

State of U.P. and Another Vs. Ram Pal and Another

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Court : Allahabad

Decided On : Sep-26-1997

Reported in : 1998(1)AWC195

Judge : S.C. Verma and ;Deva Kant Trivedi, JJ.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Writ Petition No. 663 (S/B) of 1997

Appellant : State of U.P. and Another

Respondent : Ram Pal and Another

Advocate for Def. : Rakesh Srivastava, Adv.

Advocate for Pet/Ap. : C.S.C. and ;Rakesh Srivastava, Adv.

Judgement :

S.C. Verma and Dev Kant Trivedi, JJ.

1. State of Uttar Pradesh, through Secretary Institutional Finance (Trade-tax), Anubhag 1 and Commissioner-Trade-tax, U. P., Lucknow have filed the present petition under Article 226 of the [Constitution of India](#) challenging the order of U. P. State Public Services Tribunal dated 1.6.1996 quashing the adverse entry awarded to the opposite party No. 1 for the year 1988-89.

2. The opposite party No. 1 Sri Ram Pal was at the relevant time holding the post of Sales-tax Officer (hereinafter referred to as Trade-tax' also) and was posted at Sector 4, Varanasi. There was a strike in the Sales-tax department at Varanasi from 17.2.1989 to 23.2.1989. The officials of the Sales-tax department were on strike on account of arrest of certain Sales-tax employees for their involvement in the corruption at Naubatpur Check-Post. The explanation of the opposite party No. 1 was called by show cause notice issued by the Commissioner Trade-tax through letter dated 27.10.1989 regarding his participation in the strike and absence from duty. The opposite party No. 1 by his reply dated 31.3.1989 sent his explanation by denying the charges. The opposite party No. 1 gave full details of the duties performed by him during this period.

3. The Reporting officer after considering the work and conduct of the opposite party No. 1 for the period from 16.6.1989 till 31.3.1989 for the year 1988-89 including the period of strike submitted annual confidential report and assessed it to be excellent and he also certified the integrity of opposite party No. 1. The Reviewing Officer, Deputy Commissioner (Appeals), Sales-tax, Varanasi agreed with the report of the Reporting Officer with regard to the work and conduct of the petitioner. However. It was mentioned that during the period of strike from 17.2.1989 to 23.2.1989 the opposite party No. 1 did not give his co-operation. The integrity was certified and he was also assessed by him in excellent category.

4. The Accepting Officer, Commissioner Sales-tax awarded the adverse entry with regard to the period of strike to opposite party No. 1, stating that he participated in the strike and did not cooperate in the working of the department. The department had to suffer loss and public was put to inconvenience. It was observed that as an officer, such activities were objectionable and it reflects that he has no concern with the inconvenience of the public which has resulted in spoiling the image of the department and in improving the confidence of the public in rendering the Government Service. The opposite party No. 1 was classified by him in the category 'bad'. The integrity was certified in absence of any adverse material.

5. The opposite party No. 1 by his representation dated 15.5.1990 again submitted detailed account of his presence during the strike period and the duties performed

by him but the representation was also rejected by the State Government by order dated 4.1.1993. The opposite party No. 1 then filed the Claim Petition No. 357/F/IV/92 before the State Public Services Tribunal to quash the adverse entry for the year 1988-89. The claim petition was allowed by the impugned order and the adverse entry was quashed and it was directed that the same shall be expunged from the character roll of the opposite party No. 1 and shall be treated as non-existing and further the categorisation of the opposite party No. 1 as reported by the Reporting and Reviewing Officer, shall be maintained.

6. The petitioners have challenged the impugned order on the ground that the Tribunal erred in treating the annual entry as punishment and also by holding that the charges mentioned in the annual adverse entry were subject matter of departmental enquiry and as such the same cannot be recorded as an adverse entry. It has also been alleged that the Tribunal wrongly held that the opposite party No. 1 has done work during the strike dates and did not abstain from work and duties and he did not participate in the strike.

7. Before we consider the validity of the order of the Tribunal, it would be necessary to place some facts which have come on record on the basis of which the opposite party No. 1 was awarded the adverse entry.

8. The opposite party No. 1 was posted as Sales-tax Officer, Sector 4. Varanasi during the said period when the Class IIIrd and Class IVth employees of the Sales-tax Department resorted to strike as some employees posted at Naubatpur Chauki were arrested and in their support, the employees of the Sales-tax Department have gone on strike. The petitioners have alleged that Naubatpur Check-post functions for 24 hours without any holiday and the cooperation of opposite party No. 1 was also expected during the strike period including on 19.2.1989 which was Sunday. The petitioners have admitted that the opposite party No. 1 has attended the official meeting on 17.2.1989 for few hours but for the rest of the day, he remained absent. The opposite party No. 1 has also not done work on 18.2.1989 or from 17.2.1989 to 23.2.1989 except on 21.2.1989 when he was at Allahabad for obtaining Government Stationery, the absence was inferred as opposite party's participation in the strike.

9. The Commissioner, Sales-tax had served a show cause notice asking for the explanation of the opposite party No. 1 and to furnish information for his absence from 17.2.1989 to 23.2.1989. The opposite party No. 1 was asked to submit his reply as to under whose instigation he participated in the strike and as he was holding a responsible post why he has not discharged his duties and functions as incharge of the Sector.

10. The opposite party No. 1 has submitted his reply to the said show cause notice by his letter on 31.3.1989. In the reply, it has been stated that while he was posted in Sector 4, for quite some time, he had no information of the strike by the employees of the Department at Naubatpur Check-post. The opposite party No. 1 attended on 17.2.1989 the monthly meeting of the Deputy Commissioner. Sales-tax (Administration) and he has signed on the meeting Register. He was present in the office on 18.2.1989 throughout the day upon 5 p.m. All the Class IIIrd and IVth employees were absent except one newly appointed employee but the opposite party No. 1 remained in the office throughout the day. On 19.2.1989, it was a Sunday and he remained at his residence but he was not assigned any duty. On 20.2.1989, he went to Allahabad by Government Vehicle to collect the Stationery from the office of the Printing and Stationery and he returned on 21.2.1989 at night. On 22.2.1989 he attended the office and the meeting convened by the Additional Commissioner. As the Class IIIrd employees were on strike, there was no one to take charge of the material due to strike, he had collected from Allahabad and as such he was present in the office throughout the day and was keeping watch on the Stationery which was lying in his custody. The opposite party No. 1 attended the office on 23.2.1989 and made efforts for the delivery of the Stationery which remained in his custody. The opposite party No. 1 in this manner explained his presence and duties performed during the period from 17.2.1989 to 23.2.1989. It has been stated by the opposite party No. 1 that after submission of reply to the show cause notice, and no action was taken, he was under the impression that the explanation furnished by him had been found to be satisfactory and the department could not take any further action in the matter. The opposite party No. 1 has also stated that similar show cause notices dated 27.3.1983 were issued to all the Sales-tax Officers posted at Varanasi. The adverse entry appears to be of general nature without indicating any specific lapse

or irregularity of the Officer.

11. The Reviewing Officer accepted the entire report of the Reporting Officer with regard to the work and conduct of the opposite party No. 1 but he added in his remark that the officer did not co-operate during the period of strike from 17.2.1989 to 23.2.1989. This remark also appear to be vague in not indicating as to what co-operation was expected from the opposite party No. 1 and in what manner the co-operation was not extended by the officer. The representation of the petitioner against the award of the entry, dated 15.5.1990 has also been rejected by the order dated 4.1.1993 without assigning any reason.

12. We have heard learned standing counsel and the learned counsel appearing on behalf of opposite party No. 1 and have perused the entire record. We also summoned the original record of the State Government relating to the disposal of the representation against the adverse entry.

13. The Tribunal after considering the material on record, regarding this aspect of the matter recorded finding that the petitioner had done official work during the period of strike. The Tribunal after considering the explanation furnished by the opposite party No. 1 for his day-to-day performance from 17.2.1989 to 23.2.1989 recorded the above finding. It has been rightly held that the allegation of the petitioners that the opposite party No. 1 did not perform any work from 17.2.1989 to 23.2.1989 except on 21.2.1989 is not borne out from the record. Further there is no material to establish that the opposite party No. 1 did not attend the office on 17.2.1989, 18.2.1989, and on 20.2.1989 he did not go to collect the Stationery and returned on 21.2.1989 in the night. The opposite party No. 1 also attended the office on 22nd and 23rd February, 1989. If the employees were on strike and there was no work done in the office, what work and cooperation was expected from the opposite party No. 1 has neither been stated nor is spelled out from the material on record.

14. The Officer was required to do assessment work in normal performance of his duties but in the circumstances, it was not possible and the officer cannot be held responsible for the lapse. Further, there is no material to establish that any direction issued by the superior officers was not complied by him ; on the other

hand, he attended all the meetings when he was present in the town.

15. The award of adverse entry is thus on the basis of inference drawn and is vague and of general nature that the opposite party No. 1 was on strike and he had not done any work. The authorities were not correct in evaluating the work and conduct of the petitioners in this manner specially in absence of any report or material indicated by the Reporting Officer. The Accepting Authority, the Commissioner of Sales-tax has not at all considered the explanation furnished by the opposite party No.1. The entire action, in our opinion, lacks objectivity. The findings of fact recorded by the Tribunal that the opposite party No. 1 was present throughout and had done official work during the strike period, appears to be based on material on record and does not require any interference in exercise of Jurisdiction under Article 226 of the Constitution.

16. In the case of S. Ramchandra Raju v. State of Orissa. J995SCC (Labour and Service) 74, the Hon'ble Supreme Court emphasised the need to write confidential reports objectively, fairly and dispassionately in a constructive manner either commenting/ downgrading the conduct, character efficiency or integrity of the officer in that behalf.

17. In the award of the entries, it was observed that it 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 objective 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 assessing the character, ability, integrity and responsibility displayed by the officer/employee concerned during the relevant period for the above objectives if not strictly adhered to in making an honest assessment, the prospect and career of the subordinate officer would be 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' for the superior or controlling officers to extract legitimate work from them. The writing of the confidential is contributing to make the subordinates work at least to some extent. Therefore, writing the confidential reports objectively and constructively and communication thereof at the earliest would pave way for amends by erring subordinate officers 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 retention of his service. Both would contribute to improve excellence in service.

18. In the case of Delhi Transport Corporation v. D. T. C. Mazdoor Congress, 1991 SCC (L.&S;) 1213, the Hon'ble Supreme Court held :

'An assurance of security of service to a public employee is an essential requisite for efficiency and incorruptibility of public administration. It is also an assurance to take independent drive and initiative in the discharge of public duties to actuate the goals of social Justice set down in the Constitution.

'..... Courts 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 them. 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.'

19. In the case of State Bank of India v. Kashinath Kher, 1996 SCC 1117, it was held:

'..... The object of writing the confidential report is twofold, 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 Corporation case 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 appellants to decide. The appellants have to prescribe the officer competent to write the 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'

20. In the case of State of U. P. v. Yamuna Shanker Misra, the Hon'ble Supreme Court held :

'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 facts or circumstances. Though sometimes, it may not be part of the 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 being given such an opportunity, the officer fails to perform the duty, correct his conduct or improve himself, necessarily the same may be recorded in the confidential reports and a copy thereof supplied to the affected officer so that he will have an opportunity to know the remarks made against him. If he feels aggrieved, it would be open to him to have it corrected by appropriate representation to the higher authorities or any appropriate judicial forum for redressal. Thereby, honesty, integrity, good conduct and efficiency get improved in the performance of public duties and standard of excellence in services constantly rises to higher levels and it becomes a successful tool to manage the services with officers of integrity, honesty, efficiency and devotion.'

21. The opposite party No. 1 has throughout earned good and excellent entries. He has alleged that he has never received any adverse remark or entry in the character roll. The entry awarded by the Reporting Officer and Reviewing Officer for the year 1988-89 with regard to the work and conduct of the opposite party No. 1 has been held to be excellent. The Accepting Officer has also not in any manner

adversely commented on the work of the opposite party No. 1 but he has been categorised to be a 'bad' officer merely for one reason and that too based on inference that he participated in the strike and did not co-operate with the department during the strike period. The allegation of the opposite party No. 1 that each of the officer who was posted at Varanasi during the strike period has been called to furnish the explanation by the Commissioner, Sales-tax, reflects the background in which the impugned action has been taken.

22. The second contention of the petitioner that the order rejecting the representation does not contain any reason also requires scrutiny. In the order dated 4.1.1993, no reasons have been recorded nor any discussion has been made with regard to the detailed explanation furnished by the petitioner. To ascertain whether reasons exist on record or not, we had summoned the original file. On perusal of the record, it appears that the comments from Deputy Commissioner, Sales-tax (Administration) were invited in which he has stated that the comments made by him in the entry were based on material on record, without furnishing any reason or explanation or indicating the particular material. It has been held in the case of Union of India and others v. E. G. Nambudiri, (1991) 3 SCO 38 :

'The character roll of Government servants is required to be maintained wherein the entries are made every year by superior competent authority regarding the work, conduct and character of the Government servant. These entries are confidential in nature, which contain the assessment of the work and conduct of the Government servant, reflecting his efficiency or defect in his work and conduct. The confidential reports, contain general assessment of character, conduct and qualities of a Government servant which may include comments about his good work, drive, initiative devotion to duty and integrity. These entries also reflect the inefficiency, delay, lack of initiative, carelessness in handling the problems, or any defect in character and integrity. These entries contain reference to any penalty which may have been awarded to a Government servant in departmental proceedings. These entries are important in nature as on the basis of these entries, a Government servant's suitability to the office is assessed for the purposes of his confirmation, promotion and even for retention in service. Any

adverse remark awarded against a Government servant is communicated to him to afford him opportunity of explaining the correct position by means of a representation. The competent authority is required to examine the adverse remarks in consultation, if necessary, with the Reporting Officer and countersigning authority. If the competent authority finds that the remarks are justified and there are no sufficient grounds for interference, he may reject the representation and the Government servant is informed accordingly. If, however, the competent authority finds that the adverse remarks are incorrect unfounded or unjustified, he would expunge the same and inform the Government servant. The competent authority may having regard to the facts and circumstances of the case modify, or tone down the remarks. The administrative instructions issued by the Government do not require the competent authority to record reasons either in accepting or rejecting the representation of a Government servant, made against adverse entries.

Entries made in the character roll and confidential record of a Government servant are confidential and those do not by themselves affect any right of the Government servant, but those entries assume importance and play vital role in the matter relating to confirmation, crossing of efficiency bar, promotion and retention in service. Once an adverse report is recorded, the principles of natural Justice require the reporting authority to communicate the same to the Government servant to enable him to improve his work and conduct and also to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is Justified. The superior authority competent to decide the representation is required to consider the explanation offered by the Government servant before taking a decision in the matter. Any adverse report which is not communicated to the Government servant, or if he is denied the opportunity of making representation to the superior authority, cannot be considered against him. See *Gurdial Singh Fijji v. State of Punjab*. In the circumstances it is necessary that the authority must consider the explanation offered by the Government servant and to decide the same in a fair and just manner. The question then arises whether in considering and deciding the representation against adverse report, the

authorities are duty-bound to record reasons, or to communicate the same to the person concerned. Ordinarily, courts and Tribunals, adjudicating rights of parties, are required to act judicially and to record reasons. Where an administrative authority is required to act judicially it is also under an obligation to record reasons. But every administrative authority is not under any legal obligation to record reasons for the decision, although, it is always desirable to record reasons to avoid any suspicion. Where a statute requires an authority though acting administratively to record reasons, it is mandatory for the authority to pass speaking orders and in the absence of reasons the order would be rendered illegal. But in the absence of any statutory or administrative requirement to record reasons, the order of the administrative authority is not rendered illegal for absence of reasons. If any challenge is made to the validity of an order on the ground of it being arbitrary or mala fide it is always open to the authority concerned to place reasons before the court which may have persuaded it to pass the orders. Such reasons must already exist on records as it is not permissible to the authority to support the order by reasons not contained in the records. Reasons are not necessary to be communicated to the Government servant. If the statutory rules require communication of reasons, the same must be communicated but in the absence of any such provision absence of communication of reasons do not affect the validity of the order.

There is no dispute that there is no rule or administrative order for recording reasons in rejecting a representation. In the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a Government servant against the adverse entries the competent authority is not under any obligation to record reasons. But the competent authority has no license to act arbitrarily, he must act in a fair and just manner. He is required to consider the questions raised by the Government servant and examine the same, in the light of the comments made by the officer awarding the adverse entries and the officer countersigning the same. If the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons. In the absence of any statutory or administrative provision requiring the competent authority to record reasons or to communicate reasons, no exception

can be taken to the order rejecting representation merely on the ground of absence of reasons. No order of an administrative authority communicating its decision is rendered illegal on the ground of absence of reasons ex facie and it is not open to the court to interfere with such orders merely on the ground of absence of any reasons. However, it does not mean that the administrative authority is at liberty to pass orders without there being any reasons for the same. In Governmental functioning before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion. If the order as communicated to the Government servant rejecting the representation does not contain any reasons, the order cannot be held to be bad in law. If such an order is challenged in a Court of law it is always open to the competent authority to place the reasons before the court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence aliunde before the court to Justify its action.'

23. From the record that has been placed before us, we are satisfied that the explanation furnished by the petitioner in his representation was not considered and there are no reasons or discussion indicating that the authority has applied his mind in considering the explanation furnished by the incumbent and found them to be unsatisfactory.

24. Apart from the above reasons, the order of the Tribunal does not call for any interference as the petition has been filed belatedly without giving any proper explanation and sufficient cause. The copy of the order was received on 24.10.1996 and thereafter opinion of the Presenting Officer of the Tribunal was obtained on 3.11.1996. Then the case was referred to the Government in the Trade-tax department on 16.11.1996. The Trade-tax department referred the case to the Law Department and the contest order was issued on 6.12.1996. The Commissioner Trade-tax issued instructions on 19.12.1996 to Assistant Commissioner Trade-tax, Lucknow. The Assistant Commissioner contacted the Chief Standing Counsel on 1.1.1997. The file was allotted to the concerned standing counsel for preparation of the petition on 3.1.1997 and the

official contacted the standing counsel on 6.1.1997. The standing counsel required some facts for which it is alleged that the official contacted the Trade-tax Headquarters on 10.1.1997 and 16.1.1997, as also on 18.1.1997 and thereafter on 20.1.1997 furnished the information and facts to the standing counsel who dictated the petition on 20.3.1997. The draft of the writ petition was submitted to the administrative department of the Government through Commissioner-Trade tax for final approval and signatures. It has been alleged that due to official constraints and stringencies, the writ petition could not be filed earlier and it was presented before the Stamp Reporter of the High Court on 22.5.1997 and thereafter filed on 17.7.1997. Although the above dates have been furnished with regard to the movement of file but no explanation has been given as to why after the Law Department had issued the contest order on 6.12.1996, there was delay in filing the writ petition on 17.7.1997. The petitioners have not placed on record as to what material was required by the standing counsel for which the official contacted the Head quarters on 10.1.1997, 16.1.1997, and 18.1.1997 and thereafter when he furnished the material on 20.1.1997, the writ petition was dictated on 23.3.1997 and thereafter filed on 17.7.1997. There was already sufficient delay and there appears to be no justification why even after the writ petition was drafted on 20.3.1997, it took two months' time for the Government to finalise the draft and to present it before the Stamp Reporter, High Court on 22.5.1997. Further there is no explanation why writ petition was filed after two months on 17th July, 1997. All these facts reflect the negligence and laches on the part of the petitioners for which sufficient explanation has not been furnished and for this reason also the petition is liable to be dismissed.

25. The writ petition fails and is accordingly dismissed.