

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

WP(C).No. 970 of 2014 (R)

PETITIONER(S):

**RAJIV JAYARAJ AGED 42 YEARS
S/O.R.J.MENON, PRINCIPAL MUNSIFF-I
KOZHIKODE RESIDING PERMANENTLY AT LATHA REMAM
NEAR HEAD POST OFFICE, PUTHUR ROAD, PALAKKAD
PIN.678 001**

**BY ADVS.SRI.M.R.RAJENDRAN NAIR (SR.)
SRI.MANU GOVIND
SMT.VINEETHA B.
SRI.NIRMAL V NAIR
SRI.M.R.HARIRAJ**

RESPONDENT(S):

- 1. HIGH COURT OF KERALA
REPRESENTED BY THE REGISTRAR(SUBORDINATE JUDICIARY)
HIGH COURT OF KERALA
KOCHI 682 017.**
 - 2. K. HARIPAL
ENQUIRY COMMISSIONER AND SPECIAL JUDGE (VIGILANCE)
THRISSUR.**
 - 3. DISTRICT AND SESSIONS JUDGE
KAVARATTI, UNION TERRITORY OF LAKSHADWEEP.**
 - 4. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT OF KERALA
DEPARTMENT OF HOME
SECRETARIAT THIRUVANANTHAPURAM-1.**
- R3 BY ADV. SRI.S.RADHAKRISHNAN,SC,LAKSHADWEEP ADMN
R1 & 2 BY ADV. SMT.VP.SEEMANDINI (SR.)
R1 & 2 BY ADV. SRI.M.R.ANISON
R BY GOVERNMENT PLEADER SRI.RINNY STEPHEN CHAMAPARAMPIL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30-07-2015, THE COURT ON 04-08-2015 DELIVERED
THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: COPY OF OFFICE MEMORANDUM IN F NO.10/2010-ESTT/DC DATED 2/8/2010 ISSUED BY THE SECOND RESPONDENT

EXHIBIT P2 COPY OF REPRESENTATION DATED 1/9/2010

EXHIBIT P3 COPY OF OFFICE MEMORANDUM IN F NO.10/2010/ESTT-DC DATED 15/11/2010

EXHIBIT P4 COPY OF OFFICE MEMORANDUM IN F NO.48/2010/ESTT-DC /44 DATED 24/1/2011

EXHIBIT P5 COPY OF REPRESENTATION DATED 10/2/2011

EXHIBIT P6 COPY OF OFFICE MEMORANDUM IN F NO.48/2010/ESTT-DC DATED 2/1/2011 ISSUED BY THE SECOND RESPONDENT

EXHIBIT P7 COPY OF OFFICE MEMORANDUM NO.B5/1917/2010 DATED 9/9/2010

EXHIBIT P8 COPY OF REPRESENTATION SUBMITTED BY THE PETITIONER

EXHIBIT P9 COPY OF OFFICE MEMORANDUM IN NO.10/2010/ESTT-DC/528 DATED 23/12/2010

EXHIBIT P10 COPY OF REPRESENTATION DATED 3/1/2011

EXHIBIT P11 COPY OF ORDER NO.1/16/97-ESTT(1) DATED 28/11/2008 ISSUED BY THE ADMINISTRATOR,UT OF LAKSHADWEEP

EXHIBIT P12 COPY OF OFFICE MEMORANDUM IN NO.47/2010/ESTT-DC/385 DATED 29/9/2010

EXHIBIT P13 COPY OF OFFICE MEMORANDUM IN F NO.10/2010/ESTT-DC DATED 30/3/2011

EXHIBIT P14 COPY OF OFFICE MEMORANDUM IN NO.10/2010/ESTT-DC/147 DATED 21/3/2011

EXHIBIT P15 COPY OF OFFICE MEMORANDUM NO.1/98-DC/316 DATED 7/6/2011 ISSUED BY THE SECOND RESPONDENT

EXHIBIT P16 COPY OF SELF APPRAISAL SUBMITTED BY THE PETITIONER ALONG WITH THE STATEMENT

EXHIBIT P17 COPY OF OFFICE MEMORANDUM 1/98-DC/389 DATED 19/7/2011 ISSUED BY THE SECOND RESPONDENT

EXHIBIT P18 COPY OF LETTER DATED 29/7/2011 OF THE PETITIONER

EXHIBIT P19 COPY OF LETTER DATED 15/9/2011 OF THE BENCH CLERK, ANDROTH

W.P.(C).NO.970/2014

EXHIBIT P20 COPY OF REPRESENTATION DATED 7/10/2011 SUBMITTED BY THE PETITIONER

EXHIBIT P21 COPY OF LETTER NO.15/2011 /DC DATED 18/1/2012 ALONG WITH THE REMARKS AT PART III OF THE CONFIDENTIAL REPORT

EXHIBIT P22 COPY OF REPRESENTATION DATED 28/1/2012 SUBMITTED BY THE PETITIONER

EXHIBIT P23 COPY OF ORDER NO.R1/2012)SS) DATED 9/3/2012

EXHIBIT P24 COPY OF REPRESENTATION DATED 19/4/2012 SUBMITTED BY THE PETITIONER

EXHIBIT P25 COPY OF LETTER NO.R1/2012 (SS) DATED 19/3/2013, ISSUED BY THE FIRST RESPONDENT

EXHIBIT P26 COPY OF REPRESENTATION 6/4/2013 SUBMITTED BY THE PETITIONER

EXHIBIT P27 COPY OF LETTER NO.R1/2012(SS) DATED 10/5/2013 ISSUED BY THE FIRST RESPONDENT

EXHIBIT P28 COPY OF LETTER DATED 25/5/2013

EXHIBIT P29 COPY OF LETTER DATED 25/5/2013 SUBMITTED TO FIRST RESPONDENT

EXHIBIT P30 COPY OF OFFICE MEMORANDUM NO.R1/2012(SS) DATED 18/6/2013 ISSUED FROM THE FIRST RESPONDENT

EXHIBIT P31 COPY OF REPRESENTATION DATED 9/7/2013 SUBMITTED BY THE PETITIONER REPRESENTATION

EXHIBIT P32 COPY OF REPRESENTATION DATED 9/7/2013 SUBMITTED BY THE PETITIONER

EXHIBIT P33 COPY OF OFFICE MEMORANDUM NO.R1/2012(SS) DATED 28/12/2013 ISSUED FROM THE FIRST RESPONDENT

EXHIBIT R34 COPY OF ENFORCED HALT CERTIFICATE ISSUED BY THE DEPUTY DIRECTOR (SUPPLY AND TRANSPORT) ON 7.6.2010.

EXHIBIT R35 COPY OF OFFICE ORDER NO17/2/93-SERVICES (I) DATED 1.5.2010 ALONG WITH THE POSTAL COVER SEALED ON 22.5.2010 ENCLOSING THE SAME

EXHIBIT R36 COPY OF LETTER NO.10/2010-ESTT/DC/199 DATED 14.6.2010.

EXHIBIT R37 COPY OF ORDER NO.B1-55/2010 DATED 17.4.2010 ISSUED BY THE FIRST RESPONDENT.

EXHIBIT R38 COPY OF UNDERTAKING SUBMITTED BY THE PETITIONER ON 19.5.2008.

W.P.(C).NO.9702014

EXHIBIT R39 COPY OF GO(RT) NO.1031/201/PWD DATED 23.6.2010.

EXHIBIT R40 COPY OF OM NO.D4B-19791/2010 DATED 17.1.2011 ISSUED FOR THE FIRST RESPONDENT.

EXHIBIT R41 COPY OF ORDER NO. 47/2010-ESTT/DC/497 DATED 20.9.2012.

RESPONDENT(S)' EXHIBITS:

EXHIBIT R1(A): COPY OF THE REPRESENTATION ALONG WITH COVERING LETTER DATED 8.10.2010.

EXHIBIT R1(B): COPY OF THE LETTER DATED 14.6.2010 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT R1(C): COPY OF THE OFFICE MEMORANDUM DATED 23.7.2010 ISSUED FROM THE 1ST RESPONDENT'S OFFICE IN ANSWER TO EXT.P8.

EXHIBIT R1(D): COPY OF THE COMMUNICATION DATED 23.3.2011 RECEIVED FROM THE 2ND RESPONDENT.

EXHIBIT R1(E): COPY OF THE LETTER DATED 23.12.2011 RECEIVED BY THIS RESPONDENT FROM THE 2ND RESPONDENT.

EXHIBIT R1(F): COPY OF THE LETTER DATED 25.5.2013 SENT BY THE PETITIONER TO THE 2ND RESPONDENT WITH COPY TO THIS RESPONDENT.

//TRUE COPY//

P.S. TO JUDGE

'C.R.'

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.970 OF 2014 (R)

Dated this the 4th day of August, 2015

J U D G M E N T

The petitioner in this writ petition is one of our own – a serving Principal Munsiff. He is aggrieved by certain adverse remarks that have been entered in his service records, as a consequence of which he has been denied the benefit of a higher scale of pay under the Assured Career Progression Scheme, and probably stands to lose much more in the years to come. He commenced service as a Munsiff Magistrate from 21.10.2002 and was posted as Munsiff Magistrate at Androth, on deputation. The 2nd respondent was the District Judge at Kavarati during that time and he was also the immediate superior officer and reporting authority of the petitioner. There appears to have been some irreconcilable differences between the petitioner and the 2nd respondent and there were instances of the 2nd respondent alleging improper discharge of duty by the petitioner and the petitioner alleging harassment at the hands of the 2nd respondent. It was probably on this count that the petitioner, who had joined as Munsiff-Magistrate at Androth on 02.06.2010 sought a transfer to the mainland, through Ext.P2 application dated 01.09.2010. The said

application was eventually acted upon and the petitioner was repatriated and posted as a 1st Class Judicial Magistrate at Kunnamangalam with effect from 15.05.2011.

2. As part of the administrative procedure in the subordinate judicial service, the petitioner was required to submit a self appraisal form in respect of the service rendered by him as a Munsiff-Magistrate at Androth. The petitioner submitted his self-appraisal form (Ext.P16) on 25.06.2011. The 2nd respondent, before whom the form was submitted, called for some details in respect of contested cases and the petitioner supplied the same through Ext.P20 explanation. On 18.01.2012, the petitioner received Ext.P21 communication, informing him of the adverse entries made in his confidential records. The entries in his confidential records are extracted hereunder:

PART III

(Assessment by the Reporting Authority)

1. Please comment on Part II as filled in by the Officer and state specifically whether you agree with this answers.	I do not agree with the statement for the following reasons: (Kindly see additional sheet)
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2. Please comment on the Officer's quality of performance and knowledge of law and procedure. Please mention instances of cases where the quality is not upto the standard.	He is a knowledgeable officer. But quality of work is poor. He writes orders/judgments in cryptic, telegraph language. Instances are CP 1/10, CC 8/09, 17/06, 4/09, 7/09 etc.
3. Comment on the quantity of disposal of cases by the Officer, indicating also any constraints the Officer had in the disposal of work.	He has disposed of all civil matters pending before him, but has adopted slipshod methods for achieving disposal. Instances are OS 6/08, OS 2/11, OS 4/11, OS 5/11.
4. Please comment on the capacity of the Officer to motivate, to obtain willing support by own conduct and capacity to inspire confidence of the subordinate staff	All his subordinates are from native island. Many of them found difficult to work with him. The then Head Clerk, the CMO was eager to get a transfer from the court, during this tenure.
5. Please indicate the quality of relationship with superior Officers, colleagues, subordinates and members of the Bar.	(Kindly see the additional sheet)
6. State of Health	Sound
7. Period under observation of Reporting Officer	From 2/6/10 to 25/6/11
8. Integrity 9. Please give an overall assessment of the Officer with reference to his/her judicial, administration and character and also indicate qualities, if any, not covered by the above entries.	Though there is no instance to doubt his integrity, it is certain that he is not an upright officer. His conducts in Andrott were unbecoming to be a judicial officer.
10. Grading: Outstanding Very good Good Average Below average (An Officer should not be graded 'Outstanding' unless exceptional qualities and performance have been noticed; grounds for giving such a grading should be clearly brought out)	Below average

1.
 - a) Two maintenance cases, one under Muslim Women (Protection of Rights on Divorce) Act and the other under Section 125 Cr.P.C. pending before this Court, are not included;
 - b) Atleast 52 charge sheets in criminal cases and one suit filed during his period were not taken on file. There are reasons to believe that, this was done purposely, to show a deflated pending petition;
(In this connection, I request that a report sent by me on 23/12/11, after inspecting this court, may kindly be looked into)
 - c) Out of the 20 suits disposed of, 18 are shown contested and two uncontested. It is factually incorrect. Except one suit, all were disposed of uncontested, either by returning the plaint after getting the valuation enhanced or by dismissing for default.

5. His relationship with one was not pleasant: His relationship with Mr.Cheriya Koya, the only other judicial officer and his subordinate staff also were not at all cordial. He is too selfish and was over enthusiastic in money matters; After sending money claims to the District Court, he used to trouble staff members for passing the bills in no time; He used to mention such matters over phone to the District Judge also, which is very unusual in our service.

I had the very embarrassing experience of hearing uncharitable words from his mother, over phone, which was the result of his indiscretion and volition.

3. On receipt of Ext.P21 communication, the petitioner preferred Ext.P24 representation against the adverse remarks communicated to him before the 1st respondent. While matters remained so, the Judge-in-charge exercising administrative supervision over Lakshadweep on behalf of the High Court, appears to

have had a discussion with the petitioner and the 2nd respondent. As a result of the said discussion it was felt that the adverse remarks in the confidential records of the petitioner could be expunged subject to the petitioner tendering an apology to the 2nd respondent. This was communicated to the petitioner by Ext.P25 letter of the 1st respondent. On receipt of the said letter, the petitioner wrote to the 1st respondent expressing his apprehension that a letter of apology could be viewed as an admission by him of improper conduct, and since he was unaware of any specific conduct that was found to be objectionable by the 2nd respondent, he ought to be informed of the conduct for which he was to apologise to the 2nd respondent. To the said letter, the petitioner received a curt reply, through Ext.P27, rejecting his request for clarification and directing him to comply with the earlier direction to tender an apology within two weeks. In compliance with Ext.P27 letter, by Ext.P28 communication dated 25.05.2013, addressed to the 2nd respondent, the petitioner tendered an apology. On the same day, by Ext.P29 letter, the petitioner also wrote to the 1st respondent informing him of the fact that he had tendered an apology to the 2nd respondent, as directed, and requesting for expunging the adverse remarks in his confidential records. The petitioner was, however, informed vide Ext.P30

communication dated 18.06.2013 that the administrative committee of the High Court that had met to consider the issue had resolved that the adverse remarks entered in his confidential records would stand, and that Ext.P24 representation submitted by him for expunging the adverse remarks stood rejected. Although the petitioner approached the 1st respondent through a petition seeking review of the decision of the administrative committee, by Ext.P33 communication dated 28.12.2013 he was informed that the Administrative Committee that met on 18.12.2013 had considered the matter in detail and resolved to reject the review petition. It is therefore that the petitioner has approached this court impugning Exts.P21, P25, P27, P30 and P33 and seeking a declaration that the petitioner is entitled to the benefits of the career advancement scheme.

4. A counter affidavit, as well as an additional counter affidavit, have been filed on behalf of the 1st respondent. Therein the sequence of events leading to the rejection of the representation preferred by the petitioner seeking to expunge the adverse entries made in his confidential records is narrated. In the additional counter affidavit filed on behalf of the 1st respondent, a copy of G.O.(P).No.344 dated 22.08.1966 that delineates the procedure to be followed while

recording adverse entries in the service book of State Government employees is produced. It is stated that in the matter of recording adverse entries in the service records of judicial officers, the High Court follows the guidelines laid down in the said Government Order. It is also pointed out that the Administrative Committee of the High Court that met on 18.12.2013 had resolved that Assured Career Progression (ACP)-II Scales be denied to the petitioner on account of the adverse remarks in his confidential records. A reply affidavit has been filed on behalf of the petitioner wherein factual clarifications and explanations are given in respect of the incidents that have been cited in his confidential records as forming the basis of the adverse remarks against him.

5. I have heard Sri.M.R.Hariraj, the learned counsel for the petitioner and learned Senior Counsel Smt.V.P.Seemandini appearing on behalf of the first respondent.

6. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I am of the view that the writ petition must necessarily succeed. It is not in dispute that in the matter of recording adverse entries in the service records of judicial

officers, the High Court follows the guidelines laid down in G.O.(P) No.344 dated 22.08.1966 that delineates the procedure to be followed while recording adverse entries in the service book of State Government employees. The following extracts from the said Government Order, throw light upon the object of the procedure and the manner in which it is to be implemented.

1. Objects:- The primary aims of recording annual confidential reports on officers are to achieve an objective assessment of the capacities of the individual officer in the performance of his duties and to forecast his capacity for different and more responsible work. Such systematised reports are also designed to gear such assessments to a common standard throughout the promotional area. With these ends in view it has to be ascertained how far an officer is able to apply intelligently the law and procedure prescribed to cases coming before him. His qualities of leadership, his behavioural pattern towards his subordinates and superiors and the general public are also points of interest which have to be noted. The report should also comment generally on the manner in which the Officer has discharged his various duties during the period under review and give an estimate of his personality, character and ability, and in the case of an Officer of the Police Department his capacity for supervising investigations and prosecutions. In regard to officers belonging to Technical Departments, Education and Judicial Departments, their professional ability and general reputation should also be referred to.

The object of the annual reports is not, however, merely to screen an Officer's potential for higher positions. It also aims at making the employee do his

present job better. Having assessed the qualities of a subordinate by reviewing his achievements and capacities the competent authority should make an attempt to correct the deficiencies observed with a view to improving him. This is essential for increasing the general efficiency of administration as the vast majority of officers are of average abilities.

2.

3. Responsibility for the maintenance of Confidential Reports:- *The head of every Department/Office should regard it as his personal and special responsibility to ensure that annual confidential reports are properly maintained in respect of all persons working under his direct or ultimate control. It is the duty of officers at each level to observe closely the work and conduct of those under their control and to provide training and guidance where necessary. The reports should be based on the results of such observations. The entire period of service of a Government Servant should be covered by these reports. Superior officers should see that no portion of a subordinate's service has been left uncovered. But report for a period of less than 45 days need not be insisted upon since the reporting officer will not be in a position to assess correctly the capacity of the reprottee within such a short period. As promotions to selection posts are on a comparative assessment the need for full and complete reports cannot be overemphasised. Where any period of a subordinate's service has not been covered by a report the reasons for such omission should be recorded. Default on the part of an officer in the preparation and maintenance of confidential reports on his subordinates should be mentioned in the confidential report on the reporting officer as a point of failure in his duty.*

4. Preparation:- *The following points should be noted while preparing a report:*

(i)

(ii)

(iii)

(iv)

(v)

(vi) *Reporting officers should not refrain from recording in the confidential reports all relevant observations and opinions which they might have formed, as it is the intention of Government to ensure that the report should represent a frank and full appraisal of the Officer's merits and demerits. It is equally essential that all Officers who have to record their remarks in the confidential reports should do so with the greatest caution and should not record any remarks lightly or on the spur of the moment. As far as possible, reporting officers should try to advance specific instances of reasons to justify their observations, Colourless entries like 'Satisfactory', 'fair', etc., only defeat the purpose for which confidential reports are maintained and should be avoided as far as possible. Reporting officers should deal with both the good points and shortcomings of the officer in a clear and lucid manner to enable a correct assessment of his character, ability, etc. Appendix gives the details of the authorities who are to initiate, review and keep the confidential reports on the various categories of officials.*

5.

6.

7. *Communication of remarks.-Every employee should know his remediable defects so that he can remove them and improve himself. The best results are achieved only if every reporting officer realises that his duty does not end with recording an objective assessment of his subordinate's work and qualities, but extends also*

to his tendering whenever indicated the necessary advice, guidance and assistance to correct the faults and deficiencies of his subordinates. The appraisal of the reportee's capacities and potential for higher position is undertaken partly with a view to developing his qualities. If this part of the reporting Officer's duty is properly performed, there should be no difficulty about recording adverse entries, because they would only refer to defects which had persisted despite the reporting officer's efforts to have them corrected. While mentioning any faults/defects, it would therefore be useful if the reporting officer also gives an indication of the efforts he had made by way of guidance, admonition etc., to get the defects removed and the results of such efforts. Where an adverse entry is made, the reporting officer should certify that the defects have been brought to the subordinates's notice.

In communicating remarks to the officer reported upon, the following procedure should be followed:

(a) Where no adverse entry is made in a confidential report, nothing should be communicated except in cases within (c) below.

(b) Where an adverse entry relates to a remediable defect, it should be communicated, but while doing so, the substance of the entire report including what may have been said in praise of the Officer should also be communicated.

(c) Where the report of an officer shows that he had made efforts to remedy or overcome defects mentioned in the preceding report, the fact should be communicated to the officer in a suitable form.

(d) Where an officer has made an adverse remark against a Government servant serving under him for 2 consecutive years, the officer who communicates the adverse remarks may also consider the desirability of

giving the Government servant concerned an opportunity to serve under another officer so that, there will, at least, be two independent opinions relating to the work of the Government servant when his case is considered for promotion by the competent authority.

(e) While communicating an adverse remark, neither the identity of the superior officer recording the adverse remarks nor the period to which the remarks relate should on any account be disclosed to the reportee.

(f) When an officer has done outstanding work in the course of a year and earned appreciation, the fact should also be communicated to him.

(g) The fact of communication of all remarks and the manner of communication should be recorded in the personal file. Acknowledgements should be obtained in all cases and filed in the confidential records.

8.

9. *The following procedure may be adopted in dealing with representations from the Government servants against adverse remarks communicated to them:*

(i) Representations against adverse remarks should be examined by an authority superior to the reviewing officer, in consultation, if necessary with the reporting and the reviewing officers. The superior authority referred to shall be regarded as the competent authority to deal with such representations.

(ii) if it found that the remarks were justified and the representation was frivolous a note will be made in the confidential report of the representationist that he did not take the correction in good spirit.

(iii) If the competent authority feels that

there is not sufficient ground for interference, the representation should be rejected and the Officer informed accordingly.

(iv) If he, however, feels that the remarks should be toned down he should make the necessary entry separately with proper attestation at the appropriate place of the report; the correction should not be made in the earlier entries themselves.

(v) In the rare event of the competent authority coming to the conclusion that the adverse remark was inspired by malice or was entirely incorrect or unfounded and therefore deserved expunction, he should record his findings in the confidential records. For this purpose he will make an entry in red ink with his signature, name and date stating that he had done so. But before taking such action, he should bring it to the notice of the Head of the Department or Office if he himself does not occupy that position. It is not correct to paste over the remarks expunged: they may merely be scored through.

(vi) The original representations or explanations against adverse remarks and the findings thereon should be kept in the confidential Records.

(vii) There is no scope for correspondence between the reviewing officer, the reporting officer and the officer reported upon except the representations made."

7. The necessity of following the procedure envisaged under the aforementioned Government Order cannot be understated. As a

matter of fact, the said procedure is one that has been recommended in a plethora of judgments of the Supreme Court and is generally viewed as a fair administrative procedure. It would be apposite to notice the observations of the Supreme Court in some of the cases as they underline the need for a strict adherence to the procedure suggested in G.O.(P) No.344 dated 22.08.1966.

8. In **State of UP v. Yamuna Shanker Misra and Another - [(1997) 4 SCC 7]**, it was observed thus:

“7. It would, thus, be clear that the object of writing the confidential reports and making entries in the character rolls is to give an opportunity to a public servant to improve excellence. Article 51A(j) enjoins upon every citizen the primary duty to constantly endeavour to prove excellence, individually and collectively, as a member of the group. Given an opportunity, the individual employee strives to improve excellence and thereby efficiency of administration would be augmented. The officer entrusted with the duty to write confidential reports, has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately while giving, as accurately as possible, the statement of facts on an overall assessment of the performance of the subordinate officer. It should be founded upon the facts or circumstances. Though sometimes, it may not be part of the record, but the conduct, reputation and character acquire public knowledge or notoriety and may be within his knowledge. Before forming an opinion to be adverse, the reporting officers writing confidentials should

share the information which is not a part of the record with the officer concerned, have the information confronted by the officer and then make it part of the record. This amounts to an opportunity given to the erring/corrupt officer to correct the errors of the judgment, conduct, behaviour, integrity or conduct/corrupt proclivity. If, despite giving such an opportunity, the officer fails to perform the duty, correct his conduct or improve himself, necessarily the same may be recorded in the confidential reports and a copy thereof supplied to the affected officer so that he will have an opportunity to know the remarks made against him. If he feels aggrieved, it would be open to him to have it corrected by appropriate representation to the higher authorities or any appropriate judicial forum for redressal. Thereby, honesty, integrity, good conduct and efficiency get improved in the performance of public duties and standard of excellence in services constantly rises to higher levels and it becomes a successful tool to manage the services with officers of integrity, honesty, efficiency and devotion.”

9. Similarly, in **Bishwanath Prasad Singh v. State of Bihar – [(2001) 2 SCC 305]**, the object and purpose of writing confidential reports was stated in the following terms:

“33. A number of decisions dealing with the object and purpose of writing confidential reports and care and caution to be adopted while making entries in the confidential records of government officers have been referred to in the cases of Sarnam Singh (vide paras 31, 32) as also in the case of Ishwar Chand Jain. We need not repeat the same. Suffice it to observe that the well-recognised and accepted practice of making annual entries in the confidential records of subordinate officials by superiors has a

public policy and purposive requirement. It is one of the recognised and time-tested modes of exercising administrative and disciplinary control by a superior authority over its subordinates. The very power to make such entries as have potential for shaping the future career of a subordinate officer casts an obligation on the High Courts to keep a watch and vigil over the performance of the members of subordinate judiciary. An assessment of quality and quantity of performance and progress of the judicial officers should be an ongoing process continued round the year and then to make a record in an objective manner of the impressions formulated by such assessment. An annual entry is not an instrument to be wielded like a teachers' cane or to be cracked like a whip. The High Court has to act and guide the subordinate officers like a guardian or elder in the judicial family. The entry in the confidential rolls should not be a reflection of personal whims, fancies or prejudices, likes or dislikes of a superior. The entry must reflect the result of an objective assessment coupled with an effort at guiding the judicial officers to secure an improvement in his performance where need be; to admonish him with the object of removing for future, the shortcoming found; and expressing an appreciation with an idea of toning up and maintaining the imitable qualities by affectionately patting on the back of meritorious and deserving. An entry consisting of a few words, or a sentence or two, is supposed to reflect the sum total of the impressions formulated by the Inspecting Judge who had the opportunity of forming those impressions in his mind by having an opportunity of watching the judicial officer round the period under review. In the very nature of things, the process is complex and the formulation of impressions is a result of multiple factors simultaneously playing in the mind. The perceptions may differ. In the very nature of things there is a difficulty nearing an

impossibility in subjecting the entries in confidential rolls to judicial review. Entries either way have serious implications on the service n career. Hence the need for fairness, justness and objectivity in performing the inspections and making the entries in the confidential rolls.”

10. It is well known in service matters that the career prospect of a subordinate officer depends largely upon his work and the character assessment done on him by his reporting officer. Entrusted with such an enormous responsibility, it is essential that the reporting officer eschew his subjectivity and personal prejudices or proclivity or predilections so as to make an objective assessment. The reporting officer should use fair, objective, dispassionate and constructive comments while assessing the character, ability, integrity and responsibility displayed by the officer concerned during the relevant period. It requires no more than a cursory glance through the report of the 2nd respondent to find that, in the instant case, the reporting officer has rather callously entered adverse remarks in the confidential records of the petitioner – remarks that touch upon the integrity of a judicial officer and made at a time when the judicial officer was still learning the ropes in the initial stages of his judicial career. There was no prior discussion with the petitioner on any

conduct that the 2nd respondent found objectionable, nor was the petitioner afforded an opportunity to mend his ways before making the adverse entry in his confidential records. A mere reference to the entry that reads, “Though there is no instance to doubt his integrity, it is certain that he is not an upright officer. His conducts in Andrott were unbecoming to be a judicial officer”, is sufficient to hold that the making of the adverse entries by the 2nd respondent, in the confidential records of the petitioner, smacks of arbitrariness.

11. While the petitioner had preferred a representation against the adverse entries made in his service records, there does not appear to have been a valid consideration of the said representation by the first respondent or the administrative committee of the High Court while dealing with the issue. As already noticed, the judge-in-charge, to whom the power of considering appeals and reviews from orders passed by the District Judges and Chief Judicial Magistrates, both on disciplinary matters and other service matters, was delegated as per the distribution of administrative work in the High Court, had opined that the adverse remarks could be expunged on the petitioner preferring an apology to the 2nd respondent. Although the petitioner had, initially, sought a clarification with regard to the specific incident

for which he was to prefer the apology, on being directed by the High Court, yet again, to prefer the apology, he complied with the said direction. It would appear that, it was without noticing this fact that, when the matter was subsequently placed before it, the administrative committee of the High Court that met on 18.06.2013 resolved not to expunge the adverse remarks in his confidential records. A review petition that was preferred by the petitioner was also rejected by the Administrative Committee that met on 18.12.2013. The decisions of the administrative committee do not indicate as to whether there was any enquiry as regards the procedure followed by the 2nd respondent while making the adverse entries against the petitioner, and whether the procedure followed was in accordance with that prescribed in the Government Order dated 22.08.1966. There is also no reference seen to the letter of apology that was sent by the petitioner to the 2nd respondent. The net result of all this was that the adverse remarks against the petitioner in his confidential records came to be retained, as did his apology letter that was meant to be a compromise solution for expunging the adverse remarks against him. This was obviously not what was envisaged in relation to the petitioner. Thus, an overall consideration of the matter leaves me with no doubt, whatsoever, that the adverse entries recorded in the confidential records of the

petitioner deserve to be expunged. I therefore allow this writ petition, by quashing the decisions dated 18.06.2013 and 18.12.2013 of the Administrative Committee of the High Court that rejected the representation of the petitioner against the adverse entries communicated to him, as also the decision dated 18.12.2013 of the Administrative Committee of the High Court that denied the petitioner the benefit of the Assured Career Progression (ACP)-II Scale on account of the said adverse remarks entered in his confidential records. The 1st respondent shall expunge the adverse entries recorded in the confidential records of the petitioner forthwith by following the procedure stipulated in paragraph 9 of the Government Order dated 22.08.1966. The petitioner shall also stand entitled to the benefits of the Assured Career Progression scheme and other consequential benefits as flow from this judgment.

Before parting with this case, and taking note of the manner in which the adverse entries were recorded against the petitioner in the instant case, I feel it would not be out of place to sound a note of caution to all reporting officers in the State judiciary in the matter of recording adverse remarks in the confidential records of subordinate judicial officers. While recording such remarks, they shall abide

strictly by the provisions of paragraph 7 of the Government Order dated 22.8.1966 and, in particular, the requirement of indicating in their reports, the efforts they have taken by way of guidance, admonition etc. to get the defects removed and the results of such efforts. Reporting officers must realise that their role in this regard is not confined to merely “reporting” the shortcomings of a subordinate officer but also to function as a mentor and guide to help the subordinate officer overcome those shortcomings. Then alone would the procedure be meaningful and further the twin objectives of improving the excellence of subordinate officers and enhancing the efficiency of administration.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp