

Before Surya Kant & P.B. Bajanthri, JJ

JATINDER PAL SINGH — *Petitioner*

versus

HIGH COURT OF PUNJAB AND HARYANA—*Respondent*

CWP No.15869 and 16339 of 2012

August 26, 2015

Constitution of India, 1950 – Arts. 226 and 227 — On 06.06.1992, Petitioner joined Punjab Civil Service (Judicial Branch) and made permanent as Sub-Judge on 06.06.1995 – Promoted as Civil Judge (Senior Division) — ACR for 2010-11 containing adverse remarks communicated — Representation rejected — CWP filed challenging adverse remarks in ACR for the Year 2010-11 — Petitioner contended that ACR is legally as well as factually untenable—Representation has not been given reasoned consideration — Impugned order dated 19.08.2011 in CWP No.15869 of 2012 was quashed holding that sustainability of adverse remarks in ACR require afresh and dispassionate reconsideration by High Court — Writ Petition No.16339 of 2012 challenging order dated 24.07.2012 of compulsory retirement was also disposed of holding that the High Court is directed to take a fresh decision after considering the representation as stated above within a period of two months from the date of taking decision on the representation of the petitioner against ACR.

Held, that after giving our thoughtful consideration to the points in issue, it appears that the remarks in the ACR like “*his work and conduct is not acceptable. He had been seen leaving the dias very often and spending one half of the time in the retiring room*” cannot be sustained in view of the positive remarks, namely, that the quality of judgment is 'good' and quantity of work 'the officer has claimed total 1737.5 units for the period from 01.04.2010 to 28.02.2011 which is more than the prescribed norms. The other remarks like directions for 'disposal of old cases' have not been complied with, this is to be taken note of with reference to the number of disposal of old cases. The direction was to make an effort to dispose of old cases. In this regard, the petitioner in his representation has highlighted the alleged efforts made by him and also pointed out the number of old cases dispose of by him while comparing the over all 30% cases disposed of in the Ludhiana Division. Therefore, the remarks of the directions given at the

beginning of the year to disposal of oldest cases have not been complied with, appears to be not supported by facts and figures.

(Para 25)

Further held, that consequently, integrity doubtful has been recorded. In so far as the receipt of the complaint(s) by the Hon'ble Administrative Judge during his inspection period is concerned, the record does not substantiate the receipt of any such complaint as is evident from the information furnished by the then District & Sessions Judge according to which no complaints were received by his office. Even, Registrar General of the High Court has not furnished copy of the complaints if any, received against the petitioner. In view of these actual aspects it becomes difficult to sustain serious remarks of "integrity doubtful" for want of any direct or indirect supportive material on record.

(Para 26)

Further held, that having regard to the quality of judgment 'good' and quantity of work of the petitioner which is more than the prescribed norm, it is sufficient to expunge the remark insofar as (a) conduct of business in Court and office, (iii) Capacity of management, leadership, initiative, planning and decision making for which the petitioner has placed necessary materials in his representation. Remarks of the Hon'ble Administrative Judge that the petitioner was apprised right in the beginning about his general reputation or that on account of his reputation the power of entrusting suits had to be withdrawn are also lacking the material information. It is to be noted that the then Hon'ble Administrative Judge was assigned Ludhiana Division in the month of May, 2010 and certain powers given to the petitioner were withdrawn on 18.05.2010. Till that time there was no adverse reports against him. Therefore, remarks of the Hon'ble Administrative Judge in Para 3 are difficult to sustain.

(Para 27)

Further held, that there is a growing tendency of making false and fabricated complaints against Judges at all levels, especially the District Judiciary. Realising this menace, High Court has issued office order dated 10.04.2015 with reference to DO letter No.CJI/CC/Comp/2014-15 dated 3.10.2014 of the Hon'ble Chief Justice of India that complaints should not be entertained in the absence of supporting affidavit. The said order is to protect the judicial officers.

(Para 38)

Further held, that there is no doubt that the scope of interference with the remarks in an 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.

(Para 39)

Rajiv Atma Ram, Senior Advocate with
N.S. Wahiwal, Advocate *for the petitioner*.

Ashwani Kumar Chopra, Senior Advocate with
Naresh Kumar Joshi, Advocate for respondent No.1.

P.B. BAJANTHRI, J.

(1) The petitioner on joining the Punjab Civil Services (Judicial Branch) on 06.06.1992, was made permanent as a Sub Judge on 06.06.1995. He was promoted to the cadre of Additional Civil Judge (Sr. Division), Chief Judicial Magistrate and Civil Judge (Sr. Division) on 04.03.1999, 19.08.2005 and in May, 2007 respectively.

(2) The petitioner while working as a Civil Judge (Sr. Division), Ferozepur was transferred to Ludhiana where he joined on 09.06.2009.

(3) Annual Confidential Report for the year 2010-2011 containing adverse remarks was communicated to the petitioner. He submitted representation against those remarks but the same was rejected. Consequently, he has presented CWP No. 15869 of 2012.

Thereafter, the petitioner was retired compulsorily on 27.04.2012. Aggrieved by the order of compulsorily retirement he has filed CWP No. 16339 of 2012.

(4) Firstly, we delve upon the issue of adverse remarks in the ACR 2010-2011.

(5) An extract of the Annual Confidential Report for the year 2010-2011 is reproduced hereunder:-

“MEMORANDUM

Hon'ble Administrative Judge of Ludhiana Sessions Division has been pleased to record the following inspection remarks on your work and conduct for the year 2010-2011:-

Part-II

| | | |
|-----|---|---|
| 1. | Quality of work | |
| (a) | Conduct of business in court and office | His work and conduct is not acceptable. He had been seen leaving the dias very often and spending one half of the time in the retiring room. |
| (b) | Quality of judgment | Good |
| 2. | Quality of work | The officer has claimed total 1737.5 units for the period from 01.04.2010 to 28.02.2011 which is more than the prescribed norm. |
| 3. | Capacity of management leadership, initiative, planning and decision making | The directions given at the beginning of the year to disposal of the oldest cases have not been compiled with. There is no valid explanation for such a low disposal with regard to the target given. |
| 4. | Inter personal relationship and team work | Average |
| 5. | State of Health | Good |
| 6. | Period under observation the Administrative Judge | 1.4.2010 to 31.03.2011 |

| | | |
|------------|---|---|
| 7. | Integrity | He has not been able to maintain his reputation for integrity. A large number of complaints have been received during the inspection period and the officer was apprised of the same but still has not shown any improvement. His power of entrustment of civil suit had to be withdrawn. Integrity doubtful. |
| 8. | General assessment regarding strength and shortcomings: | This officer could not prove an asset to the institution but in account of lapses on his part his performance is far from satisfactory and is afflicted by unworthy actions. |
| 9. | Grading- | C-Integrity doubtful. |
| Part - iii | Remarks of the Administrative Judge | This officer was apprised right in the beginning about his general reputation. On account of his reputation, the power of entrusting suits had to be withdraw.' |

(6) The aforesaid Annual Confidential Report has been recorded, based on the inspection remarks on the petitioner's work and conduct, by the then Hon'ble Administrative Judge of Ludhiana Sessions Division. The petitioner after the receipt of ACR requested the High Court on 14.06.2011 for furnishing copies of the complaints which might be the basis of above reproduced adverse remarks. However, no material was furnished to the petitioner. Consequently, he requested the District & Sessions Judge, Ludhiana to furnish copies of the complaints referred to in the ACR of the year 2010-2011.

(7) The District & Sessions Judge, Ludhiana vide communication dated 24.06.2011 stated that as per the records maintained by his office, no complaint, verbal or written have been received against the petitioner. An extract of the communication is reproduced hereunder:

“Memorandum

Reference your letter No.1100 dated 22.06.2011, on the subject cited above.

“This is to inform you that as per the record maintained in the office of the undersigned, no complaint having allegations

against you, for not sitting on the dias or sitting in the chamber, was received during the period 2010 to 23011 (uptill 31.03.2011), in writing. So far as verbal complaint is concerned, no body approached the undersigned with the information as enumerated supra. Similarly, no written complaint is available in the office, touching your integrity as well as regarding any misuse or abuse of the exercise of power of entrustment of civil suits. No such information was brought to the notice of the undersigned verbally, by any of the complainant. However, on the telephonic message received from the Hon'ble Administrative Judge of this Sessions Division, powers for the entrustment of Civil Suits etc. were withdrawn on 19.05.2010.”

(8) Thereafter, the petitioner on 04.07.2011 submitted a detailed representation along with certain documents for expunging the adverse remarks in the subject ACR and also requested for its upgradation with reference to record of the service.

(9) On 12.07.2011, Hon'ble Committee constituted for the disposal of representations by the Judicial Officers against ACRs held its meeting and took the following decision on the petitioner's representation:-

“The committee took the following decisions:-

xx xx xx xx

ITEM NO. 3: Shri Jatinder Pal Singh, Civil Judge (Senior Division), Ludhiana.

Consideration of representation dated 4.7.2011 made by the officer against inspection remarks recorded on his work and conduct for the year 2010-2011 by Hon'ble Mr. Justice M.M. Kumar, Administrative Judge of Ludhiana Sessions Division.

The representation has been considered and the same is rejected.

(10) Further, in 18th Full Court meeting of Hon'ble Judges held on 05.08.2011 the following decision was taken:

“Extract from the proceedings of the 18th Full Court meeting of Hon'ble Judges of the year 2011, held on Friday, the 5th day of August, 2011 at 4.15 P.M.

xx xx xx xx

20. The matter regarding report dated 12.07.2011 of Hon'ble Committee to Dispose of Representations of the Judicial Officers against ACRs on the following representations made by the Judicial Officers of Punjab Civil Services (Judicial Branch) was considered alongwith the note of Registrar General and it was resolved that,

(ii) the report of the Committee be accepted and representation dated 4.7.2011 made by Shri Jatinder Pal Singh, Civil Judge (Senior Division), Ludhiana against inspection remarks recorded on his work and conduct for the year 2010-2011 by Hon'ble Mr. Justice M.M.Kumar, Administrative Judge of Ludhiana Sessions Division be rejected and his annual confidential remarks for the year 2010-2011 be recorded as 'C'-Integrity doubtful'."

(11) Consequent upon the rejection of the petitioner's representation, on 08.08.2011 the High Court withdrew the judicial work from him. The petitioner then presented an application on 16.08.2011 under RTI to Public Information Officer, of the District & Sessions Judge, Ludhiana requesting for furnishing complaints received questioning his integrity for the period from 5.06.2009 to 05.08.2011. The information as furnished to the petitioner on 23.08.2011 revealed that there was no such complaint against him. The petitioner thereafter presented CWP No.15869 of 2012 questioning the order dated 19.08.2011 by which his representation dated 04.07.2011 for expunging the remarks made in his ACR for the year 2010-2011 was rejected. He has also questioned the validity of the order dated 08.08.2011 by which the High Court withdrew the judicial work from petitioner.

(12) During pendency of the aforesaid CWP No. 15869 of 2012, the petitioner approached the Hon'ble Supreme Court by way of writ petition (Civil) No. 417 of 2011 under Article 32 of the Constitution in which certain orders are reproduced below:-

Order dated 31.10.2011

Issuance notice returnable after eight weeks

(Pradeep Kumar)
Court Master

(Renu Diwan)
Court Master

Order dated 17.02.2011

Learned counsel for the respondent is directed to place on record, in sealed cover, the complainants which are referred to in Column 7 at Page No. 75 of the paper book and also the details of the inspection carried out by the Inspecting Judge for the period referred in that column within two weeks from today.

Learned counsel for the respondent is also directed to keep the complete service record of the petitioner along with the vigilance reports, if any.

List the matter for final disposal on March 13, 2012.

(Rajesh Dham)
(Court Master)

(Renu Diwan)
(Court Master)

Order dated 26.07.2012

On a thoughtful consideration of the entire matter, we are of the view that since the controversy in these two Writ Petitions pertains to service matter, it shall be in fitness of things if the matter is heard by the High Court.

2. We, accordingly, pass the following order:-

i The entire records of Writ Petition (Civil) No.417 of 2011 along with Interlocutory Applications and Writ Petition (Civil) No.198 of 2012 along with Interlocutory Applications shall be transferred to the Punjab and Haryana High Court forthwith.

ii On receipt of the above records, the Punjab and Haryana High Court shall register these matters.

iii The respondents in Writ Petition (Civil) No.198 of 2012 shall file their counter affidavit/s before the High Court within three weeks from today. The petitioner shall be at liberty to file rejoinder within one week therefrom.

iv We request the High Court to hear and decide the two Writ Petitioner as expeditiously as may be possible and preferably before October 31, 2012.

(13) In deference to the orders reproduced above, we have heard learned counsel for the parties and perused the entire record.

(14) Learned senior counsel for the petitioner contended that the ACR of the year 2010-11 of the petitioner viz : “his work and conduct” is legally as well as factually untenable. The adverse comments that “he had been seen leaving the dias very often and spending one half of the time in the retiring room.” are inconsistent for the reason that the Hon'ble Administrative Judge, has himself found that the quality of the judgment is “Good” and as regard to quantity of work, “the officer claimed total 1737.5 units for the period from 01.04.2010 to 28.02.2011 which is more than the prescribed norm”, “internal personal relations” and “team work” was found to be “Average”. In view of these recordings, the remark on the petitioner's work and conduct is not acceptable as the question of leaving the dias very often and spending one half of the time in the retiring room is not in harmony with the remarks on the quantity of work and quality of judgment read with internal personal relationship and team work. It was further contended that in so far as integrity of the petitioner is concerned it has been remarked as “integrity doubtful”. Such remark is supported with the observation that “he has not been able to maintain his reputation for integrity. A large number of complaints have been received during the inspection period and the officer was apprised of the same but still has not shown any improvement. His power of entrustment of civil suit had to be withdrawn.” In this regard, no material has been furnished despite petitioner seeking copies of the complaints allegedly received by the Administrative Judge or District & Sessions Judge. In fact, the petitioner sought information under RTI even then the cited complaints were not furnished by the High Court. However, the District & Sessions Judge has informed in writing that no complaints were received by his office. In other words, it was contended by the petitioner's counsel, that in the absence of material proof the aforesaid “integrity doubtful” remark is totally uncalled for.

(15) It was further contended that in so far as the remark “ this officer could not prove an asset to the Institution but in count of lapses on his part his performance is far from satisfactory and he is afflicted by unworthy action” is concerned, there is nothing on record to strengthen the same. On the contrary, quality of judgment has been found good and the quantity of work was also more than the required therefore, the aforesaid remarks are self-contradictory. In the ACR, grading has been awarded as “C-Integrity Doubtful”. It was further contended that as regard to remarks of the worthy Administrative Judge, namely “this officer was apprised right in the beginning about his general reputation. On account of his reputation, the power of

entrusting should said to be withdrawn” are concerned, the petitioner was not apprised of anything. In fact, there is no material on record to indicate that the petitioner was apprised verbally or otherwise right in the beginning about his general reputation. He also urged that if anything was to be apprised for rectifying any mistake or behaviour of the petitioner, Hon'ble Administrative Judge, ought to have issued memos to keep the record straighten. In the absence of such material, it was not legally tenable to make such remark which are supported only with the order of withdrawal of power of entrusting suits etc.

(16) The petitioner's counsel vehemently contended that against the adverse remarks in question, the petitioner submitted a detailed representation which has not been given reasoned consideration. The Hon'ble Committee has on 12.07.2011 merely stated that “the representation has been considered and the same is rejected.” So also in 18th Full Court Meeting, no reason finds mentioned for rejecting the petitioner's representation.

(17) It was urged that in the absence of any reason assigned by the Hon'ble Committee or the Full Court, the very object of submitting a representation by the petitioner stood defeated. Even on this account, the impugned action deserves to be annulled.

(18) The petitioner's counsel pointed out that on earlier occasion for the year 2008-2009 and 2009-2010 there were certain remarks which were considered by the Hon'ble Administrative Committee and the Full Court, and those remarks have been treated as 'advisory in nature'. Thus, till the end of the year 2010 or beginning of 2010-2011 there was not even iota of adverse material or remarks to castigate the petitioner.

(19) The petitioner's counsel further pointed out that the Hon'ble Administrative Judge who inspected work of the petitioner and withdrew power of distribution of complaints and petitions on 18.05.2010, had taken over as the Administrative Judge in that very month only. It was thus claimed that within few days the petitioner's work was assessed and certain powers were withdrawn over telephonic instructions to the then District & Sessions Judge which is suggestive of the fact that the work and conduct of the petitioner was pre-judged, may be on the basis of some hearsay information.

(20) Learned counsel for the petitioner also pointed out that complaints which are presumably referred to in the ACR for the year 2010-2011 were made available during pendency of the petition in

compliance to the orders passed by the Apex Court in Writ Petition (Civil) No. 417 of 2011. The complaints are dated 31.01.2011 made by one Smt. Manjit Kaur Sethi, Ludhiana addressing to the then Administrative Judge against the petitioner, two complaints by Mr. Darshan Singh Rai, Advocate, Bharshtachar Virodhi Front, Ludhiana dated 03.03.2010 and 03.03.2011. One more complaint by Ms. Parkash Rani, Ludhiana had been filed which was addressed to the Hon'ble Chief Justice of High Court dated nil. All these complaints were against the functions of the petitioner as a Civil Judge (Senior Division), Ludhiana. The aforesaid complaints were examined by High Court on administrative side and it decided on 21.04.2011 and 30.05.2011 not to take any action on these complaints and the same were filed. An extract of the decisions dated 21.04.2011 and dated 30.05.2011 are reproduced hereunder:-

“No action is required: Be filed.”

“Detailed order dated 09.03.2010 (Flag C). As such, the desirability of filing the complaint may be considered because the complaint is devoid of any merit.”

(21) The petitioner has during pendency of writ petition filed additional affidavit pointing out the fact of dropping of action on the complaints and further upon dropping of the complaints his request that the adverse remarks in ACR for the year 2010-2011 to be expunged and its grading from 'C' to be upgraded. He submitted a representation in this regard but the same has not been considered. The petitioner also alleges discrimination in the matter of non-upgradation of his ACR as according to him, in the matter of Mrs. Harpreet Kaur Randhawa whose case was identical to that of petitioner, this court examined the complaints received against her and dropped the action and so also expunged the ACRs on her representation, whereas no such positive action was taken in petitioner's case. An extract of the contention of the petitioner and so also the objections of the respondent on this point are reproduced here under:-

“5. That the facts of the case of the petitioner are identical to that of Ms. Harpreet Kaur Randhawa. The principles of natural justice, equality, equity and fair play demands that the petitioner should also be given the similar treatment as given to Ms. Harpreet Kaur Randhawa and others under the similar circumstances. Moreover, the Wednesday Principles also demands that the adverse remarks be expunged as the very basis for recording adverse remarks in the shape of

complaints has become non-existent due to the rejection/ filing of the complaints being devoid of any merit by the Hon'ble High Court.

4. That the averments made by the petitioner in para No.4 para of additional affidavit of the writ petition are wrong and denied. So far as the instance of Ms. Harpreet Kaur Randhawa given by the petitioner is concerned, it is submitted that in the case of Ms. Harpreet Kaur Randhawa, the Hon'ble Administrative Judge had recorded **“B-Average-Integrity Doubtful”** remarks on her work and conduct for the year 2010-2011 on the basis of a complaint and later on the proceedings of the said complaint were dropped.

5. That the assertion of the petitioner in para No. 5 of the additional affidavit of the writ petition, that the facts of his case are identical to that of Ms. Harpreet Kaur Randhawa is not correct and is denied. It is submitted that **“C-Integrity Doubtful”** were recorded on the work and conduct of the petitioner by the Hon'ble Administrative Judge after taking into consideration his overall performance during the inspection year 2010-2011. In the said ACR of the petitioner, it was substantially mentioned by the Hon'ble Administrative Judge in **Column No.7 “Integrity” that a large number of complaints were received during the inspection period and the officer was apprised of the same but still has not shown any improvement.** The Hon'ble Administrative Judge had also recorded in **Column no.1(a) that the conduct of the officer is not acceptable. He had been seen leaving the dias very often and spending one haof of the time in the retiring room.** The Hon'ble Administrative Judge had also recorded in **Column No.3 of his ACR that the directions given at the beginning of the year to dispose of oldest 25 cases were not complied with by him and there was no valid explanation for such a low disposal with regard to the target given.** It was also recorded by the Administrative Judge in Part III of his ACR that **the officer was apprised right in the beginning about his general reputation. On account of his reputation, the power of entrusting the suits have to be withdrawn from him.** Whereas, in the

case of Ms. Harpreet Kaur Randhawa, the Hon'ble Administrative Judge had recorded "**B-Average-Integrity Doubtful**" remarks on her work and conduct for the year 2010-2011 on the basis of a complaint. Subsequently, the proceedings on this complaint were dropped. No adverse remarks in any column of her ACR (except column no. 7 i.e. 'Integrity') were recorded by the then Hon'ble Administrative Judge of Ferozepur Sessions Division for the year 2010-2011. Thus, it is apparently clear that the case of the petitioner is entirely different to that of Ms. Harpreet Kaur Randhawa."

(22) The petitioner's counsel submitted that the aforesaid action of the High Court is arbitrary and is violative of Articles 14 and 16 of the Constitution.

(23) Learned senior counsel for the respondent, on the other hand, vehemently argued that ACR for the year 2010-2011 written by the then Hon'ble Administrative Judge is in order, subjective and over all assessment have been made before recording the remarks, therefore, there is no infirmity in the same. He further contended that the Administrative Committee/ACR Committee as well as Full Court of the High Court have examined the records while rejecting and confirming the adverse remarks as well as the grading of 'C'-integrity doubtful. It was also contended that scope of judicial review in so far as ACRs are concerned is very limited. In the present case, the petitioner has not made out a case so as to interfere with the adverse remarks or for upgrading the ACR. Learned senior counsel took us to the four complaints received by the respondents which are said to have been taken note of by the then Hon'ble Administrative Judge for the purpose of writing ACRs for the year 2010-2011, as well as the entire service record of the petitioner.

(24) Questions that fall for consideration are:-

1. Whether the adverse remarks impinging on the integrity of the petitioner as recorded in its ACR for the year 2010-2011 are valid and deserve to sustain?
2. Whether the recommendations made by the High Court to the Government for compulsorily retirement of the petitioner, and the order of the compulsorily retirement issued by the Government, suffer from any flaw?

(25) After giving our thoughtful consideration to the points in issue, it appears that the remarks in the ACR like “his work and conduct is not acceptable. He had been seen leaving the dias very often and spending one half of the time in the retiring room” cannot be sustained in view of the positive remarks, namely, that the quality of judgment is 'good' and quantity of work 'the officer has claimed total 1737.5 units for the period from 01.04.2010 to 28.02.2011 which is more than the prescribed norms. The other remarks like directions for 'disposal of old cases' have not been complied with, this is to be taken note of with reference to the number of disposal of old cases. The direction was to make an effort to dispose of old cases. In this regard, the petitioner in his representation has highlighted the alleged efforts made by him and also pointed out the number of old cases disposed of by him while comparing the over all 30% cases disposed of in the Ludhiana Division. Therefore, the remarks of the directions given at the beginning of the year to disposal of oldest cases have not been complied with, appears to be not supported by facts and figures.

(26) The core issue, however, pertains to the adverse remarks on the integrity of the petitioner. These remarks are based on the large number of complaints received by the Hon'ble Administrative Judge during his inspection period which were statedly apprised to the petitioner who still failed to show any improvement due to which petitioner's power of entrustment of civil suit was also withdrawn. Consequently, integrity doubtful has been recorded. In so far as the receipt of the complaint(s) by the Hon'ble Administrative Judge during his inspection period is concerned, the record does not substantiate the receipt of any such complaint as is evident from the information furnished by the then District & Sessions Judge according to which no complaints were received by his office. Even, Registrar General of the High Court has not furnished copy of the complaints if any, received against the petitioner. In view of these factual aspects it becomes difficult to sustain serious remarks of “integrity doubtful” for want of any direct or indirect supportive material on record.

(27) Having regard to the quality of judgment 'good' and quantity of work of the petitioner which is more than the prescribed norm, it is sufficient to expunge the remark insofar as (a) conduct of business in Court and office, (iii) Capacity of management, leadership, initiative, planning and decision making for which the petitioner has placed necessary materials in his representation. Remarks of the Hon'ble Administrative Judge that the petitioner was apprised right in the

beginning about his general reputation or that on account of his reputation the power of entrusting suits had to be withdrawn are also lacking the material information. It is to be noted that the then Hon'ble Administrative Judge was assigned Ludhiana Division in the month of May, 2010 and certain powers given to the petitioner were withdrawn on 18.05.2010. Till that time there was no adverse reports against him. Therefore, remarks of the Hon'ble Administrative Judge in Para 3 are difficult to sustain.

(28) The only adverse material made available against the petitioner was complaints dated 03.03.2010, 31.01.2011 & 03.03.2011 which were later on found baseless and were filed by the Hon'ble Administrative Judge. In the absence of other 'oral' or 'written' complaint impinging upon the integrity of petitioner, it would be unsafe and a too risky proposition to record or uphold the most serious remarks like those of "doubtful integrity". It has to be kept in view that as per Full Court decision of this Court an officer with a singular adverse report of doubtful integrity is liable to be thrown out of service. Such like report thus has fatal consequences on the career of a Judicial Officer. Therefore, there must always be some direct or indirect material to support such remarks except where the spoken reputation of the officer is so largely bad, that the adverse remarks can be retained.

(29) What is meant by 'consideration' is aptly dealt by the Apex Court in *M.P.State Co-op Dairy Federation Ltd. versus Rajnesh Kumar Jamindar*¹. It is held that "It is well settled while a power is exercised by an authority, ordinarily, reasons contained in the order should be supported by the material on record."

(30) In *Pawan. N.Chandra versus Rajasthan High Court*² the matter related to expunction of adverse remarks. Hon'ble Supreme Court held that sweeping adverse remarks made in the annual confidential report casting doubt on integrity, impartiality and capacity to work cannot be treated as justified more so because the same were primarily based on the complaints. It was held that some extraneous matter was taken note of by the High Court while recording adverse remarks which was unfair. An extract of the judgment is reproduced hereunder:-

“5. From 1982 to 1995 and 1997 till date, the appellant has, by and large, been rated as a good officer. During these

¹ (2009)15 SCC 221

² (2009) 17 SCC770

years his immediate superiors have written positive about his performance and integrity. Only in some of the years he has been rated as an average officer. For the year 1993, his performance was described as below average but on representation the said remark was expunged.”

(31) In the present case also the High Court vaguely relied on complaints which were examined independently and found unsustainable. Therefore to some extent the ratio of cited decision applies to the present case.

(32) As against it, learned counsel for the respondents relied upon:

i). *Rajendra Singh Verma (Dead) Through LRs and Others versus Lieutenant Governor (NCT of Delhi) and others*³ their Lordships have held as follows:-

“81. Judicial service is not a service in the sense of an employment as is commonly understood. Judges are discharging their functions while exercising the sovereign judicial power of the State. Their honesty and integrity is expected to be beyond doubt. It should be reflected in their overall reputation. There is no manner of doubt that the nature of judicial service is such that it cannot afford to suffer continuance in service of persons of doubtful integrity or who have lost their utility.

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

³ (2011) 10 SCC 1

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.”

(33) *Randhir Singh versus Hon'ble High Court of Punjab and Haryana and another*⁴. The matter relates to compulsory retirement and ACRs . It was held that a bonafide expression of opinion by an Administrative Judge which has withstood the test of Full Court would call for interference in the exercise of power of judicial review only if the formation of such opinion rests upon totally perverse considerations and its sustenance shall cause grave injustice to the officer. In the present case materials which were relied for writing ACRs were held as not sustainable. Therefore the aforesaid decision is not relevant.

(34) *Gorakh Nath, District & Sessions Judge (Retd.) versus State of Haryana and another*⁵. The mater relates to compulsory retirement and ACR. Scope of judicial review has been discussed, while holding that 'integrity doubtful' in the service record of an employee then it is considered to be larger public interest to retire such person prematurely.

(35) On facts of the present case the aforesaid judgment is not relevant.

(36) The above cited judgment relates to compulsory retirement in public interest. Whereas case in hand relates to ACR and scope of judicial review in the matter of ACR. In the absence of tangible material reasons the courts can interfere in the matter of ACRs.

(37) At this juncture it is relevant to look into the ACRs of the petitioner from the date of entry into service. Following are the extract of these reports:

1992 -1993 To 2010-2011

⁴ 2012 (4) RSJ364

⁵ 2014 (1) SCT 69

| PUNJAB AND HARYANA HIGH COURT | | | | | | | | | | | | | | | |
|-------------------------------|---|-------------------------------|---------------|-------------------|-------------|--|---|------------------------------|---------------|-----------|--|---------------------------|-----------|-----------------|-----------------|
| | | 1992-1993 | 1993-1994 | 1994-1995 | 1995-1996 | 1996-97 | 1997-98 | 1998-1999 | 1999-2000 | 2000-2001 | 2001-2002 | 2002-2003 | 2003-2004 | 2004-2005 | 2005-2006 |
| 1. | Knowledge of law and procedure | Good | Good | Very Good | Average | He is required to improve his knowledge of procedural laws | Satisfactory | Just satisfactory | Good | Good | He is well acquainted with law and procedure. Good application. | Good | Good | Very Good | Very Good |
| 2. | Is he industrious and prompt in the disposal of cases and has he coped effectually with heavy work? | Industrious | Yes | Yes | Yes | Yes | Just satisfactory. The officer may be advised to work hard and read reported cases. | Need to put more efforts | Yes | Yes | Yes. He had coped up with heavy work. | Yes, prompt and efficient | Good | Yes | Yes |
| 3. | Are his judgments and orders well written and clearly expressed? (Category in which the judgments are to be placed viz. A Plus outstanding, A-Very Good, B Plus (Good), B Average/Satisfactory, C-Below Average). | Writes Well. B (Satisfactory) | Yes B+ (Good) | Yes B plus (Good) | A-Very Good | Judgments Lucidly written B Plus (good) | B + (Good) | Just satisfactory B- Average | Yes B+ (Good) | Good | Yes. Well written with clear expression of the category of A-Very Good | B Plus (Good) | Good | Yes A-Very Good | Yes A-Very Good |

| | | | | | | | | | | | | | | | | |
|----|--|--------------------------|------|------|--------|---------------------------|--------------|--------------|---------------------------------|--|----------------|---|----------------|------|-----------|-------------------------------------|
| 4. | Is his supervision of the distribution of business amongst and control on the subordinate Court, good? (For Distt. & Sessions Judge and Senior subordinate Judges/Chief Judicial Magistrates). | Good | N.A. | N.A. | N.A. | N.A. | N.A. | N.A. | N.A. | Yes. Good. He is incharge at the place of posting and cases are instituted in his court. | Not applicable | Yes | Not applicable | Good | N.A. | Yes |
| 5. | Is he an efficient Judicial Officer? | Yes | Yes | Yes | Yes | Yes | Just Good | Average | Yes | Yes | Yes | He is an efficient judicial office | Yes | Yes | Yes | Yes |
| 6. | Has he maintained Judicial reputation for honesty and impartiality? | No Complaint | Yes | Yes | Yes | No complaint was received | No complaint | Yes | Yes. He is honest and impartial | Yes | Yes | Enjoys good reputation for honesty and impartiality | Yes | Yes | Yes | Yes. No complaint |
| 7. | Remarks about his attitude towards his superiors, subordinates and colleagues | Maintains good relations | Good | Good | Proper | No complaint was received | Good | No Complaint | Very Good | Good | Good | Maintaining good relations with all. | Good | Good | Very Good | Good Attitude towards all concerned |

| | | | | | | | | | | | | | | | |
|----|---|-----------------|---------|-------------|-------------|---------------------------|---------------|-------------------------------|---|----------------|-------------|---------------|---------------|---------------|--------------------|
| 8. | Behaviour towards members of the Bar and the Public | Good | Good | Good | Proper | No complaint was received | Good | No complaint | Very Good | Good | Very Good | Good | Good | Very Good | Good. No complaint |
| 9. | Whether the office attended refresher course and seminars, particularly relating to the fields of law, like constitutional law, public law and law relating to exercise of writ jurisdiction? | | | | | | | No | This information is available with the office | Not applicable | | | | | |
| 10 | Net Result: | B(Satisfactory) | Good B+ | B plus Good | A-Very Good | B Plus (Good) | B Plus (Good) | B-Average +++B Plus (Good) | B + (Good) | B + (Good) | A-Very Good | B Plus (Good) | B Plus (Good) | A (Very Good) | A (Very Good) |

| | | 2006-2007 | 2007-2008 | 2008-2009 | 2009-2010 | 2010-2011 |
|-----|---|--|---------------------------------------|---------------------------------------|------------------|---|
| 1. | <i>Quality of work</i> | | | | | |
| (a) | <i>Conduct of business in court and office</i> | <i>Good</i> | <i>Good</i> | <i>Good</i> | <i>Good</i> | <i>His work and conduct is not acceptable. He had been seen leaving the dias very often and spending one half of the time in the retiring room</i> |
| (b) | <i>Quality of judgment</i> | <i>Good</i> | | <i>Good</i> | <i>Good</i> | <i>Good</i> |
| 2. | <i>Quantity of work</i> | <i>Satisfactory</i> | <i>Reasonable</i> | <i>Sufficient</i> | <i>Very Good</i> | <i>The officer has claimed total 1737.5 units for the period from 01.04.2010 to 28.02.2011 which is more than the prescribed norm.</i> |
| 3. | <i>Capacity of management, leadership, initiative, planning and decision making</i> | <i>Good</i> | <i>Good</i> | <i>Good</i> | <i>Good</i> | <i>The directions given at the beginning of the year to disposal of oldest cases have not been complied with. There is no valid explanation for such a low disposal with regard to the target given.</i> |
| 4. | <i>Inter personal relationship and team work</i> | <i>Good</i> | <i>Good</i> | <i>He is cooperative</i> | <i>Good</i> | <i>Average</i> |
| 5. | <i>State of Health</i> | <i>Good</i> | <i>Good</i> | <i>Good</i> | <i>Good</i> | <i>Good</i> |
| 6. | <i>Period under observation of the Administrative Judge</i> | <i>1.04.2006 to 31.03.2007</i> | <i>May, 2007 to March, 2008</i> | <i>April 2008 to March, 2009</i> | <i>2009-2010</i> | <i>1.4.2010 to 31.3.2011</i> |
| 7. | <i>Integrity</i> | <i>There was a complaint regarding</i> | <i>Reputation at Bar not good. No</i> | <i>Spoken reputation is not good.</i> | <i>Good</i> | <i>He has not been able to maintain his reputation for integrity. A large number of complaints have been received during the inspection period and the officer was apprised of the same but still has not shown any</i> |

| | | | | | | |
|----------|---|---|--|--|-----------------------------------|--|
| | | grant of bail to an accused allegedly in an unusual manner, which is being inquired into. Except that, nothing adverse heard or noticed. Subject to | specific complaint. Needs to be watched in future. | No specific complaint. To be kept under surveillance | | improvement. His power of entrustment of civil suit had to be withdrawn. Integrity doubtful. |
| 8. | General assessment-regarding strength and shortcomings: | No specific shortcoming | More believe in 'Chamcha giri' | | A Good and an industrious officer | This officer could not prove an asset to the institution but in account of lapses on his part his performance is far from satisfactory and is afflicted by unworthy actions. |
| 9. | Grading- | B+ (Good) | B Plus (Good) | B Plus (Good) | B Plus Good | C-Integrity doubtful |
| Part III | Remarks of the Administrative Judge | | | | A good Officer | This officer was apprised right in the beginning about his general reputation. On account of his reputation, the power of entrusting suits had to be withdrawn.” |

(38) There is a growing tendency of making false and fabricated complaints against Judges at all levels, especially the District Judiciary. Realising this menace, High Court has issued office order dated 10.04.2015 with reference to DO letter No. CJI/CC/Comp/2014-15 dated 3.10.2014 of the Hon'ble Chief Justice of India that complaints should not be entertained in the absence of supporting affidavit. The said order is to protect the judicial officers. In other words not to entertain false and fictitious complaints. Extract of the order reads as follows:-

“i) The complaint making allegations against members of the Subordinate Judiciary in the States will not be entertained and no action will be taken thereon, unless it is accompanied by a duly sworn affidavit of the complainant and verifiable material to substantiate the allegations made therein;

ii) If action on such complaint meeting the above requirement is deemed necessary, authenticity of the complaint will be duly ascertained and further steps thereon will be taken only after satisfaction of the competent authority designated by the Chief Justice of the High Court; and

iii) If the above requirements are not complied with, the complaint will be filed/lodged without taking any steps thereon.”

(39) 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.

(40) The Hon'ble Supreme Court in the cases of **Registrar General, Patna High Court versus Pandey Gajendra Prasad and other**⁶ 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. An extract of the judgement is reproduced herein:-

“18. However, before parting with the judgment, we deem it necessary to make a mention about the recording of the ACRs of judicial officers. We feel that the present system of recording the ACRs leaves much to be desired and needs to be revamped. Experience has shown that it is deficient in several ways, being not comprehensive enough to truly reflect the level of work, 25 conduct and performance of each individual on one hand and unable to check subjectivity on the other. This undoubtedly breeds discontent in a section of the judicial service besides eroding proper and effective superintendence and control of the High Court over subordinate judiciary. The process of evaluation of a judicial officer is intended to contain a balanced information about his performance during the entire evaluation period, but it has been noticed that many a times, the ACRs are recorded casually in a hurry after a long lapse of time (in some cases even after the expiry of one year from the period to which it relates), indicating only the grading in the final column. It needs no elaboration that such hurried assessment cannot but, be either on the basis of the assessment/grading of the preceding year(s) or on personal subjective views of the Inspecting Judge(s), which is unfair to the judicial officer. Undoubtedly, ACRs play a

⁶ 292(3)SCT 348

vital and significant role in the assessment, evaluation and formulation of opinion on the profile of a judicial officer, particularly, in matters relating to disciplinary action against a judicial officer. The ACRs of such officer hold supreme importance in ascertaining his conduct, and therefore, the same have to be reported carefully with due diligence and caution. We feel that there is an urgent need for reforms on this subject, not only to bring about uniformity but also to infuse objectivity and standardization.

19. *In Bishwanath Prasad Singh versus State of Bihar & Ors.* 2001(1) S.C.T. 328: (2001)2 SCC 305 and *High Court of Punjab & Haryana, Through R.G. versus Ishwar Chand Jain & Anr.*, 1999(2) S.C.T.353 : (1999)4 SCC 579, highlighting the importance of ACRs, this Court had observed that the 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. This Court also stressed on the need for the assessment to be made as an ongoing process continued round the year and the record to be made in an objective manner. We are constrained to note that these observations have not yet engaged the attention of most of the High Courts in the country.”

(41) The Hon'ble Supreme Court in the case of *Vinod Kumar versus State of Haryana and others*⁷ held that :-

“23. We may usefully refer to the judgment of the English court in *Roberts v. Hopwood* laying down the law in the following terms:

“... A person in whom is vested a discretion must exercise his discretion upon reasonable grounds. A discretion does not empower a man to do what he likes merely because he is minded to do so- he must in the exercise of his discretion do not what he likes but what he ought. In other words, he must, by use of his reason, ascertain and follow the course which reason directs. He must act reasonably.”

⁷ 2013(16) SCC 293

(42) In *State of U.P. versus Renusagar*⁸, it is held as follows:-

“In *Renusagar*, Mukharji, J., as he then was, states: (SCC p.104, para 86) 86.... The exercise of power whether legislative or administrative will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary. Similarly, if the power has been exercised on a non-consideration or non-application of mind to relevant factors the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated.”

(43) The Apex Court in *Ravi Yashwant Bhoir versus District Collector, Raigad and others*⁹ held as follows on the point of recording of reasons:-

"38. It is a settled proposition of law that even in administrative matters the reasons should be recorded as it is incumbent upon the authorities to pass a speaking and reasoned order.

39. In *Shrelekha Vidyarthi v. State of U.P.*, this court has observed as under (SCC p.243, para 36)

"36... Every state action may be informed by reason and it follows an act uninformed by reason, is arbitrary. The rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is the trite law that 'be you every so high, the laws are above you'. This is what men in power must remember, always.”

41. In *State of W.B.v. Atul Krishna Shaw*, this court observed that:

(SCC p.421, para 7)

"7... Giving of reasons is an essential element of administration of justice. A right of reason is, therefore, an indispensable part of sound system of judicial review".

⁸ (1988) 4 SCC 59

⁹ (2012) 4 SCC 407

42. In *S.N.Mukherjee v. Union of India*, it has been held that the object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action. The expanding horizon of the principles of natural justice provides for requirement to record reasons as it is now regarded as one of the principles of natural justice, and it was held in the above case that except in cases where the requirement to record reasons is expressly or by necessary implication dispensed with, the authority must record reasons for its decision.

"47.. Reasons are the links between the material, the foundation for their erection and the actual conclusions. They would also demonstrate how the mind of the maker was activated and actuated and their rational nexus and synthesis with the facts considered and the conclusions reached. Lest it would be arbitrary, unfair and unjust, violating Article 14 or unfair procedure offending Article 21.

(44) In view of the afore cited decisions and following their ratio and dictum, we answer the first question that the sustainability of adverse remarks in the annual confidential report for the year 2010-2011 requires a fresh and dispassionate reconsideration by the High Court. Thus, the impugned order dated 19.08.2011 vide Annexure P-17 in Civil Writ Petition No.15869 of 2012 is quashed.

(45) Consequently, the High Court is directed to reconsider the representation of the petitioner and pass fresh order within a period of two months in accordance with law.

(46) Coming to the 2nd question whether the recommendations made by the High Court to the Government for compulsorily retirement of petitioner, or the order of the compulsory retirement issued by the Government, suffers from any flaw or not, the same shall depend on the reconsideration of the petitioner's representation by the High Court. Therefore challenge to compulsory retirement order dated 24.07.2012 vide Annexure P1(Colly) in Civil Writ Petition No. 16339 of 2012 is concerned, the High Court is directed to take a fresh decision after considering the representation as stated above within a period of 2 months from the date of taking decision on the representation of the petitioner against ACR. Accordingly, both the writ petitions are disposed of in above terms.