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Court : Rajasthan

Decided On : Nov-21-2000

Reported in : 2001(4)WLC470; 2001(1)WLN600

Judge : R.R. Yadav, J.

Appeal No. : S.B. Civil Writ Petition No. 5159 of 2000

Appellant : Avinash Mathur

Respondent : State and Others

Advocate for Pet/Ap. : Virendra Lodha, Adv.

Judgement :

ORDER

Yadav, J.

(1). The petitioner, by filing the present petition, questions the legality and validity of Annexure-8 to the writ petition, whereby, some of annual adverse remarks, relating to the year 1995-96, have been expunged, on the representation of the petitioner, made to the State Government, but some of the adverse remarks on output of work, general assessment, overall rating and about his performance not satisfactory, are maintained.

(2). It is strenuously urged by the learned counsel for the petitioner, Shri Virendra Lodha, that the petitioner has unblemished record of service and no adverse remarks have ever been communicated to him. It is submitted by him that the same reporting officer, who has made adverse entries in the Annual Confidential Reports (ACRs) for the year 1995-96, had also given adverse remarks to him, in the year 1994-95, against which, the petitioner had made a representation to State Government, and on his representation, the adverse remarks, given by the reporting officer, in the year 1994-95, have been expunged by the State Government, after examining his service-record and work-report, but (he State Government, after expunging some of adverse remarks, given by reporting officer, illegally, maintained some of adverse remarks, mentioned hereinabove, against the petitioner, for the year 1995-96, after doing the same exercise, what was done for expunging the adverse remarks for the year 1994-95. It is further submitted by the learned counsel for the petitioner that in the present writ petition, the petitioner is not making allegations of mala fides, against the Government, for maintaining the adverse remarks, mentioned hereinabove, but he is alleging mala fides against the reporting officer.

(3). It is well to remember that there is a presumption of a Government servant, working bonafidely. There could be no presumption about working malafidely. It is held that it is easy to allege mala fides, against a public servant, but it is very difficult, to prove it. It is to be imbibed that if an allegation of mala fide, is made against a public servant, then, he is required to be impleaded in the array of respondents, in person, by name, as a party, in addition to his impleadment, in his official capacity, in a writ petition, so that against whom mala fides are alleged, may get an opportunity, to rebut the allegations of mala fides- In the present case, the petitioner has not impleaded the reporting officer, by name, in the array of respondents, separately, after impleading him, in his official capacity, giving him an opportunity, to rebut the allegations of mala fides, alleged against him, by the petitioner, therefore, the plea of mala fides, against the reporting officer, is not acceptable, and it is hereby repelled.

(4). This Court takes judicial notice of the fact that now-a- days, the practice of making allegations of mala fides, against reporting officers, giving adverse

remarks in the ACRs, is gaining grounds. It is also noticed by this Court that whenever and wherever an adverse entry is made by a reported officer, against a Government employee, invariably wild allegations of mala fides are made against such reported officers, in impolite language, touching their honesty and integrity. Such practice is being institutionalized, which deserves to be checked, by evolving some mechanism, with vision, to maintain healthy traditions of keeping annual entries in ACRs, impartial and giving an opportunity to improve, to a subordinate Government servant, after communicating such adverse remarks to him.

(5). It is a matter of common knowledge of service jurisprudence that adverse entries are given by a reporting officer, to a subordinate Government servant, to improve his performance and to make introspection in his functioning, and not to penalise him. The healthy tradition of maintaining impartial ACRs, with care and caution, from time immemorial, is working as bulwark, in maintaining discipline and preventing insubordination amongst Government employees, which cannot be allowed to attain a colour of empty formality.

(6). It is further true that adverse entries, given by reporting officers, also affect the future career of subordinate Government employees, to whom, such adverseremarks given in ACRs, are communicated. Thus before evolving a proper mechanism, both the aspects, mentioned hereinabove, deserve to be kept in view. It is held that whenever and wherever a subordinate Government servant makes a representation, to expunge adverse remarks, given against him such representation must be coached in polite language and must be based on data-based ground realities, to demonstrate that adverse remarks are not justified, ordinarily, without making any imputation relating to honesty and integrity of reporting officer, who has given adverse remarks against him. It would be expedient in this regard that any representation, against adverse entries in ACRs, to a reviewing authority, entitled to examine such representation, must be routed through the reporting officer, giving him an opportunity to give him reasons in support of adverse remarks, given by him, to a Government employee, together with his opinion to the merit of representation. It is made clear that if a representation by a subordinate Government employee, for expunging remarks given against him, is made in impolite language, making wild allegations against

reporting officer, touching his honesty and integrity, then, such representation, for expunging adverse remarks is to be rejected, on this ground alone, making it possible of a reporting officer, to give impartial remarks in ACRs, without fear of being maligned at the behest of a subordinate officer working under him.

(7). It is settled norm that annual remarks in ACRs are given by reporting officers, on their subjective overall assessment of public servants, relating to their performances and integrity, based on their general reputation amongst their subordinates, superior officers and the public, with whom, they deal with. It is practically impossible to record impartial annual remarks, in ACRs on objective considerations alone. In fact, elimination of element of subjectivity, in recording impartial annual remarks in ACRs, is not possible, therefore, representation in impolite language alleging malafides against a reporting officer is to be deprecated, It is observed that when adverse remarks, given by reporting officers are placed before confirming authorities, for confirmation, they are to take precaution in those cases, in which previous year's entries in ACRs of Government employees are found to be either outstanding, or very good or good, but reporting officer is assessing, in the next following year, to be either an average, or below average. Reason for such precaution, while affirming such annual remarks, in ACRs of a public servant, is not far to seek, as such entries affect his promotional avenues and his future career. Same norm of precaution is to be observed, where the reporting officer has assessed a public servant, to be either an officer of outstanding, very good or good, but the confirming authority differs for such assessment of the reporting officer, while confirming such assessment, on his personal information, then, he is required to interact with the reporting officer, before changing the assessment of reporting officer, from outstanding, very good or good, to average or below average. Although, remarks of average, recorded in ACRs of Government employees, are not to be treated to be adverse remarks, and as such, these remarks are not required to be communicated to (the Government employees, but in those cases, where, in the ACR of the previous year of a Government employee, he is recorded either outstanding, very good or good, and the reporting officer and confirming authority propose to assess him, average, even then, such average entry is to be communicated to the public servant,- as it affects his promotional chances.

(8). From the discussions, made hereinabove, I decline to make the order impugned, Annexure-8, passed, by State Government, expunging some of the adverse remarks and maintaining few adverse remarks in the ACRs of the petitioner, for the year 1995-96, ineffective, by invoking extraordinary equitable jurisdiction, under Article-226 of the Constitution, on the backdrop of averments made in the writ petition and also on the ground of mala fides, alleged against the reporting officer, without impleading him in the array of respondents, in the present petition, giving him an opportunity to rebut the allegation of mala fides, alleged against him.

(9). Consequently, the instant writ petition is hereby dismissed in limine.

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