

HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.25440 OF 2005

ORDER:

Heard Mr.W.B.Sinivas for petitioner. No representation for respondents.

The petitioner challenges proceedings No.R.XIII./2003-ST dated 12.11.2003 of the 1st respondent, confirming order No.R.XII./01-ST dated 05.05.2001 of the 2nd respondent, as bad, illegal and arbitrary. The petitioner prays for expunging the remarks retained through order dated 12.11.2003.

The 2nd respondent through communication No.A.XII-3/99-GC-PA dated 28.07.1999 communicated the adverse remarks recorded against petitioner in the ACR and the remarks read thus:

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- i) Partial agree. He never worked in the office before or after office hours in spite of being directed by supervisory staff as and when need arises.
 - ii) He is an intelligent SI (M). But not hard working and needs improvement.
 - iii) Not satisfactory as judged by a Board of Officers detailed by ADIGP vide O/O No.M.V-1/99-OS-SR dated 24.3.99 & 23.4.99.
 - iv) Not satisfactory for which he was advised by ADIGP vide letter No. M.V-1/99-OS-SR dated 6.2.99 and needs improvement.
 - v) He is an indisciplined SI (M). He is habitual of disobedience of orders and of argumentative nature. He is also habitual of making false allegations against his seniors.
 - vi) Not cordial as he is a person of argumentative nature and not maintaining good relation with his fellow employees.
 - vii) No. But he was warned a number of occasions verbally and in writing by ADIGP vide letter No.M.V-1/99-OS-SR dated 16.2.99. He was directed twice to

appear before ADIPG's O/R but he never appeared in O/R and represented against it to DG, CRPF by making false allegations against his senior officers for which a P.E has been ordered.

viii) An indisciplined, argumentative SI (M) who is through experienced and having adequate knowledge of rules and regulation, refuses to put in his best. He is the habit of entering into avoidable arguments with his supervisory staff.

2. Representation if any against the above remarks may be preferred within one month of receipt of this communication”.

On 14.1.2002, the petitioner, against the adverse remarks noted for the period 01.04.1998 to 31.03.1999, submitted representation to 2nd respondent. The 2nd respondent deleted adverse remark Nos.3, 4 and 6. The petitioner not satisfied with the partial deletion of adverse remarks appealed to 1st respondent and the same was rejected through proceedings No.R.XIII./2003-ST dated 12.11.2003. The operative portion reads thus:

“He had also represented against the following remarks, endorsed in the relieving order, about his performance, by the ADIGP GC CRPF Hyderabad, vide his application dated 22.8.98:-

“Despite requesting the ADIGP GC CRPF, Rangareddy to provide a good SI (M) for the important task of screening of applications, GCO had detailed an SI (M) who was unwilling/reluctant, argumentative and unsuitable for the assigned job”.

On enquiry it was found that ADIGP GC Hyderabad had endorsed the remarks correctly after assessing his work attitude and the SI (M) was advised to refrain from making frequent representations on frivolous grounds vide DIGP CRPF Hyderabad letter No.C.III.1/98-CC dated 01.11.1998.

From the above it is clear that ample opportunities were given to the official to improve his work and conduct but he

did not show any improvement. Thus, the other adverse remarks recorded in the ACR of SI (M) R.Sundarasamy are based on the evidence on record, and recorded only after making an objective and balanced assessment of his work and conduct which are fully justified and are per instructions contained in G.I.D.P & A.R. O.M.No.21011/1/1/81-Estt(A) dated 5th June, 1981.

- iii) The copies of various advisory letters etc issued to the said SI (M) are already with him and the same are sufficient to substantiate the adverse remarks recorded in the ACR.
- iv) The adverse remarks which are ordered to be retained in the ACR of the said official at S.No.(i) (ii) (v), (vii) & (viii) are based on evidence and record and the same were endorsed only after making an objective and balanced assessment and no interference is called for.

7. In view of the position explained above, I find that the adverse remarks which were ordered to be retained in the ACR of the SI (M) Sundrasamy for the year 1998-99 vide DIGP CRPF, Hyderabad order No.R.XIII.I/01-ST dated 05.05.2001, are fully justified. Therefore, I have come to the conclusion that the said adverse remarks are well justified and do not warrant any interference. The appeal is rejected being devoid of merits.

Mr.W.B.Srinivas contends that the adverse remarks noted against the petitioner by the 2nd respondent firstly are interrelated, secondly monotonous, and that after considering the explanation given by the petitioner, adverse remark No.3, 4 and 6 were rightly expunged and by accepting the same analogy, the petitioner is entitled for expunging the rest of the adverse remarks noted against him for the period the period 01.04.1998 to 31.03.1999. He fairly admits that there is no statutory rule or instructions requiring the competent authority to record reasons in rejecting the representation, but at the same time he contends that the record disclosed reasons for retaining a few adverse remarks. He places strong reliance upon the decision reported in

UNION OF INDIA v. EG.NAMBUDIRI¹. After perusing the entire decision, this Court is of the view that excerpting paragraphs 9 & 10 would be useful for considering the objections of petitioner:

“There are however, many areas of administrative activity where no reasons are recorded or communicated, if such a decision is challenged before the Court for judicial review, the reasons for the decision may be placed before the court. The superior authority while considering the representation of a Government servant against adverse remarks, is not required by law to act judicially, it is under no legal obligation to record or communicate reasons for its decision to the Government servant. The decision, rejecting the representation does not adversely affect any vested right of the Government servant nor does it visit him with any civil consequences. In many cases having regard to infinite variations of circumstances, it may not be possible to disclose reasons for the opinion formed about the work and conduct or character of the Government servant. In the instant case adverse remarks as contained in item Nos. 1 to 4 were expunged but those at serial numbers 5 and 6 were not expunged and the respondent's representation to that extent was rejected. On a careful scrutiny of the two remarks, it would appear that observation contained in Item No. 5 "that nothing adverse has come to notice regarding your integrity" is not adverse to the respondent's work and conduct. These remarks are neutral in nature, and they do not adversely comment upon the respondent's work, conduct or character, though they are not commendatory in nature. As regards the remarks at Serial No.6, they are self-explanatory, which show that in spite of oral and written warnings the respondent the respondent did not improve. If the superior authority was not satisfied with the explanation of the respondent as contained in his representation, what reasons could be stated, except that the authority was not satisfied with the explanation. The superior authority was not obliged to write detail judgment

¹ AIR 1991 SC 1261

or order giving details of the warnings or the material on which he formed opinion.

There is no dispute that there is no rule or administrative order for recording reasons in rejecting a representation. In the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a Government servant against the adverse entries the competent authority is not under any obligation to record reason. But the competent authority has no licence to act arbitrarily, he must act in a fair and just manner. He is required to consider the questions raised by the Government servant and examine the same, in the light of the comments made by the officer awarding the adverse entries and the officer counter-signing the same. If the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons. In the absence of any statutory or administrative provision requiring the competent authority to record reasons or to communicate reasons, no exception can be taken to the order rejecting representation merely on the ground of absence of reasons. No order of an administrative authority communicating its decision is rendered illegal on the ground of absence of reasons ex facie and it is not open to the court to interfere with such orders merely on the ground of absence of any reasons. However, it does not mean that the administrative authority is at liberty to pass orders without there being any reasons for the same. In governmental functioning before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion. If the order as communicated to the Government servant rejecting the representation does not contain any reasons, the order cannot be held to be bad in law. If such an order is challenged in a court of law it is always open to the competent authority to place the reasons before the Court which may have led to the rejection of the representation. It is always open to an

administrative authority to produce evidence alinude before the court to justify its action.

In the case on hand, the 2nd respondent has given reasons for expunging remarks 3, 4 and 6 and has recorded rest of remarks—no case is made out for expunging, and on the other hand, the record warrants retention of these remarks. The 1st respondent after going through the record and also the specific instances referred by ADIGP has concluded that the adverse remarks now retained are justified.

After perusing the proceedings impugned in the writ petition, this Court is of the view that firstly the adverse remarks have been recorded and communicated to petitioner, therefore, no impropriety is pointed. The petitioner made out case for expunging three remarks. The authority who has recorded adverse remarks after going through the record was satisfied that the grounds for expunging other remarks were not satisfactory and held that rest of the remarks need not be expunged. When against the order of 2nd respondent appeal is filed, the appellate authority from the record examined the reasons for retention of these remarks and concurred with the 2nd respondent. The case on hand cannot and could not be treated as one line consideration and rejection in its entirety. When objections of adverse remarks have been pointed out, respondents 1 and 2, well within their jurisdiction, have applied mind, recorded reasons for expunging a few and refusing to expunge other remarks. Therefore, it cannot be contended that the orders are either arbitrary and without material. This Court ought not to re-examine the issue of adverse remarks retained on

the ground that the same is similar and monotonous and once a few adverse remarks are expunged, rest follow suit and they will have to be expunged. After perusing the record, this Court is of the view that this Court cannot sit as a Court of appeal and again re-examine and substitute its opinion for retention or deletion.

The writ petition fails and is, accordingly, dismissed. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any pending, stand closed.

24th March, 2017

Lrkm



S.V.BHATT, J