

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6657 of 2008

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Sunil Kumar Savita (IRLANo.4897), son of Sri Nandu Lal Sharma, resident of village-Jagdishpur, P.S.-Kashi Chak, District- Nawada, and at present Dy. Commandant, 36th Battalion, Central Reserve Police Force, ITI Complex, P.S.-Civil Lines, Gaya, Bihar.

... .. Petitioner

Versus

1. The Union of India.
2. The Union Home Secretary, Government of India, North Block, New Delhi.
3. The Director General of Police, C.R.P.F., C.G.O. Complex, Lodhi Road, New Delhi.
4. The Additional D.I.G.P., Group Centre, Mokamah Ghat, C.R.P.F., Bihar.
5. The Inspector General of Police, Bihar Sector, C.R.P.F., Patna.
6. The Additional Dy. Inspector General of Police (Adm.), Bihar, Sector, Patna.
7. The Commandant, 4th Battalion, C.R.P.F., Orissa.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Nand Kishore Pd. Sinha, Advocate Mr. Jawed Ahmad, Advocate
For the Union of India	:	Mr. S.D. Sanjay, Sr. Advocate, A.S.G. Mr. Anshuman Singh, Advocate, C.G.C.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 02-04-2018

Heard learned counsel for the petitioner and
learned counsel for the Union of India.

2. In the present case, the petitioner is challenging the order dated 21.01.2003, passed by the Inspector General of Police, Central Reserve Police Force (Annexure-5), whereby



and where-under the appeal of the petitioner has been rejected and having held that there is no merit and the petitioner could not make out any case for interference with the order. Further prayer has been made to restore the *inter se* seniority of the petitioner *vis-a-vis* the officer of 30th Batch DAGOS and further give direction in the nature of *mandamus* commanding the respondents to review the D.P.C.

3. In the present case, primarily the question has been raised by the petitioner that on account of adverse entry the D.P.C. has not recommended his case for promotion, thereby it has caused a serious prejudice in his service carrier and further claimed that the Appellate Authority has passed a cryptic order without dealing with the issues raised by the petitioner.

4. The short facts of this case are that the petitioner was selected in the Para-military Force (C.R.P.F.) and presently he is posted at 36th Battalion, Gaya, as Deputy Commandant, Central Reserve Police Force. The petitioner was appointed in the 30th Batch as a direct recruitee to the post of Assistant Commandant on 28.12.1998 and after completion of the training at the Internal Security Academy, Mount Abu, Rajasthan, he was allotted his posting in the 36th Battalion, Headquarter at Kalkaj, New Delhi, falling under the jurisdiction of Mokamah Ghat



Group Centre, Bihar. After his joining, he was deployed in Baramullah Sector in Jammu and Kashmir in June, 2001 and from there he was transferred to 4th Battalion, which was deployed in the area of Kokrajhar, Assam, he remained there upto 2003. Accordingly, he submitted his joining at Kokrajhar, vide letter dated 18.06.2002 and D.O. No. R-13-2/202 was received by him dealing with the period from 17.06.2001 to 31.03.2002 with adverse entry have been recorded in the Annual Confidential Report. Altogether six adverse entries were communicated to have been entered into the Annual Confidential Report and was asked to give reply, if any, within a month from the date of receipt of the letter. Accordingly, he filed the reply and has given the details of the fact. In his reply, he has mentioned that after his joining at Battalion-4 in Kokrajhar, after four days, he was deputed to *Ultapani*. This place was 60 km. away from the Battalion Headquarters, situated in the thick jungle of Chirang Reserve Forest, the place is so isolated, there was no sister agency near to that place, he remained continuously for 10 months upto to proceeding for leave in March, 2002. He has further mentioned that during his stay in *Ultapani* he requested for leave for few days, but his request for leave was rejected and that caused him mental agony. He has



mentioned that his reporting officer was not happy with him for petty matters, he used to serve the advisories and the cause letters under one pretext or other, as has been said that he was surprised and astonished to see the behaviour of the Commandant with him, in stead of helping, he always used to demoralise and tried to tarnish his image refuted all the charges which were mentioned in the letter. As per the procedure, the matter was placed before the Reviewing Authority, who also did not interfere with the recording of adverse entry. Against that, the petitioner filed an Appeal and that has been rejected by the Deputy Inspector General of Police, Central Police Force, vide order dated 21.01.2003 (Annexure-5). Against that, the petitioner filed further Appeal before the Director General of Police, who also rejected the Appeal vide order dated 18.03.2005 (Annexure-7) mentioning therein that there is no provision for further Appeal to the Director General of Police.

5. Learned counsel for the petitioner submits that during the period of his stay at *Ultapani* and Kokrajhar, he received several recommendation of his good behaviour and good work and some of them he has attached with the present writ application as Annexure-4 (series) as well as letter of Subhas Goswami, I.P.S. dated 06.05.2003, another letter dated



16.05.2005 of P.M. Nair, IPS, letter dated 07.12.2005 of Aurn Chibbar, the Inspector General of Police and submitted that his work was altogether appreciated by the other Officers, he always performed his duty with best of his ability and sincerity by Supplementary Affidavit he has made some quotations from the Standing Order, wherein the purpose of A.C.R. has been mentioned. It will be relevant to quote Clause- 1.1 to 2.6 of the Standing Order, which are as follows:-

1. INTRODUCTION:-

1.1. The system of confidential Reports on the performance of Government servants is a means to an end and not an end in itself. The ultimate goal is to optimise the achievement of Government Policies and programmes. This is possible only if the confidential Reports led to the optimisation of the performance of the concerned Government servants. The main focus of the Reporting Officer should, therefore, be developmental rather than judgemental. A confidential Report should be a true indicator of the achievement of the Government servant; it should not be a mere tool to control or discipline him.

1.2. The system of Confidential Reports has two principal objectives and the Reporting Officer should have a very clear perception of these objectives. The first and foremost is to improve the performance of the subordinate in his present job. The second objective is to assess the potentialities of the subordinate and prepare and through



appropriate feed back and guidance for future possible opportunities in service. To a great extent, the second objective is dependent on the achievement of the first.

1.3. It is the duty of the superior officer to give the subordinate a clear understanding of the tasks to be performed and to provide requisite resources for his performance. The subordinate is required to contribute to the best of his capacity to the qualitative and quantitative achievement of the given tasks making optimum use of the resources provided. Also, both the superior and his subordinate have to be necessarily aware of the ultimate goal of their organization, which can be achieved only through the joint efforts of both of them. This is the basic philosophy underlying any system of Confidential Report.

1.4. A number of instruction have been issued from time to time on writing of ACRs. However, it is noticed that the officers, who are initiating / reviewing the ACRs, do not follow these institution strictly. With a view to bring in all the Departmental instructions on the subject, issued in the past, this Standing Order is being laid down:-

2. MEMORANDUM OF SERVICE:

2.1. It is noticed that ACRs recorded by various officers often do not bring out a clear picture of the strength and weakness of the officer reported upon, and very often, are based on subjective impressions. Maintenance of memorandum of service is therefore, made operative for all officers. This is a need for all Reporting/Supervisory officers to maintain a memorandum of service in respect of all officers



working under them. The instructions issued in this context are annexed as ANNEXURE-1. The memorandum of service so maintained should function as a periodic assessment of the work and conduct of the officer, which is to be consulted at the time of recording of ACRs.

2.2. Inspecting officers while visiting a unit will see the memorandum of service. It will be mandatory for the reporting officer to send a copy of his quarterly assessment, along with any advice or appreciation issued to an officer on the quality of his work, to the reviewing authority with copy to the superior reviewing authority. This apart from allowing the reviewing and superior reviewing authority to keep a check that the instructions with regard to the memorandum of service are being followed, will also enable them to keep abreast of the work quality of officer subordinate to them. While visiting units (Coys. in the case of Commandants) the reviewing and superior reviewing authority should carry the quarterly reports and also themselves assess the work quality of subordinates reported upon. This should have a positive impact on the objectivity in recording the ACR.

2.3. According to instructions on ACRs, only adverse remarks recorded in the ACR, if any, are to be communicated to the Government Servant. The grading in the ACR, even if "average" (which may not make him eligible to achieve the prescribed bench mark for promotion) need not be communicated. However, in the past, officials who were graded as "average" in the ACR, were advised suitably (without disclosing grading) to improve



their performance. The intention behind this was that the Govt. servant should be advised to improve his performance in the interest of his career.

2.4. However, as already laid down vide sub para 1 above, the Reporting Officers are required to maintain Memorandum of Service in respect of each official employed under them. All instances of good and bad work coming to the notice of the reporting officer are required to be entered in the Memorandum of Service and the same is to be reviewed quarterly, and the officials to be reported upon are to be suitably advised in writing regarding weaknesses coming to the notice during the quarter. The reporting officers are also required to set out the short term and long term objectives, which are to be realistic and achievable, after discussing the matter with the official reported upon.

2.5. Where official showed improvement, or showed no improvement, in work and conduct in subsequent quarters, this is required to be reflected in the Memorandum of Service. In cases where no improvement is shown, and after it has been recorded in the Memorandum of Service, the official is required to be suitably advised in writing. While initiating the ACR, the reporting officer is required to consult the Memorandum of Service, and only then record his impressions about the officials work and conduct. It is felt that if these instructions are followed in the letter and spirit, the necessity of conveying deficiencies on account of average grading, after recording of ACR, would not arise. Inspecting officers who are Reviewing / Accepting Authorities, while visiting units / institutions should also go through the Memorandum of Service and



wherever necessary give suitable instructions / guidance, to officer found wanting in any particular area.

2.6. As there is a suitable and adequate mechanism to bring deficiencies in work and conduct to the notice of an individual, there does not appear to be necessity to continue with the practice of issuing an advisory letter on "Average" grading in the ACR. However, an "Average" grading can be a hurdle to promotion, and as it would not be fair on the part of reporting officer to keep him in the dark on a matter which can affect his career progression, it has to be ensured that personnel whose work is of average quality, or lower, should have been suitably advised. Therefore, there should be no case of "Average" or lower grading without the individual having been suitably advised in writing well in advance."

6. During the argument, the petitioner has made an assertion that the communication of adverse entry is without any base and the communication of adverse entry is completely arbitrary exercise of power. The submission of the petitioner has been recorded in order dated 27.11.2017, which is as follows:-

" Heard learned counsel for the petitioner and learned counsel for the Union of India.

In this case, the petitioner is challenging adverse entry in the A.C.R. by the competent officer and he has made allegation of mala fide though the reporting officer has not been added as a party respondent in the writ application. He



further submits that except the statement, there is nothing on record to show that he has ever disobeyed or misbehaved with the superior officers.

Let the Union of India produce the entire records with regard to adverse entry made in the A.C.R.

Let this case be listed after three weeks under the same heading.”

7. In view of the submission, the Court has directed the Union of India to produce the relevant records showing communication of adverse entry to the petitioner. In pursuance thereof, the Union of India produced the record for perusal of the Court and this Court has perused the record and where-after the Union of India has filed its Supplementary Counter Affidavit, attaching the letters which were communicated to the petitioner during his stay at Kokrajhar. The reply that was given by the petitioner has been attached with the reply to the counter affidavit by the petitioner.

8. In view of the records that has been produced by the Union of India, it cannot be said that the materials were not available while recording the A.C.R. So, this part of the submission made by the petitioner that there was no material available on record and *ipse dixit* the adverse entry was communicated, appears to be not sustainable. But, the question in the present case is only limited to the extent that when the



petitioner has addressed an Appeal, mentioning certain facts and was personally heard, in such circumstance, the Appellate Authority was required to exercise his power properly while disposing of the appeal.

9. Appeal is a forum where the Appellate Authority has not only to deal with the points of law but he has to go through the record and deal with the facts also. When a person feels aggrieved by the action of the Reporting Officer and the Reviewing Authority and approaches to the Appellate Authority, in such circumstance, the duty cast upon the Appellate Authority to hear and decide the same by reasoned order on the basis of materials are/were available on record and whatever the points taken by the employee is required to be dealt with and it is not so that he will dismiss the Appeal only recording the finding that he has gone through the records and the petitioner has not made out any case for interference at the Appellate stage.

10. Learned counsel for the Union of India has submitted that in the Para-military Force the discipline is the hall-mark and dire necessity, if remain indiscipline then it will be very difficult for the Para-military Force to act properly and later on survival will be at stake. It has further been said by the learned counsel for the Union of India that interfere by this



Court will give a wrong signal and submitted that the question of adverse entry has been dealt with by the Hon'ble Supreme Court in the case of ***Rajendra Singh Verma vs. Lt. Governor (NCT of Delhi)***, reported in ***2011(10) S.C.C.-1***.

11. It is no doubt that the discipline is the core for any police force, para-military force and military force and without the discipline the police force cannot survive, but in the present case when an employee files appeal raises the grievance before the Appellate Authority, in such circumstance, the appellate authority should have dealt with the matter and passed a reasoned order. Reliance can be made on ***2003(4) S.C.C. 364***, paragraph no.15, wherein the Supreme Court has held that the decision is living link between the decision and the decision maker and if the link is missing and absence of reason, the judgment and order cannot survive, violates the basic principle of Article-14 of the Constitution of India.

12. In such view of the matter, this Court is of the view that the Appellate Authority has not passed a reasoned order. Accordingly, the order dated 21.01.2003 passed by the Appellate Authority is set aside and the matter is remanded back to the Appellate Authority to consider the appeal of the petitioner afresh and pass a reasoned order in accordance with law.



13. Accordingly, this writ petition is allowed to the aforesaid extent.

(Shivaji Pandey, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	13.04.2018
Transmission Date	N/A.

