IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-20171-2010 (O&M)
Reserved on: 03.05.2024
Pronounced on:14.08.2024

Dharamvir Singh
..... Petitioner

versus

State of Haryana
..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI
HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: None for the petitioner.

Mr. Rajiv Atma Ram, Senior Advocate (Amicus Curiae) with
Mr. Brijesh Khosla, Advocate and
Mr. Paramvir Singh, Advocate.

Mr. Samarth Sagar, Additional Advocate General, Haryana.

Deepak Sibal, J.

1. Whether to be legally sustainable, an adverse entry of doubtful integrity, recorded in the Annual Confidential Report (for short – ACR) of a government employee is required to be supported by tangible evidence or material is the spinal question referred to this Bench for its opinion.

2. A few relevant facts may be noticed.

3. While the petitioner served the Haryana Police as a Head Constable, an FIR under Sections 7, 8, 13/49 of the Prevention of Corruption Act, 1988 was registered against him. A trial ensued which ended in his acquittal as in the trial the prosecution failed to bring home the petitioner's guilt. His acquittal attained finality.

4. On the same facts on which were based the afore said criminal proceedings, the petitioner was also departmentally proceeded against which proceedings also culminated in his exoneration.

5. During pendency of the above proceedings, the petitioner was conveyed an ACR in which he was labelled as an unreliable, below average, indisciplined and dishonest officer. The petitioner appealed against these adverse remarks which appeal of his was dismissed. It was at that stage that he knocked the doors of this Court through filing of a writ petition seeking therein expunction of the adverse remarks recorded against him.

6. The petitioner petitioned this Court on the ground that the adverse entry doubting his integrity was based on the same facts which formed the basis of the FIR lodged against him as also the departmental proceedings initiated against him and since he had earned acquittal and exoneration in both these proceedings the adverse entry questioning his integrity would have no legs to stand.

7. It was submitted on behalf of the State that the impugned remarks in the petitioner's ACR clearly revealed that the petitioner's integrity had been doubted on the overall estimation of his work and that this was in addition to the corruption matter for which he was being tried. No reason or material was required to support the petitioner's adverse entry as it was a result of subjective assessment of his work by his reporting officer. To

buttress its case the State relied on the following Division Bench judgments of this Court :-

1. LPA-362-2011 – Davinder Singh versus State of Haryana and others, decided on 11.05.2011.
2. LPA-94-2010 – The Punjab and Haryana High Court at Chandigarh through its Registrar (Rules) versus Dewan Chand and others, decided on 21.12.2013.

8. The petitioner countered the State's stand by submitting that the entry in the petitioner's ACR doubting his integrity was neither backed by reason nor supported by any material. Therefore, even if there was no allegation of *mala fide* raised by the petitioner against his reporting officer, the said entry was legally unsustainable. In support of this stand of his the petitioner relied on the following two Division Bench judgments of this Court:-

1. CWP-15070-1993 – Des Raj versus State of Haryana and others, decided on 28.11.1994.
2. CWP-11695-1993 – D.N. Dalal versus The State of Haryana etc., decided on 30.11.1994.

9. In Des Raj's case (*supra*) and D.N. Dalal's case (*supra*) two Division Benches of this Court have opined that adverse reports doubting an officer's integrity which are not backed by any supporting material are liable to be set aside.

10. On the other hand, in Davinder Singh's case (*supra*) and Dewan Chand's case (*supra*) two other Division Benches of this Court have held that adverse entries doubting the integrity of an officer may not be supported by tangible evidence and that they can also be based on material from any

source as also that these entries would be legally sustainable if they are based on the *bona fide* subjective satisfaction of the reporting officer.

11. In the light of the afore divergent views expressed by Benches of equal strength of this Court and for the reason that the issue involved in the matter needed to be authoritatively settled, on a reference made by a learned Single Bench of this Court, this matter has been placed before us for our opinion on the aforesaid question.

12. Learned Amicus Curiae and the learned State counsel have been heard.

13. In *Puran Singh versus State of Punjab* 1980 SCC Online P&H 362 a Division Bench of this Court was called upon to decide as to whether a departmental enquiry could be ordered subsequent to the recording of an ACR on identical or substantially the same basis. After considering the matter the Division Bench opined that the purpose of writing ACRs was distinct from a formal departmental enquiry. While writing of ACRs was specifically for the internal assessment of the employee's performance by his superior over the prescribed period of time covered by the ACR, a departmental enquiry was the process to take penal action against the employee, if the charges against him were proved. In this context it was held that writing of ACRs was an administrative function based on the subject assessment of the employee's work whereas a departmental enquiry was objective and quasi judicial. Paragraph No.6 of the judgment which is relevant is reproduced below for ready reference :-

> *"6. It appears to me that the aforesaid twin contentions stem from a basic fallacy and misapprehension of the very nature and purpose of an annual confidential report as against the*

formal departmental enquiry, whilst the former is specifically for the internal assessment of estimate of the performance of a public servant by his superiors over the period of one year, the latter is intrinsically intended as the foundation for taking a punitive action against him if the charges come to be proved. The very nature and purpose of the two are consequently distinct and separate and to confuse them as either identical or similar, would to my mind be patently erroneous. An annual confidential report is in essence subjective and administrative whilst a departmental enquiry is inevitably objective and quasi-judicial.

14. In State of Punjab and others versus Janak Raj Jain 1986 SCC Online P&H 349 the question referred for the decision of a Division Bench of this Court was as to whether adverse remarks recorded in an employee's ACR could be made the subject matter of challenge before a Civil Court. After considering this issue the Division Bench held that recording of ACRs was a subjective and administrative act on the part of the employee's superior officer. The same was confidential in nature which confidentiality should be maintained to a certain extent. It was further held that recording of ACRs was based on a larger public policy which was usually in compliance with government instructions on the issue and that while recording ACRs the reporting officers were penning down their subjective assessment of the public servant's conduct. Thus, recording of ACR being a matter of subjective satisfaction of the officer's superior and in the very nature of things being an administrative function, the correctness thereof could not be gone into by a Civil Judge. Relevant paragraphs of the judgment in Puran Singh's case are reproduced as under:-

"6. The recording of annual confidential reports is, in essence, subjective and administrative while a departmental enquiry is inevitable objective and quasi-judicial. While considering this distinction, the Division Bench of this Court in Puran Singh v. State of Punjab, held that the recording of the confidential reports is in the sheer public interest and in a large governmental organisation, the same would be imperative, and equally, its confidential nature must also be maintained to a certain extent. Once that is so, either on the basis of a large public policy or usually in compliance with the Government instructions on the point, the superior officers are enjoined and indeed duty bound to put down their subjective assessment of the servants conducted in the shape of a confidential report. Therefore, it may well be said that such authority has both a right and a duty to record the annual confidential report unless for some specific and weighty reasons he chooses to defer the same.

7. The Supreme Court also in R.L. Butail v. Union of India, observed that the entry in the CRS is made under the office Order of 1961 by way of an annual assessment of the work done by the Government servant and not by way of a penalty under the Central Civil Services (Classification, Control and Appeal) Rules. True it is that of promotion arises and when comparative merits of persons eligible for promotion are considered. But then whenever a Government servant is aggrieved by an adverse entry he has an opportunity of making a representation. Such a representation would be considered by an appropriate authority, who, if satisfied, would either amend, correct or even expunge a wrong entry, so that it is not as if an aggrieved Government servant is without remedy. Making of an adverse entry is thus not equivalent to imposition of a penalty which would necessitate an enquiry or the giving of a reasonable opportunity of being heard to the concerned Government servant.

> *8. Thus, we are of the opinion that the recording of the annual confidential reports is a matter of subjective satisfaction of the officers concerned and in the every nature of things, the correctness there of could not be gone into in a Civil Court. The proper remedy for the person aggrieved would be to file a representation against the adverse remarks. In Union of India v. M.E. Reddy, it was observed by the Supreme Court that a superior officer may make certain remarks while assessing the work and conduct of the subordinate officer based on his personal supervision or contact. Some of these remarks may be purely innocuous, or may be connected with general reputation of honesty or integrity that a particular officer enjoys. It will indeed be difficult, if not impossible, to prove by positive evidence that a particular officer is (sic) but those who have had the opportunity to watch the performance of the said officer in close quarters are in a position to know the nature and character not only of his performance but also of the reputation that he enjoys.*

15. In *Ishwar Chand Jain versus High Court of Punjab and Haryana and another* (1988) 3 SCC 370 the question before the Supreme Court was as to whether the services of a judicial officer had been legally dispensed with. The judicial officer's work had been assessed by his Administrative Judge to be good. However, the Full Court downgraded the entry from good to unsatisfactory. The High Court sought to justify its action *inter-alia* by relying on the downgraded adverse remarks but the Supreme Court rejected the High Court's stand because the High Court failed to produce any record as to on what basis the initial entry recorded by the officer's Administrative Judge had been downgraded by the Full Court. Accordingly, the judicial officer was directed to be reinstated with continuity

of service and arrears of salary etc. In this regard paragraph 13 of the judgment is relevant and is reproduced for reference:-

> *"13. As regards the confidential roll of the appellant is concerned it is noteworthy that when the High Court considered the matter on March 21, 1985 the appellant's annual report was available only for the first year of his service namely 1983-84. The report for that year was satisfactory. Entry for the year 1984-85 was awarded by Justice S.P. Goyal who was Inspecting Judge on April 15, 1985. He awarded Grade 'B' plus to the appellant which means that appellant's work was good. But this entry could not be taken into consideration by the High Court as it had already taken the decision on March 21, 1985 to dispense with the appellant's services. We are distressed to find that when the aforesaid entry for 1984-85 came up for consideration before the full court of the High Court it modified the same and down-graded the entry from 'B' plus to 'C' which means appellant's work was unsatisfactory. During the hearing we asked the learned counsel appearing for the High Court to produce material on the basis of which the High Court modified the entry given by Justice S.P. Goyal for the year 1984-85 but he was unable to place any material before us to support the decision of the High Court in modifying the entry. The modification of the entry is therefore without any material and is not sustainable in law. It is thus clear that so far as annual entry on the appellant's confidential roll is concerned there was no material against him which could show that the appellant's work and conduct was unsatisfactory."*

16. In State of U.P. versus Yamuna Shanker Misra and another (1997) 4 SCC 7 the respondent before the Supreme Court was not promoted on account of adverse remarks made in his confidential reports for two successive years 1987-88 and 1988-89. He challenged the State's action

before the Services Tribunal which allowed his petition and quashed the adverse remarks recorded against him. On a challenge made by the State the High Court affirmed the order of the Services Tribunal and the matter was then taken by the State before the Supreme Court. While examining the issue the Supreme Court opined that one of the objects of writing ACRs was to give an opportunity to the public servant to improve excellence. The superior officer was entrusted with the duty of writing ACRs objectively, fairly and dispassionately while giving as accurately as possible the statement of facts on an overall assessment of the subordinate officer's performance. It was held that objective assessment must be founded upon facts or circumstances which sometimes may not be part of the record but the conduct, reputation and character acquire public knowledge which may be within the superior officer's knowledge. However, before forming an opinion to be adverse the reporting officer should share the opinion which is not a part of the record with the officer concerned. If, despite thereof, the officer fails to correct his conduct or perform his duties as is required of him, the reporting officer may go on to record the confidential report. Paragraph No.7 of the said judgment reads as follows:-

> *"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 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 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 given 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 standards of excellence in services constantly rises to higher levels and it becomes successful tool to manage the services with officers of integrity, honesty, efficiency and devotion."

17. In <u>M.S. Bindra versus Union of India and others</u> *(1998) 7 SCC 310* the Supreme Court held that an entry of doubtful integrity in an officer's ACR should not be based on a mere hunch of the reporting officer and that the entry should be of such as would reasonably and consciously be

entertainable by a reasonable man on the given material. Paragraph No.13 of the said judgment is relevant. The same reads as under:-

> *"13. While viewing this case from the next angle for judicial scrutiny i.e. want of evidence or material to reach such a conclusion, we may add that want of any material is almost equivalent to the next situation that from the available materials no reasonable man would reach such a conclusion. While evaluating the materials the authority should not altogether ignore the reputation in which the officer was held till recently. The maxim "Nemo firut repente turpissimus" (no one becomes dishonest all of a sudden) is not unexceptional but still it is a salutary guideline to judge human conduct, particularly in the field of Administrative Law. The authorities should not keep the eyes totally closed towards the overall estimation in which the delinquent officer was held in the recent past by those who were supervising him earlier. To dunk an officer into the puddle of "doubtful integrity" it is not enough that the doubt fringes on a mere hunch. That doubt should be of such a nature as would reasonably and consciously be entertainable by a reasonable man on the given material. Mere possibility is hardly sufficient to assume that it would have happened. There must be preponderance of probability for the reasonable man to entertain doubt regarding that possibility. Only then there is justification to ram an officer with the label "doubtful integrity".*

18. In *Rajendra Singh Verma (dead) through LRs and others versus Lieutenant Governor (NCT of Delhi) and others* *(2011) 10 SCC 1* the Supreme Court not only opined on the nature of the function of a reporting officer writing confidential reports but also the nature of "material" which is required to legally support an entry in the officer's confidential report doubting his integrity. In this regard the following paragraphs of the

judgment in <u>*Rajendra Singh Verma's case*</u> *(supra)* are required to be referred to:-

> *"189. The argument that material was not supplied on the basis of which "`C' Doubtful Integrity" was awarded to the appellants and, therefore, the order of compulsory retirement is liable to be set aside has no substance. Normally and contextually word `material' means substance, matter, stuff, something, materiality, medium, data, facts, information, figures, notes etc. When this Court is examining as to whether there was any `material' before the High Court on the basis of which adverse remarks were recorded in the confidential reports of the appellants, this `material' relates to substance, matter, data, information etc. While considering the case of a judicial officer it is not necessary to limit the `material' only to written complaints or `tangible' evidence pointing finger at the integrity of the judicial officer. Such an evidence may not be forthcoming in such cases.*
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> *190. As observed by this Court in R.L. Butail Vs. Union of India and Others, it is not necessary that an opportunity of being heard before recording adverse entry should be afforded to the officer concerned. In the said case, the contention that an inquiry would be necessary before an adverse entry is made was rejected as suffering from a misapprehension that such an entry amounts to the penalty of censure. It is explained by this Court in the said decision that making of an adverse entry is not equivalent to imposition of a penalty which would necessitate an enquiry or giving of a reasonable opportunity of being heard to the concerned Government servant.*
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> *191. Further in case where the Full Court of the High Court recommends compulsory retirement of an officer, the High Court on the judicial side has to exercise great caution and circumspection in setting aside that order because it is a complement of all the judges of the High Court who go into the*

question and it is possible that in all cases evidence would not be forth coming about doubtful integrity of a Judicial Officer. As observed by this Court in High Court of Punjab & Haryana vs. Ishwar Chand Jain, at times, the Full Court has to act on the collective wisdom of all the Judges and if the general reputation of an employee is not good, though there may not be any tangible material against him, he may be given compulsory retirement in public interest and judicial review of such order is permissible only on limited grounds. The reputation of being corrupt would gather thick and unchaseable clouds around the conduct of an officer and gain notoriety much faster than the smoke. Sometimes there may not be concrete or material evidence to make it part of the record. It would, therefore, be impracticable for the reporting officer or the competent controlling officer writing the confidential report to give specific instances of shortfalls, supported by evidence.

192. Normally, the adverse entry reflecting on the integrity would be based on formulations of impressions which would be result of multiple factors simultaneously playing in the mind. Though the perceptions may differ in the very nature of things there is a difficulty nearing an impossibility in subjecting the entries in the confidential rolls to judicial review. Sometimes, if the general reputation of an employee is not good though there may not be any tangible material against him, he may be compulsorily retired in public interest. The duty conferred on the appropriate authority to consider the question of continuance of a judicial officer beyond a particular age is an absolute one. If that authority bona fide forms an opinion that the integrity of a particular officer is doubtful, the correctness of that opinion cannot be challenged before courts. When such a constitutional function is exercised on the administrative side of the High Court, any judicial review thereon should be made only with great care and circumspection and it must be confined strictly to the parameters set by this Court in several reported *decisions. When the appropriate authority forms bona fide opinion that compulsory retirement of a judicial officer is in public interest, the writ Court under Article 226 or this Court under Article 32 would not interfere with the order.*

193. Further this Court in M.S. Bindra's case has used the phrase `preponderance of probability' to be applied before recording adverse entry regarding integrity of a judicial officer. There is no manner of doubt that the authority which is entrusted with a duty of writing ACR does not have right to tarnish the reputation of a judicial officer without any basis and without any `material' on record, but at the same time other equally important interest is also to be safeguarded i.e. ensuring that the corruption does not creep in judicial services and all possible attempts must be made to remove such a virus so that it should not spread and become infectious. When even verbal repeated complaints are received against a judicial officer or on enquiries, discreet or otherwise, the general impression created in the minds of those making inquiries or the Full Court is that concerned judicial officer does not carry good reputation, such discreet inquiry and or verbal repeated complaints would constitute material on the basis of which ACR indicating that the integrity of the officer is doubtful can be recorded. While undertaking judicial review, the Court in an appropriate case may still quash the decision of the Full Court on administrative side if it is found that there is no basis or material on which the ACR of the judicial officer was recorded, but while undertaking this exercise of judicial review and trying to find out whether there is any material on record or not, it is the duty of the Court to keep in mind the nature of function being discharged by the judicial officer, the delicate nature of the exercise to be performed by the High Court on administrative side while recording the ACR and the mechanism/system adopted in recording such ACR.

194. From the admitted facts noted earlier it is evident that there was first a report of the Inspecting Judge to the effect that he had received complaints against the appellants reflecting on their integrity. It would not be correct to presume that the Inspecting Judge had written those remarks in a casual or whimsical manner. It has to be legitimately presumed that the Inspecting Judge, before making such remarks of serious nature, acted responsibly. Thereafter, the Full Court considered the entire issue and endorsed the view of the Inspecting Judge while recording the ACR of the appellants.

195. It is a matter of common knowledge that the complaints which are made against a judicial officer, orally or in writing are dealt with by the Inspecting Judge or the High Court with great caution. Knowing that most of such complaints are frivolous and by disgruntled elements, there is generally a tendency to discard them. However, when the suspicion arises regarding integrity of a judicial officer, whether on the basis of complaints or information received from other sources and a committee is formed to look into the same, as was done in the instant case and the committee undertakes the task by gathering information from various sources as are available to it, on the basis of which a perception about the concerned judicial officer is formed, it would be difficult for the Court either under Article 226 or for this Court under Article 32 to interfere with such an exercise. Such an opinion and impression formed consciously and rationally after the enquiries of the nature mentioned above would definitely constitute material for recording adverse report in respect of an officer. Such an impression is not readily formed but after Court's circumspection, deliberation, etc. and thus it is a case of preponderance of probability for entertaining a doubt about integrity of an official which is based on substance, matter, information etc. Therefore, the contention that without material or basis the adverse entries were recorded *in the ACR of the appellants cannot be upheld and is hereby rejected."*

19. In Civil Appeal No.5984 of 2013 - High Court of Delhi through Registrar General versus Barkha Gupta and another decided on 06.10.2016, the challenge before the Supreme Court was to the judgment of the Division Bench of the Delhi High Court which had quashed the adverse entry of integrity doubtful in the ACR of the officer(s) concerned as there was no material to support the said entry. The Supreme Court dismissed the appeal and affirmed the order of the High Court by holding as under :-

> "*1. We have perused the order of the High Court under challenge. The High Court has very elaborately discussed and considered the totality of the facts in which the Annual Confidential Report (A.C.R.) of the officer(s) concerned was given the grading 'C' – integrity doubtful. Before the Division Bench of the High Court, which had passed the impugned order, no material whatsoever had been laid to sustain the said conclusion of the Full Court. Before us also there is not even a whisper as to the basis on which grading 'integrity doubtful' has been recorded.*
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> *2. In the aforesaid circumstances, it will not be necessary for us to traverse the detailed facts and circumstance of the case except to record our conclusion that the remarks recorded in the A.C.Rs. of the officer concerned for the years in question i.e. 1999-2004 are wholly unsustainable in law. We accordingly dismiss the appeal and affirm the order of the High Court. Beyond the above, we do not consider it necessary to say anything further except that the assistance offered to this Court by the Administrative Side of the High Court is shocking. This Court would have expected the responsible officer(s) of the High court to be present along with the record(s) to support the conclusions recorded on the Administrative side, particularly, in*

a situation where the appeals are pending for almost 10 years before this Court. We are dismayed by the assistance offered and request the Chief Justice of the High Court of Delhi to look into the matter."

20. In Jatinder Pal Singh versus High Court of Punjab and Haryana 2015 (4) S.C.T. 1 the petitioner therein had challenged the adverse remarks in his ACRs on the ground that they were not supported by any reason or material. The Division Bench answered the question in the petitioner's favour by holding as under:-

"*35. There is no doubt that the scope of interference with the remarks in a ACR is quite limited. However, having regard to the factual aspects of the present case, in our considered view, the decision of the then Hon'ble Administrative Judge and its approval by the High court was clearly erroneous for the reason that if there were some serious allegations made against petitioner in that case it was necessary to hold an enquiry. However, if it was a case of gathering overall report on the general reputation of officer, the most damaging remarks ought to have been supported by any material evidence/any reason. Or in the alternative the petitioner should have been given opportunity to meet those allegations by way of furnishing copy of the complaints and to seek his explanation or against those allegations. It is relevant to note that writing of ACR against an officer/employee is akin to quasi judicial function. The Apex Court has held that if there are civil consequences, necessary and reasonable opportunity should be given to the concerned person. In the present case against ACR, the petitioner submitted a detailed representation but no reasons are discernible while rejecting the same. It is to be noted that even the administrative decisions must be supported by reasons when it is appealable or for judicial review, since effective appeal would be deprived.*

> *36. The Hon'ble Supreme Court in the cases of Registrar General, Patna High Court versus Pandey Gajendra Prasad and others 2012(3) SCT 348, held that ACRs are to be reported carefully with the due diligence and caution. Power to make such entries, which have the 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 the subordinate judiciary and it is also observed that indicating only the grading in the final column be either on the basis of assessment or on personal has been views of the inspecting Judge(s) which is unfair to the judicial officer."*

21. In *Manjinder Singh versus State of Punjab and another 2018 (4) PLR 110* a Division Bench of this Court quashed the adverse remarks recorded in the ACR of the petitioner therein doubting his integrity. One of the main issues raised by the petitioner therein was that there was no material to support the adverse remarks doubting his integrity. In that case learned counsel appearing for the High Court did not dispute that there was no material to support the impugned adverse entry. In these facts the Division Bench quashed the adverse remarks.

22. After considering the entire gamut of law we are of the opinion that writing of confidential reports is in public interest. It is the periodic assessment by the superior officer of the work done by his subordinate. The primary object of writing of confidential reports is to give an opportunity to the public servant to improve excellence. This is in furtherance of Article 51-A(j) of the Indian Constitution as per which upon every citizen is the primary duty to constantly endeavour to prove his best, individually and collectively. Confidential reports are also maintained by the government and other organizations to assess the employee's service record at the time of

consideration of his case for grant of increments, promotions, retention in service etc.

23. Writing of confidential reports is an administrative function. It should be done objectively and fairly. Subject to the confidential report being a bonafide opinion of the reporting officer and not based on his whims, the Courts would normally refrain to interfere with the recording thereof. The reason for such reluctance is because the officer who is entrusted with the duty of writing confidential reports is best suited for this job as it is he under whose watch is the officer whose confidential report is being written.

24. Recording of confidential reports is not a penalty but these reports and in particular entries doubting the employee's integrity would certainly prejudice the employee's career. Even a solitary entry of doubtful integrity in the employee's confidential reports can propel his ouster from service. It could also adversely impact the grant to him of increments, promotions etc. Thus, recording of the entry with regard to doubting the employee's integrity must be only after the employee's work and conduct has been assessed objectively and dispassionately. To hold otherwise could invite mischief. Such an entry should not be based on the reporting officer's mere notion or supposition or assumption. The entry of doubting of his subordinate's integrity to be recorded in his ACR should be such which would be acceptable by a reasonable man on the given material. In these cases "material" may or may not be limited to written complaints or tangible evidence as many a times such evidence is not easily forthcoming. "Material" on which confidential reports of such nature can be based could be substance, matter, data, information etc. Repeated verbal complaints or

even discreet enquiries conducted qua the concerned officer or even receipt of information from a reliable source would constitute “material” leading to doubting of his integrity. There may also be instances where an entry of doubtful integrity could be based on the overall bad reputation of the employee over a prolonged period of time as such an officer would not become suddenly dishonest. In this regard there may not be found any tangible material against the employee but in these circumstances *bona fide* recording of an entry doubting his integrity which is based on information from reliable source(s) could be upheld when put under judicial scrutiny. One of the reasons behind holding so is because it is not uncommon that the corrupt are clever enough not to leave any tangible trace of their wrong doings. In these peculiar circumstances, in public interest, even in the absence of concrete or material evidence bona fide doubting of the employee’s integrity based on information received from different but reliable sources would be sustainable. However, in such circumstances, while recording/ approving adverse entries of doubtful integrity the reporting and/ or the approving officer has to exercise extreme caution. In a given case, the Court, while exercising judicial scrutiny may still quash the adverse entry pertaining to doubting of the employee’s integrity if it finds that the same is based on “no material whatsoever” but while doing so the Court would also exercise caution and keep in mind the nature of the function being discharged by the employee concerned and the nature of the exercise undertaken by his reporting officer at the time of recording the ACR in question.

25. In the light of the afore discussion, we humbly declare that Des Raj’s case (*supra*) and D.N. Dalal’s case (*supra*) to the extent that they hold

that adverse reports doubting the officer's integrity to be legally sustainable, are required to be backed by tangible material, are not good law.

26. Having answered the question referred to us as above, we direct listing of the petition before an appropriate Bench, as per roster, for decision on merits.

(Deepak Sibal)
Judge

(Harsimran Singh Sethi)
Judge

14.08.2024 **(Deepak Manchanda)**
gk **Judge**

Whether speaking/reasoned : Yes
Whether reportable : Yes