

STATE OF U.P.

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v.

YAMUNA SHANKER MISRA AND ANR.

FEBRUARY 21, 1997

[K. RAMASWAMY AND S. SAGHIR AHMAD, JJ.]

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Service Law :

Confidential reports—Adverse remarks recorded for the years 1987-88 and 1988-89 in Confidential reports of the employee—Promotion denied—Claim of employee allowed by the Tribunal holding that the remarks made by Secretary, Food & Civil Supplies were due to malice and they smack of arbitrariness—Held, the findings recorded by Tribunal of malice and arbitrariness on the part of Secretary as affirmed by High Court are not warranted—Since the Secretary was not eo-nominee to the proceedings and had no opportunity to explain the position it would be violative of principles of natural justice—Further, since the vigilance inquiry was pending, unless the officer was exonerated and cleared from the cloud, Secretary could not clear the conduct and integrity of the officer.

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Adverse remarks—Held, should be founded on 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 the knowledge of reporting officer—Before forming an opinion to be adverse, the reporting officer writing confidentials should share the information which is not 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.

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Moti Ram Deka v. General Manager, [1964] 5 SCR 683; Delhi Transport Corporation v. D.T.C. Mazdoor Congress & Ors., [1991] Supp. 1 SCC 600; S. Ramachandra Raju v. State of Orissa, [1994] Supp. 3 SCC 424; State Bank of India & Ors. v. Kashinath Kher & Ors., [1996] 8 SCC 762; U.P. Jal Nigam & Ors. v. Prabhat Chandra Jain & Ors., [1996] 2 SCC 363 and Sukhdeo v. Commissioner Amravati Division, Amravati & Anr., [1996] 5 SCC 103, referred to.

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A *Constitution of India, 1950 :*

Article 51-A(j)—Duty of citizen to constantly endeavour to improve excellence—Confidential reports of an employee—Held, the object of writing confidential reports and making entries in the character rolls is to give an opportunity to public servant to improve excellence—Officer entrusted with duty to write confidential reports had a public responsibility and trust to write confidential reports objectively, fairly and dispassionately on an overall assessment of the performance of the subordinate officer.

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C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1878 of 1997.

From the Judgment and Order dated 2.12.93 of the Allahabad High Court in W.P. No. 9458(SS) of 1993.

D Rakesh Dwivedi Adv. Genl., U.P., Arvind Kr. Shukla and Irshad Ahmad for the Appellant.

K.R. Nagaraja and K.K. Tyagi for the Respondents.

The following Order of the Court was delivered :

E Leave granted. Heard learned counsel for the parties.

This appeal by special leave arises from the Judgment of the Allahabad High Court, Lucknow Bench, made on 2.12.1993 in Writ Petition No. 9458(SS)/93.

F The adverse remarks for the years 1987-88 and 1988-89 were recorded in the confidential reports of the respondent. As a consequence, he was not promoted. When claim was made before the Service Tribunal, the Service Tribunal allowed the petition and quashed the adverse remarks recorded for the periods from 1.12.1988 to 31.3.1989 and 1.4.1989 to 30.9.1989. While recording that, the Tribunal held that the remarks made by the Secretary, Food & Civil Supplies were due to malice and they smack of arbitrariness. The High Court on a writ petition, by the impugned order, has affirmed the same. Thus, this appeal by special leave.

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H In *S. Ramachandra Raju v. State of Orissa*, [1994] Supp. 3 SCC 424, this Court underlined the need to write confidential reports objectively,

fairly and dispassionately in a constructive manner either comment- A
ing/downgrading the conduct, character, efficiency or integrity of the of-
ficer in that behalf. It is stated in para 11 that from the year 1973-74, the
performance of the duty by the appellant therein was consistently as
'satisfactory' to 'fair' except for the year 1987-88 in which year he dropped
down suddenly as an average or below average teacher. In that behalf it B
was held that "when he was a responsible teacher and he had cordial
relations with the student community, and was taking pains to impart
lessons to the students, would it be believable that he avoids to take classes
and drops down "if not watched"? When anterior to or subsequent to
1987-88 he was a man of ability and of integrity, the same whether would C
become below average only for the academic year 1987-88 without discern-
ible reasons, it would speak volumes on the objectivity of assessment by the
reporting officer i.e. the Principal. This conduct is much to be desired. This
case would establish as a stark reality that writing confidential reports bears
onerous responsibility on the reporting officer to eschew his subjectivity
and personal prejudices or proclivity or predilections and to make objec- D
tive assessment. It is needless to emphasise that the career prospects of a
subordinate officer/employee largely depends upon the work and character
assessment by the reporting officer. The latter should adopt fair, objective,
dispassionate and constructive commends/comments in estimating or as- E
specting the character, ability, integrity and responsibility displayed by the
officer/employee concerned during the relevant period for the above ob-
jectives if not strictly adhered to in making an honest assessment, the
prospect and career of the subordinate officer being put to great jeopardy.
The reporting officer is bound to lose his credibility in the eyes of his
subordinates and fail to command respect and work from them. The
constitutional and statutory safeguards given to the government employees
largely became responsible to display callousness and disregard of the
discharge of their duties and make it impossible to the superior or control- F
ling officers to extract legitimate work from them. The writing of the
confidentials is contributing to make the subordinates work at least to some
extent. Therefore, writing the confidential reports objectively and construc- G
tively and communication thereof at the earliest would pave way for
amends by erring subordinate officer or to improve the efficiency in service.
At the same time, the subordinate-employee/officer should dedicate to do
hard work and duty; assiduity in the discharge of the duty, honesty with
integrity in performance thereof which alone would earn his usefulness in H

A retention of his service. Both would contribute to improve excellence in service." In that case, on account of the vague remarks made for the year 1987-88, the appellant therein was compulsorily retired from service. This Court, after looking into the entire record, set aside the order. In *Moti Ram Deka v. General Manager*, [1964] 5 SCR 683, a Bench of seven Judges had held that in a modern democratic State, the efficiency and incorruptibility of public administration is of such importance that it is essential to afford to civil servants adequate protection against capricious action from their superior authority. If a public servant is guilty of misconduct, he should no doubt be proceeded against promptly under the relevant disciplinary rules, subject of course, to the protection under Article 311(2); but to maintain honesty, straightforwardness and efficiency in permanent civil servants, it was pointed out, from the point of view of the State, that they should enjoy a sense of security which alone can make them independent and truly efficient. In *Delhi Transport Corporation v. D.T.C. Mazdoor Congress & Ors.*, [1991] Supp. 1 SCC 600 at 739, to which one of us, K. Ramaswamy, J., was a member, the Constitution Bench had held that the Sword of Damocles hanging over the head of a public servant would inevitably create a sense of insecurity. The unbridled wide discretionary powers would conceivably be abused. Thereby this Court laid emphasis that "an assurance of security of service to a public employee is essential requisite for efficiency and incorruptibility of public administration. It is also an assurance to take independent drive and initiative in the discharge of the public duties to actuate the goals of social justice set down in the Constitution". In paragraph 275 at 740-41, it is further pointed out that the Court should take note of actualities of life that persons actuated to corrupt practices are capable to manoeuvre with higher echelons in diverse ways and also camouflage their activities by becoming sycophants or cronies to the superior officers. Sincere, honest and devoted subordinate officers are unlikely to lick the boots of the corrupt superior officer. They develop a sense of self-pride for their honesty, integrity and apathy and inertia towards the corrupt and tend to undermine or show signs of disrespect or disregard towards the corrupt. Thereby, they not only become inconvenient to the corrupt officer but also stand as an impediment to the ongoing smooth symphony of corruption at a grave risk to their prospects in career or even to their tenure of office. The term "efficiency" is an elusive and relative one to the adept capable to be applied in diverse circumstances. If a superior officer develops liking towards sycophant, though corrupt, he would

tolerate him and find him to be efficient and pay encomiums and corruption in such cases stand no impediment. When he finds a sincere, devoted and honest officer to be inconvenient, it is easy to cast him/her off by writing confidential reports with delightfully vague language imputing to be 'not up to the mark', 'wanting public relations' etc. At times they may be termed to be 'security risk' to their activities. Thus, they spoil the career of the honest, sincere and devoted officers. Instances either way are galore in this regard. Therefore, one would be circumspect, pragmatic and realistic to these actualities of life while angulating constitutional validity of wide, arbitrary, uncanalised and unbridled discretionary power of dismissal vested in an appropriate authority either by a statute or a statutory rule."

In *State Bank of India & Ors. v. Kashinath Kher & Ors.*, [1996] 8 SCC 762 at 771 in para 15, this Court pointed out that the object of writing the confidential report is two-fold, i.e., to give an opportunity to the officer to remove deficiencies and to inculcate discipline. Secondly, it seeks to serve improvement of quality and excellence and efficiency of public service. This Court in *Delhi Transport Corpn. case* (supra) pointed out the pitfalls and insidious effects on service due to lack of objectives by the controlling officer. Confidential and character reports should, therefore, be written by superior officers higher above the cadres. The officer should show objectivity, impartiality and fair assessment without any prejudices whatsoever with the highest sense of responsibility alone to inculcate devotion to duty, honesty and integrity to improve excellence of the individual officer. Lest the officers get demoralised which would be deleterious to the efficacy and efficiency of public service. Therefore, they should be written by a superior officer of high rank. Who are such high rank officers is for the appellant to decide. The appellants have to prescribe the officer in rank above the officer confidentials. There should be another higher officer in rank above the officer who has written confidential report to review such report. The appointing authority or any equivalent officer would be competent to approve the confidential reports or character rolls. This procedure would be fair and reasonable. The reports thus written would form the basis for consideration for promotion. The procedure presently adopted is clearly illegal, unfair and unjust". In *U.P. Jal Nigam & Ors. v. Prabhat Chandra Jain & Ors.*, [1996] 2 SCC 363 at 634 para 3, this Court had held that while writing the confidential reports, if the official were to be downgraded from the previous reports, "as we view it, the extreme illustration given by the High Court may reflect an adverse element compulsorily communicable,

A but if the graded entry is of going a step down, like falling from 'very good' to 'good' that may not ordinarily be an adverse entry since both are a positive grading. All that is required by the authority recording confidentialials in the situation is to record reasons for such downgrading on the personal file of the officer concerned, and inform him of the change in the form of an advice. If the variation warranted to be not permissible, then

B the very purpose of writing annual confidential reports would be frustrated. Having achieved an optimum level, the employee on his part may slacken in his work, relaxing secure by his one-time achievement. This would be an undesirable situation. All the same the sting of adverseness must, in all events, not be reflected in such variations, as otherwise they shall be

C communicated as such. It may be emphasised that even a positive confidential entry in a given case can perilously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true. In the instant case we have seen the service record of the first respondent. No reason for the change is mentioned. The downgrading is reflected by comparison. This cannot sustain. Having explained in this manner the case

D of the first respondent and the system that should prevail in the Jal Nigam, we do not find any difficulty in accepting the ultimate result arrived at by the High Court."

E In *Sukhdeo v. Commissioner Amravati Division, Amravati & Anr.*, [1996] 5 SCC 103 paragraph 6 this Court has pointed out that "It is settled law that when the Government resorts to compulsorily retire a Government servant, the entire record of service, particularly, in the last period of service is required to be closely scrutinised and the power would be reasonably exercised. In *State Bank of India v. Kashinath Kher*, JT (1996)

F 2 SC 569 at 578 para 15, this Court had held that the controlling officer while writing confidential and character roll report, should be a superior officer higher above the cadres of the officer whose confidential reports are written. Such officer should show objectivity, impartiality and fair assessment without any prejudice whatsoever with highest sense of responsibility to inculcate in the officer's devotion to duty, honesty and integrity

G so as to improve excellence of the individual officer, lest the officers get demoralised which would be deleterious to be efficacy and efficiency of public service. In that case it was pointed out that confidential reports written and submitted by the officer of the same cadre and adopted without any independent scrutiny and assessment by the committee was held to be

H illegal. In this case, the power exercised is illegal and it is not expected to

from that high responsible officer who made the remarks. When an officer makes the remarks, he must eschew making vague remarks causing jeopardy to the service of the subordinate officer. He must bestow careful attention to collect all correct and truthful information and give necessary particulars when he seeks to make adverse remarks against the subordinate officer whose career prospect and service were in jeopardy. In this case, the controlling officer has not used due diligence in making remarks. It would be salutary that the controlling officer before writing adverse remarks would give prior sufficient opportunity in writing by informing him of the deficiency he noticed for improvement. In spite of the opportunity given if the officer/employee does not improve then it would be an obvious fact and would form material basis in support of the adverse remarks. It should also be mentioned that he had given prior opportunity in writing for improvement and yet was not availed of so that it would form part of the record."

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 employee 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 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

- A 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
- B to manage the services with officers of integrity, honesty, efficiency and devotion.

- It is seen from the record that the respondent maintained constantly good record earlier to the adverse remarks made for the aforesaid period.
- C It would appear that subsequently also he had good confidential reports on the basis of which the clouds over his conduct were cleared and he was given further promotion. Mr. Rakesh Dwivedi, learned Advocate General, in fairness, therefore, has stated that since the respondent has been regularised after the subsequent good reports, the dispute does not survive for adjudication on merits. But the counter comments made against him
- D by the Secretary were warranted in view of the material on record. He brought to our notice that as on the date when the entries were made, the vigilance enquiry was pending against the respondent and, therefore, the adverse remarks came to be made. The findings recorded by the Tribunal of malice and arbitrariness on the part of Secretary as affirmed by the High
- E Court are not warranted for two reasons. Firstly, since the Secretary was not eo-nominee to the proceedings and had no opportunity to explain the position, it would be violative of the principle of natural justice. Secondly, since the vigilance enquiry was pending, unless the officer was exonerated and cleared from the cloud, necessarily, the Secretary could not clear the conduct and integrity of the officer. Therefore, the adverse remarks cannot
- F be said to be to smack of arbitrariness.

The appeal is accordingly allowed only the above extent. No cost.

R.P.

Appeal allowed.