidelines laid down by the State Government as regards writing of C.R., the review of the C.R. etc. laid down vide GR dt. 1.2.1996 and 1.11.2012. We found no illegality in the order passed on facts as well as in law. It is pertinent to note that the respondent claims that he is working with the Government since the year 1984 and in due course, he was twice promoted. He was promoted in the year 1995 as Desk Officer and in the year 2005 as Under Secretary. There is no dispute as to the fact that the respondent was working in the Home Department and handling the work regarding COFEPOSA since the year 2005 onwards till he was transferred in the year 2012. It is neither stated in the affidavit filed by the petitioner nor produced any material on record that during the period from 2005 to 2012, the respondent was served with any memo, or subjected to any departmental enquiry or any adverse remark was recorded against him. As per the GR produced on record, it is expected by the reporting officer as well as reviewing officer to maintain the ephemeral role in respect of each of the employee working under him. In the ephemeral role, if anything adverse found against the employee working under him, then same is to be recorded in the ephemeral role. No such ephemeral role was produced on record. Except one letter dt. 6.9.2012, received from the Government of India, mentioning therein that during the hearing of SLP No. 2442 of 2012 filed by one Suresh Kotwani friend of one of absconding accused in the COFEPOSA before the Hon'ble Supreme Court, it was noticed that the copies of instructions/guidelines issued by the Ministry vide their letter dt. 12.7.2001 and 21.2.2007, which according to the department, forms a classified and confidential information and could not have been provided without the written consent of the Ministry, same has been provided to some person in reference to application received under RTI Act. By the said letter, the Department has requested to take necessary action and suggested to take remedial measures to avoid such recurrence. Thus, if we consider the additional affidavit filed by the applicant and the letter dt. 6.9.2012, then there was absolutely no reason

recorded by the reviewing officer to downgrade the C.R. of the respondent in the back date for the year 2010-11 and 2011-12. We are, therefore, of the view that the reasons recorded by the Tribunal in the order passed are based upon due appreciation of material on record.

9. If we consider the overall service record of the respondent prior to the period for which the adverse remarks are recorded in respect of which the petitioner / original respondent has not disputed the past as well as the post service record of the respondent, then throughout the respondent was rated as either very good or outstanding. It is pertinent to note that the same reviewing officer has rated the respondent as outstanding for the period 23.9.2009 to 31.3.2010. It is pertinent to note that the respondent has been continuously rated as very good (A) by the reporting as well as reviewing officer and very good or outstanding (A+) from the year 2005-06 onwards upto 2010. The C.Rs. were written by the reporting officers of the rank of Dy. Secretary or Jt. Secretary and same has been reviewed by Principal Secretary working in Home Department. It is pertinent to note that the petitioner was transferred in the year 2012 from Home Department to Department of Agriculture and Husbandry. The C.R. of the period 31.8.2012 to 31.3.2013 appears to have been recorded by the Officer of the rank of Dy. Secretary and reviewed by the officer of the rank of Additional Chief Secretary. Both of them rated the officer as outstanding (A+). Thus, except the C.R. and the adverse remarks, throughout the C.Rs. of officer recorded as very good or outstanding. Even according to petitioner/orig. Respondent, except the alleged communication dt. 6.9.2013, there was no material against the officer concerned to have downgraded the respondent/orig. applicant as average or below average. The act for which the officer has been downgraded at the most could have been subject matter of enquiry. The department has already conducted the departmental enquiry. After undergoing full-fledged enquiry, the Enquiry Officer found the respondent (original applicant) as not guilty of

the charge relating to disclosure of classified or confidential information under the RTI Act. Thereafter the act of review of the CR by the reviewing officer thereby recording the adverse remarks against the respondent itself amounts to arbitrary, unjust and unsustainable on the part of the reviewing authority. In the adverse remarks recorded, there is no mention about such communication being received and basis for recording the remark. Respondent was not called upon to furnish explanation in respect of letter dt. 6.9.2012. The disclosure about recording of adverse remark has been 1st time made by way of additional affidavit filed in the matter that too pursuant to direction given by the Tribunal to disclose the basis for recording such adverse remarks against the respondent.

10. It is rather surprising that the officer who was throughout rated as outstanding or very good, was suddenly rated to be average by the reviewing officer. It is pertinent to note that the respondent/original applicant was working under the Dy. Secretary / Jt. Since the Dy. Secy / Jt. Secy being authority superior to respondent and the respondent was reporting to them. Therefore, there was no reason for the reviewing authority to have made his own assessment regarding the officer in absence of any independent information or material available to make such remark. In the administrative set up, the files are routed from the subordinate officer to his next superior officer and through that officer, file is submitted to officer who is senior in rank to that officer. It was not proper to observe on the part of the reviewing authority that the respondent is not fit to be promoted. Therefore, we are of the view that, the action on the part of concerned officer is not sustainable in law.

11. Similarly, the order passed by the concerned authority while deciding representation made by the respondent is cryptic and unsustainable in law. It appears that the superior authority i.e. Minister concerned who has dealt with the representation of the respondent has not applied his mind

independently. He has not recorded any reason to dispel those contentions raised by the respondent.

12. In exercise of the writ jurisdiction against the order passed by the Tribunal or *quasi* judicial authority, the Courts are expected not to interfere with such order unless the order is found to be patently illegal, perverse and passed without considering the material on record or found to be a case of wrongful exercise of jurisdiction. In the instant case, we found the order passed by the Tribunal is well reasoned order. All the contentions raised before this Court were duly considered by the Tribunal while passing the order. We found no illegality or perversity in the order so as to interfere in exercise of writ jurisdiction under Articles 226 and 227 of the Constitution of India. We are, therefore, inclined to dismiss the petition. Accordingly the petition is dismissed with no order as to costs. Rule discharged.

[V. L. ACHLIYA, J.]

[ANOOP V. MOHTA, J.]