

that the petitioner in this case was labouring under the same impression that HUDA could extend time, and, therefore, asked for the extension of time. The amount of Rs. 11,000 deserves to be refunded because the petitioner did reply back within 30 days of the receipt of the allotment letter. If it is taken that he accepted subject to the condition of extension of time it can be inferred that he complied with first part of regulation 5(5) of the Regulations, due to which, amount could not be forfeited and had to be returned.

(21) For the reasons recorded above, the allotment of the plot in favour of the petitioner stood automatically cancelled and, therefore, no relief can be granted. But a direction is issued to HUDA to refund the earnest money of Rs. 11,000 to the petitioner within a period of two months from today.

R. N. R.

Before P. C. Jain, C.J. and J. V. Gupta, J.

STATE OF PUNJAB, and others,—Appellants.

versus

JANAK RAJ JAIN,—Respondent.

Regular Second Appeal No. 1580 of 1983.

May 29, 1986.

Constitution of India, 1950—Article 16—Adverse entry made in the annual confidential report of a government employee—Suit filed challenging the correctness of such entry and as having been recorded in violation of the procedure prescribed by government instructions—Civil suit filed—Whether maintainable—instructions issued by the government for recording annual confidential reports—Whether statutory in nature—Such instructions—Whether can be enforced in the Court of law.

Held, that the recording of annual confidential reports is, in essence, subjective and administrative. The recording of such 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 larger public policy or

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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 public servants conducted in the shape of a confidential report. A superior officer may make certain remarks while assessing the work and conduct of the subordinate officer based on his personal supervision or contact. It will indeed be difficult, if not impossible, to prove by positive evidence that a particular officer is dishonest but those who have had the opportunity to watch the performance of the said officer in close quarters to know the nature and character not only of his performance but also of the reputation that such officer enjoys. The recording of the annual confidential report being, therefore, a matter of subjective satisfaction of the concerned officer in the very nature of things the correctness thereof could not be gone into by a civil Court and the suit was, therefore, not maintainable.

(Paras 6 and 8)

Held, that if the adverse reports are recorded in violation of the executive instructions, they suffer from serious infirmity but at the same time there is no gain saying that the civil Court cannot substitute its own remarks in place of that of the reporting officer. At the most, the authority concerned may be directed by the Court to record remarks in accordance with the law which may or may not be possible after the lapse of time spent in Courts. Moreover, the instructions issued in regard to recording of confidential reports are not statutory in nature. They are in the nature of guidelines and instructions for internal consumption by the officers for recording the annual confidential reports. Of course, the Officers would follow such instructions and in case there is a violation thereof, it would be for the reviewing authority on a representation by the aggrieved employee to go into the matter to give necessary relief to him if so satisfied, but at the same time the said instructions cannot be enforced in a Court of law.

(Paras 10 and 11).

Regular Second Appeal from decree of the Court of the Addl. District Judge, Patiala dated the 2nd day of March, 1983 modifying on filing Cross Objections by the plaintiff that of the Sub Judge 1st Class, Patiala, dated the 27th day of April, 1982 (decreeing the suit of the plaintiff for declaration to the effect that the order of the rejection of his representation by the Commissioner of Excise and Taxation, Punjab, Patiala,—vide memo number E-3-III-77-2277, dated 22nd July, 1977 is wrong and illegal and ordering that the representation of the plaintiff is to be disposed of by a speaking order and further ordering that the plaintiff is however not entitled to the relief of permanent injunction as adverse remarks cannot be expunged in the instant suit and leaving the parties to bear their

own costs) to the extent of entitling the plaintiff to the declaration that adverse entry remarks integrity highly doubtful in the personal file of the plaintiff be not considered as an impediment for his future promotion and for the purposes of retiring him pre-maturely, with no order as to costs.

Case referred by Hon'ble Mr. Justice J. V. Gupta on dated 27th March, 1984 to a larger Bench as an important question of law involved in the case. The larger Bench consisting of Hon'ble the Chief Justice Mr. P. C. Jain and Hon'ble Mr. Justice J. V. Gupta, decided the case on May 29, 1986.

H. S. Bedi, Advocate, for the Appellant.

G. C. Gupta, Advocate, for the Respondent.

JUDGMENT

J. V. Gupta, J.

(1) The plaintiff-respondent filed the suit for the grant of the declaration to the effect that the adverse remarks with regard to his integrity conveyed to him,—*vide* memorandum dated September 20, 1976, and the order of rejection of his representation by the Punjab Government as conveyed,—*vide* Commissioner, Excise & Taxation, Punjab, memorandum dated July 22, 1977, were illegal, *ultra vires*, unconstitutional, null and void, *mala fide*, against the principle of natural justice, against service rules and regulations governing his service and the instructions issued by the Government.

(2) The plaintiff who was working as a Taxation Inspector in the Excise and Taxation Department, was conveyed adverse remarks with regard to his integrity etc.—*vide* memorandum dated September 20, 1976. Aggrieved against the same, he made a representation to the Financial Commissioner (Taxation) Punjab, on November 5, 1976, which was rejected with the order, "considered and rejected". The plaintiff filed the said suit challenging the communication of the said adverse remarks and the order rejecting his representation thereto *inter alia* on the ground that there was no material to justify the conveyance of the adverse remarks and the representation against the same had been disposed of summarily without the application of mind. The suit was contested *inter alia* on the ground that the plaintiff had no cause of action and that the same was not maintainable as he had not suffered any monetary loss. It was also

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pleaded that the suit was infructuous as the defendants were not taking any action against him on the basis of the adverse remarks conveyed to him. The trial Court held that the order rejecting the representation of the plaintiff against the adverse remarks was wrong and illegal as it did not show that the defects pointed out by the plaintiff challenging the order of the conveyance of the remarks were taken into consideration by the reviewing authority. As a result, the plaintiff's suit was decreed to the extent that the order of rejection of the plaintiff's representation by the Commissioner, Excise and Taxation, Punjab,—*vide* memorandum dated July 22, 1977, was wrong and illegal. The representation of the plaintiff was to be disposed of by a speaking order. However, he was not held entitled to the relief of permanent injunction as the adverse remarks could not be expunged in the suit. Dissatisfied with the same, the State of Punjab filed an appeal whereas the plaintiff filed the cross-objections. The learned Additional District Judge found that the adverse remarks, "integrity highly doubtful. Overall assessment : Below average"; given by the Joint Excise and Taxation Commissioner, were without any basis because nothing was said why he differed with the reports of the two subordinate reporting officers. It was also found that the said remarks were not given according to the instructions dated October 4, 1956 appearing at page 154 of the Manual of Instructions on Service Matters. Consequently, the appeal filed on behalf of the State of Punjab was dismissed whereas the cross-objections filed by the plaintiff were allowed. Resultantly, the plaintiff's suit was decreed with the direction that the said adverse remarks in the personal file of the plaintiff be not considered as an impediment in his future promotion and for the purposes of retiring him pre-maturally. Dissatisfied with the same, the State of Punjab filed this second appeal in this Court.

(3) *Vide* my order dated March 27, 1984, I referred the appeal to be heard by a larger Bench. The main question canvassed for decision was : whether the giving of adverse remarks was justiciable in a civil Court and if so, to what extent? It is in these circumstances that this appeal has come up for hearing before this Bench.

(4) The learned counsel for the appellant contended that the recording of annual confidential reports is an administrative act and, therefore, the plaintiff had no cause of action to file the present suit. Moreover, if the civil Courts entertained such like suits,

argued the learned counsel, the administration would be paralysed. The giving of remarks in the annual confidential reports is a matter of subjective satisfaction of the officers concerned and that it being so, it could not be agitated in a civil Court. On the other hand, the learned counsel for the plaintiff-respondent contended that the adverse remarks, in the instant case, with respect to the integrity of the plaintiff were not recorded in accordance with the instructions of the Government in this behalf as contained in the Manual of Instructions on Service Matters. Since those instructions are binding, any remarks recorded in contravention thereof were illegal. Besides, the adverse remarks, in this case, affected the civil rights of the plaintiff and, therefore, he was entitled to approach the civil Court to seek redressal of his grievance.

(5) We have heard the learned counsel for the parties and have also gone through the case law cited at the bar.

(6) The recording of annual confidential reports is, in assence, subjective and administrative whilst a departmental enquiry is inevitably objective and quasi-judicial. While considering this distinction, the Division Bench of this Court in *Puran Singh v. the State of Punjab* (1), 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 larger 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 public 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* (2) 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 such remarks would be taken into consideration when a question such as that of promotion arises and when comparative merits of persons eligible for promotion are considered.

(1) 1981 (1) S.L.R. 338.

(2) 1970 S.L.R. 926.

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 of 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 very nature of things, the correctness thereof 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 and another* (3) 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 dishonest 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.

(9) In view of the aforesaid authoritative pronouncements of the Supreme Court, the contention raised on behalf of the plaintiff-respondent is that since there was violation of the instructions in regard to the recording of the remarks in the annual confidential report, the plaintiff's suit was liable to be decreed on that account. In support of the contention, the learned counsel also relied upon two decisions of the Gujarat High Court in *M.M. Valand v. The State of Gujarat* (4) and *B. R. Kulkarni v. Government of Gujarat* (5) and a decision of the Madras High Court in *T. N. Sarkarasundram v. Director of S. & P. Madras* (6).

(3) 1979(2) S.L.R. 792.

(4) 1978(1) S.L.R. 489.

(5) 1978(2) S.L.R. 682.

(6) 1983(2) S.L.R. 183.

(10) Of course, it was held in the abovesaid Gujarat and Madras High Courts decisions that the Government is bound by its own instructions, which may be executive in character. If the adverse reports are recorded in violation of the executive instructions, they suffer from serious infirmity. There may not be much dispute so far as this proposition of law is concerned, but at the same time, there is no gainsaying that the civil Court could not substitute its own remarks in place of that of the reporting officer. At the most, the authority concerned may be directed by the Court to record remarks in accordance with law which may or may not be possible after the lapse of time spent in Courts. Otherwise also, all the cases cited at the bar relate to the final action taken against the public servants by way of compulsory retirement, stoppage of promotion etc. on the basis of adverse entries made in their character rolls and the Courts have ignored the adverse entries which had not conformed to the instructions on the subject and decided the cases accordingly, but none is a case which relates to the expunction of the adverse remarks simpliciter. Rather in *T. N. Sankarasundram's* case (supra), the petitioner filed the writ petition earlier for expunction of certain adverse remarks made against him in his confidential file and the same was dismissed as not maintainable. Only in *B. R. Kulkarni's* case (supra), the Gujarat High Court in the exercise of its writ jurisdiction had declared the adverse remarks to be illegal, but we respectfully disagree with that view, especially when the question of maintainability has not been gone into therein.

(11) The Division Bench of this Court in *Baldev Kapoor v. Union of India*, (7) has had to say as under regarding the instructions, in question :

“These instructions are only meant for the guidance of the authorities concerned. They do not have any statutory force and their violation or non-compliance does not render the decision illegal.”

Similarly, in the present case, the instructions contained in the Manual of Instructions on Service Matters in regard to the recording of the confidential reports said to have been violated are not statutory in nature. They are in the nature of guidelines and instructions for internal consumption by the officers for recording

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annual confidential reports. Of course, the officers will follow the said instructions and in case there is any violation thereof, it will be for the reviewing authority on a representation by the aggrieved employee to go into the matter to give necessary relief to him if so satisfied, but at the same time, the said instructions cannot be enforced in a Court of law.

(12) Though the suit of the plaintiff has to fail on this score alone as not maintainable, but since the appeal has been heard on merits also, we delineate the facts of the case, in brief, also, but before that is done, it would be apt to notice the observations of the Orissa High Court in *S. S. S. Venkatrao v. State of Orissa* (8). They are,—

“The Government in maintaining the character roll is exercising administrative function in which it is to act justly and fairly. That is not a quasi-judicial function though certain elements in the exercise of both the functions are similar. The Government servant is not entitled to establish his case in any other manner except by way of making a representation against the adverse entry. Excepting this, no other principle of natural justice is available. It is not open to the Government servant to justify his stand by giving evidence. Behind him the Government as a benevolent master is to act *bona fide* in testing *ex parte* the correctness of the statements made in the representation.”

Now, reverting to the facts of the present case, the plaintiff made the representation to the Financial Commissioner (Taxation) against the said adverse remarks and, therefore, the Joint Excise and Taxation Commissioner who had made the said adverse remarks was asked to furnish his comments. The comments made by him,—*vide* memorandum dated April 1, 1977, Exhibit DA, read,—

“The representationist has submitted that the remarks are not based on fact, that there were no complaints against him, that the defects were not pointed out to him, that his

earlier record of service was spotless and that his work during the year under review has been excellent. As regards the adverse remarks regarding integrity, he has also cited instructions of the Chief Secretary to Government, Punjab, that these remarks should generally be fortified by the reasons which may be in the possession of the Reporting Officer.

As far as this official is concerned, I may categorically state that I was informed by responsible public man that he was collecting bribes from the dealers within his circle on behalf of the District Excise and Taxation Officer, and was making regular payment of the same during the first week of every month to the District Excise and Taxation Officer at his residence. Since it is his reputation that is under discussion, no further facts need be adduced, nor from the nature of the case can there be any such facts. The question of pointing out this defect does not arise since it is an irremedial defect. The spotlessness of the past career is also not relevant to the issue whether the reputation of the official for integrity was doubtful or not.

As regards the overall assessment of the official, this is based on various aspects of his performance, including his reputation for integrity, and the opinion of the official himself that his work was excellent, is irrelevant."

It was after the receipt of the said comments, that the representation made by the plaintiff was rejected after due consideration. In these circumstances, the plaintiff could not make a grievance that there was no applicability of mind while considering or rejecting his representation.

(13) As a result of the above discussion, this appeal succeeds and is allowed. The judgments and decrees of the Courts below are set aside and the plaintiff's suit is dismissed with no order as to costs.

H.S.B.