

S.T. RAMESH
v.
STATE OF KARNATAKA AND ANR.

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FEBRUARY 20, 2007

[DR. AR. LAKSHMANAN AND ALTAMAS KABIR, JJ.]

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Service Law:

All India Services (Confidential Rolls) Rules, 1970: Rules 8 & 9.

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Annual Confidential Report—Importance of—Adverse remarks—Expunging of—IPS officer had been graded as "very good", "excellent" and "outstanding" throughout his career—But, for a short period of 150 days, the officer's performance had been graded as 'average' with certain adverse remarks—The officer filed an application before the Central Administrative Tribunal for quashing of the adverse remarks—The Tribunal dismissed the application and also imposed costs on the appellant for using intemperate language against the reviewing authority—High Court affirmed the decision—Correctness of—Held: The confidential report is an important document as it provides the basic and vital inputs for assessing the performance of an officer and further achievements in his career—It should be used as a tool for human resource development and is not to be used as a fault finding process but a developmental one—The performance of the appellant has been consistently of high quality except for a short period of about 150 days—Hence, adverse remarks not justified and expunged—Administrative Tribunals Act, 1985, S. 19.

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The appellant, an IPS Officer, had a consistently good record of service and had been graded as "very good", "excellent" and "outstanding" throughout his career. The appellant filed an application before the Central Administrative Tribunal for quashing of the communication of adverse remarks under various headings in the Annual Confidential Report for the period from 16.10.1996 to 15.3.1997.

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The Tribunal dismissed the application with costs payable to the second respondent for using intemperate language against him. The High Court

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A dismissed the writ petition filed by the appellant. Hence the appeal.

Allowing the appeal, the Court

B HELD: 1. From the remarks made by the different authorities at different
C points of time, it will be evident that the appellant is an officer of outstanding
D qualities and merit. Except for the impugned remarks made by the reporting
E officer and by the second respondent as the reviewing authority, he has been
consistently graded as "outstanding", "very good" and "excellent" and has
also been entrusted with various responsibilities. It is true that in his
representation he has used intemperate language, mainly against respondent
No.2, on an erroneous assumption. that the adverse remarks had been made
by the said respondent, but use of such intemperate language has to be looked
at objectively after careful consideration of all the Annual Confidential
Reports for all the years. It will have to be considered whether the remarks
made by the reporting officer and the reviewing officer were sufficient in
themselves to merit the overall assessment of "average" as against the
consistently excellent remarks in the confidential reports both before and
after the period in question. In fact, the remarks of the Additional Chief
Secretary and Principal Secretary to the Government, Home and Transport
Department, while disagreeing with the general assessment made by the
second respondent of the appellant's performance from 14.7.2000 to
28.2.2001, also merits consideration. [Para 41] [832-C-F]

F 2. The confidential report is an important document as it provides the
G basic and vital inputs for assessing the performance of an officer and further
achievements in his career. This Court has held that the performance
appraisal through C.Rs. should be used as a tool for human resource
development and is not to be used as a fault finding process but a developmental
one. Except for the impugned adverse remarks for a short period of about
150 days, the performance of the appellant has been consistently of high
quality with various achievements and prestigious postings and meritorious
awards from the President of India. The appellant has been graded as "very
good", "excellent" and "outstanding" throughout his career. It is difficult
to appreciate as to how it could become adverse during the period of 150 days
for which the adverse remarks were made. Furthermore, despite such adverse
remarks, the State Government, considering his merit, ability and outstanding
qualities, has already promoted the appellant as the Inspector General of Police.

[Para 42] [832-G-H; 833-A-B]

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3. Although, the remarks made by the reporting officer has been questioned by the appellant as if they had been made by the respondent No.2, the Court still has to make an assessment as to whether the said remarks were merited by the appellant on account of his consistently good performance. Even his outburst against the respondent No.2 in his representation appears to be a fall out of such presumption which was certainly not expected of an officer of the rank and caliber of the appellant. But, the same should not come in the way of an otherwise unblemished and outstanding career. [Para 43] [833-B-C]

4. The High Court was prejudiced by the intemperate outburst of the appellant, in his representation, which led to the dismissal of the writ petition. On account of such prejudice, the High Court chose to ignore the consistently good record of the appellant and based its judgment on the basis of the language used by the appellant in his representation. Furthermore, the High Court also failed to appreciate that remarks such as "anything but smiling", "cannot vibe with his seniors" and "his decision making was governed by his paradigm" are not remarks which are adverse or could have been used to justify the average rating in the appellant's A.C.R. [Para 44] [833-D-E]

5. The entire service record of the appellant was called for and upon perusal of the same, it is found that the remarks of the reporting officer for the period in question were contrary to his consistent performance. The observation of the respondent No.2 that the appellant was an arrogant officer is followed by his remark that his knowledge and work is good. Such an observation cannot be the basis of an overall rating of average. [Para 45] [833-F-G]

6. The Tribunal also appears to have been prejudiced by the intemperate language used by the appellant against the second respondent. The Tribunal while holding that such language was totally unacceptable also imposed cost on the appellant to be paid to the second respondent. It is not in dispute that the said cost has been paid by the appellant to the second respondent. However, for the same reasons as those indicated above, the Tribunal also committed an error in overlooking the otherwise consistently good track record of the appellant. [Para 46] [833-G-H; 834-A]

7. The authorities are directed not to treat the appellant's performance during the period in question as average. The appellant should also desist from using intemperate and abusive language in future while discharging his official functions. [Para 47] [834-B]

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 868 of 2007.

From the final Judgment and Order dated 27.9.2005 of the High Court of Karnataka at Bangalore in writ Petition No. 33105 of 2000(S-CAT).

B Arvind V. Sawant, Shri Narain, Navkesh Batra and Sandeep Narain (For S.Narin & Co.), for the Appellants.

Sunil Mathew, Sanjay R. Hedge and Santanam Swaminadhan for the Respondents.

C. Dinakar Respondent No. 2-In-Person.

C The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. 1. Leave granted.

D 2. This appeal is directed against the order dated 27.9.2005 passed by the Division Bench of the High Court of Karnataka at Bangalore in Writ Petition No. 33105 of 2000 filed by the appellant, S.T. Ramesh, IPS who is now functioning as Inspector General of Police, dismissing the writ petition and awarding cost to the second respondent.

E 3. The appellant herein filed original application before the Central Administrative Tribunal, Bangalore for quashing of the communication of adverse remarks under various headings as incorporated in the letter from the Chief Secretary, Government of Karnataka, dated 9.12.1997. The Tribunal, by its order, dismissed the Original application with costs of Rs.3000/- payable to the second respondent, namely, Sri C. Dinakar, IPS.

F 4. Aggrieved against the same, the appellant filed writ petition before the High Court which was also dismissed by the High Court. The appellant questioned the correctness of the order passed by the Tribunal and of the High Court in this appeal.

G 5. Before we proceed further, we shall reproduce the communication of adverse remarks under various heads as incorporated in the letter dated 9.12.1997 from the Chief Secretary which read as follows:

CHIEF SECRETARY

VIDHAN SOUDHA
BANGALORE- 560001
D.O.No.CS 26 IPS CR 9

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Dated: 9.12.1997 A

Dear Shri Ramesh

In your Annual Confidential Report for the period from 16.10.1996 to 15.3.1997 your overall performance has been graded as 'Average' and the following adverse remarks have also been recorded: B

QUALITY OF OUTPUT:

He did not use his optimum capacity and gave an impression as though his stint in COD was a sojourn. This perhaps, became a constraint for the COD. There was no willingness 'to add on' more responsibility and it was an attitude of thus far and no further. C

KNOWLEDGE AND SPHERE OF WORK:

He is knowledgeable in the profession and its related application but, however, his 'paradigm' prevented him from performing better. D

LEADERSHIP QUALITIES:

He could not appreciate the environment and the work culture as defined by the Competent Authority in the COD and this block flow of new ideas or new methods of work. The 'Leader' in him went into hibernation. E

MANAGEMENT QUALITIES:

This column needs to be read with the immediately preceding column. All the management qualities, which very much exist in him, became dormant to the dangerous extent of his not visiting a scene of occurrence in an important case of rape and murder of a young girl student in Chitradurga. F

INITIATIVE AND PLANNING ABILITIES:

On the only occasion when a group of agitators, after due intimation through handbills, came and squatted outside the COD premises, he, for reasons best known to himself, went out of the Office around that time and in the process, his senior had to defuse the situation. G

DECISION MAKING ABILITY:

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A His decision making was governed by his 'paradigm'.

COMMUNICATION SKILLS:

B He has command over English and in his few files wherein he was preferred to be elaborate, he has expressed himself clearly. However, his expression in Kannada needs improvement. His presentation of arguments is also good but on a certain occasion; he created an unpleasant scene with the DGP which was totally avoidable.

APPRAISING ABILITY:

C His evaluation of some of his subordinates was clouded by some of 'His past experiences' with them elsewhere.

INTER-PERSONAL RELATIONS AND TEAMWORK:

D His professional relationship with one of his Senior Officers was marked by cold hostility. It was lukewarm with others.

GENERAL BEARING PERSONALITY:

Anything but smiling.

SOCIABILITY:

E Prefers to be aloof.

DEDICATION TO DUTY:

Depends on his convenience.

ATTENTION TO DETAILS:

F Yes; but takes his own time; response time is not fast.

ABILITY TO TAKE A PRINCIPLED STAND:

It is clouded by his 'Paradigm'.

G *GENERAL ASSESSMENT:*

He has the capacity to deliver goods but cannot adjust to the organization as a whole if he can't vibe with his seniors.

H An arrogant Officer. His knowledge of work is good, but he cannot be objective and impartial in discharging his duties.

Please acknowledge the receipt of this letter.

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Yours Sincerely

Sd/- illegible

(B.K.Bhattacharya)"

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6. While opposing the original application filed by the Appellant, Respondents filed their written statement. While denying the contentions made by the Appellant as factually incorrect, the respondents have also submitted that they have taken appropriate action in dealing with the representation submitted by the Appellant as per the provisions of the Rules. It is also stated that the adverse remarks submitted by both the Appropriate Authority and the Reviewing Authority without disclosing the identity of the persons who wrote the adverse remarks in accordance with the clarification issued by the Government of India under Rule 8 of the Rules and the comments of the Appropriate Authority and the Reviewing Authority were obtained on the request of the Appellant for expunction of the adverse remarks and that since both the Authorities have justified the adverse remarks recorded by them, the first Respondent do not find any reason to expunge the adverse remarks.

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7. The case of the appellant in brief is as follows:

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The appellant was selected to the Indian Police Service in the year 1976 and allocated to Karnataka State by the Central Government. In the month of April, 1997, the appellant was promoted to the rank of Inspector General of Police. From 1.4.1996 to 30.6.1996, the appellant discharged his duties as Director (Security & Vigilance), KSRTC, in the rank of Deputy Inspector of Police. In the month of July, the appellant was deputed to Olympic Games held at Atlanta, United States of America. He was on compulsory waiting for some time. On 16.10.1996, the appellant was posted as Deputy Inspector General of Police, CID and he relinquished the said post on 17.4.1997 on his promotion to the cadre of Inspector General of Police.

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8. By letter dated 9.12.1997, the Chief Secretary informed the appellant that in his Annual Confidential Report for the period from 16.10.1996 till 15.3.1997, the overall performance had been graded as "Average" and certain adverse remarks had been recorded. On receipt of the letter dated 9.12.1997, the appellant submitted his representation as provided by Rule 9 of the All

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A India Services (Confidential Rolls) Rules, 1970 (for short, "the Rules"). The appellant received an order dated 19.6.1999 by which the appellant's representation for expunging the adverse remarks was rejected. Aggrieved by the said order, the appellant instituted O.A.No. 981 of 1999 before the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 (for short, "the Act") seeking expunction of adverse remarks.

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9. The main grounds urged by the appellant in support of the relief sought by him are that all those remarks are the result of personal bias against him as well as the incompetence, lack of objectivity and frustration on the part of the second respondent (C. Dinakar) who at the relevant point of time was working as Director General of Police, COD. In addition to the above grounds, the appellant also attacked the impugned order on several other grounds stating that the mandatory requirements of Rules 5 & 6 of the Rules have been violated and that the second respondent has recorded against the appellant the adverse remarks in a *mala fide* exercise of the statutory power under Rule 6 of the Rules and that the said adverse remarks were made in violation of the aforesaid provisions which are mandatory in character, are illegal, void and liable to be quashed and that the order which was made without application of mind is liable to be quashed and that the impugned order dated 19.6.1999 is otherwise unreasonable, unjust and opposed to law and facts.

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10. The original application was opposed by the State of Karnataka and other respondents and before the Tribunal it was contended on behalf of the second respondent that adverse remarks against the appellant herein were written for the relevant period when he worked as the Deputy Inspector General of Police, COD and the Reporting authority for the appellant was one Sri Vijay Sasanur, who was the then Inspector General of Police, COD and that the second respondent, who was then working as the Director General of Police, COD was the Reviewing authority; the allegations made against the second respondent by the appellant are motivated, totally baseless and false.

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11. The Tribunal opined that the allegations made by the appellant against the second respondent are abusive, malicious and have caused acute discomfort and embarrassment to the second respondent personally and that it is appropriate for the Government of Karnataka to initiate suitable action against the appellant. Mr. C. Dinakar, 2nd respondent, appeared in person and submitted his case.

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12. We have perused the impugned Annual Confidential Reports which is for a brief period of 4 months and 19 days i.e. from 16.10.1996 to 15.3.1997 for which period the 2nd respondent was the reviewing authority as, in the first half, *inter alia*, the appellant was deputed to the Olympic Games at Atlanta, U.S.A. and in this brief period there was no review. C. Dinakar, the second respondent who appeared in person contended before the Tribunal that the impugned Annual Confidential Reports written by the reporting authority and the reviewing authority are in conformity with the provisions of the Rules and the instructions issued by the Government of India from time to time and that the remarks written by the reporting authority cannot be faulted with or condemned on the ground of *mala fide*. The only additions made by the Reviewing authority are the following:

Arrogant officer, His knowledge and work is good, but he cannot be objective and impartial in discharging his duties."

13. According to second respondent, Rule 5(3) envisages recording of remarks for a part of the year and therefore, the recording of the impugned remarks by the reporting authority and the Reviewing authority cannot be faulted with. At the time of hearing, our attention was drawn to the communication dated 18.1.1998 sent by the appellant to the Chief Secretary, Government of Karnataka in reply to the communication dated 9.12.1997 of the Chief Secretary communicating the adverse remarks. We have gone through the entire reply dated 18.1.1998. Our attention was also drawn to the proceedings of the Government of Karnataka (Annexure P-3) which was the order passed by the Government of Karnataka refusing to expunge the remarks for the reasons mentioned thereunder. The Government before passing the said order has also examined the request of the appellant after obtaining comments of the authorities, namely, the reporting authority and the reviewing authority that have recorded the adverse remarks and found that there are no grounds to expunge the adverse remarks.

14. On our request, the comments offered by the reporting authority and the reviewing authority were also brought to our notice and we have perused the same. In the circumstances, the Government of Karnataka after obtaining the comments of the authorities who have recorded the adverse remarks found that there are no grounds to expunge the adverse remarks and accordingly rejected the representation made by the appellant to expunge the adverse remarks.

A 15. As already noticed, all the adverse remarks were recorded by the reporting authority, Late Mr. Vijay Sasanur. However, the whole basis of attack of the impugned adverse remarks alleging the ill-will and *mala fide* was made by the appellant only against the second respondent. The grounds taken in the original application and the grounds mentioned in the representation of the appellant are all based on the misconceived perception on the part of the appellant that the second respondent alone is the author of the adverse remarks and the second respondent is biased against the appellant and, therefore, he deliberately authored those remarks against the appellant as a vindictive measure.

C 16. We have also carefully analysed as to whether any other ground was made to assail the impugned adverse remarks apart from the remarks made against the appellant by the second respondent. We have not found any other ground except the personal attack made against the second respondent.

D 17. The appellant has failed to implead the reporting authority as a party to the proceedings who made the drastic adverse remarks against the appellant at the time of offering his remarks to the Government. However, the remarks/comments made by the reporting authority and the reviewing authority were also placed before us at the time of hearing. Unfortunately, the reporting authority was not made a party-respondent to the proceedings in question.

E 18. As directed by us, the Government of Karnataka placed before us the entire service records of the appellant from 1978-1979 to 2005-2006. Except the impugned adverse remarks, all other entries are "excellent", "very good" and "outstanding". Many officers have rated the appellant as a smart and well balanced officer and has excellent perception of I.B's role in national security and has excellent power of communication both verbal and written and his Conduct and character is "very good" and has contributed very significantly for the overall intelligence output of the SIB as also on enhancing its image among young employees.

G 19. On 25.7.1990, the Accepting authority, Mr. K. Saranyan, Additional Director, IB Headquarters, New Delhi, fully endorsed the Reviewing Officer's assessment that the officer is "*outstanding*".

H 20. For the period 1.4.1990 to 31.3.1991, the appellant was graded as a *very good officer*.

21. For the period 1.4.1991 to 1.10.1991, the Accepting authority made the remarks that "he has been ably assisting the DGP and shows keen interest to receive instructions and do good work". A

22. For the period 1.11.1991 to 31.3.1992, Mr. Dharam singh made the remarks found him quite a knowledgeable officer, hard working and when asked, can tender unbiased opinions. B

23. For the period ending 31.3.1993, he has been graded as "very good".

24. For the period ending 31.1.1994, he has been graded as "outstanding". Mr. J.C. Lynn, Chief Secretary, Government of Karnataka, graded him as "outstanding". C

25. From 16.10.1996 to 15.3.1997, the impugned adverse remarks were "an arrogant officer, his knowledge of work is good but he cannot be objective and impartial in discharging his duties."

26. From 1.4.1997 to 18.4.1997, he has been graded as "very good" by Mr. S.K. Bhattacharya, Chief Secretary, Government of Karnataka. However, for all these years, Mr. V.V. Bhaskar, the Director General of Police has graded him as an officer of *outstanding merit*. D

27. From 1.4.1998 to 31.3.1999, he has been graded as "very good". E

28. From 1.4.1999 to 31.3.2000, he has been graded as "excellent" and under his guidance and supervision his staff was able to detect large number of smuggling forest produce and trade in wild life.

29. Mr. V.V. Bhaskar, the Director General of Police graded him as "outstanding". F

30. From 14.7.2000 to 28.2.2001 Mr. C. Dinakar, IPS (Retd.), (2nd respondent), Director General & Inspector General of Police, Karnataka State, Bangalore, in paragraph 20 made general assessment as follows:

"An arrogant and undisciplined officer against whom the Central Administrative Tribunal passed strictures and ordered him to pay cost of Rs.3000/- (which he paid) for using intemperate and unrestrained language." G

31. The above remarks were not accepted by the Additional Chief. H

A Secretary & Principal Secretary to government, Home & Transport Department and his assessment is as follows:

B “His integrity is beyond doubt. The remarks at S.No.20 relate to period from 16.10.1996 to 15.3.1997. My assessment of the officer is that he did very good work and have taken keen interest in computerization programme of the Department and reviewed other works assigned to him like crime review and Forensic Science Laboratory.”

C 32. From 1.4.2001 to 31.7.2001 Dr. K. Sreenivasan, Director General & Inspector General of Police, Karnataka State, Bangalore found him as “*outstanding*” and Mr. M.B. Prakash, the Additional Chief Secretary & Principal Secretary to Government Home & Transport Department was also agreed to the said grading.

D 33. For the period ending 31.3.2002, he has been graded as “*outstanding*” by Mr. M.D. Singh, the Additional Director General of Police, Crime and Technical Services, Bangalore.

E 34. For the period 1.4.2002 to 30.9.2002, again Mr. M.D. Singh graded him as “*Outstanding*”. Mr. V.V. Bhaskar, Director General & Inspector General of Police, Karnataka State, graded him as “*Outstanding*” and Mr. Adhip Chaudhury, Additional Chief Secretary & Principal Secretary to Govt. graded him as an *excellent officer*. For the same year, Dr. A. Ravindra, Chief Secretary, Government of Karnataka graded him as an *outstanding officer*.

F 35. For the period ending 31.3.2003, due to special efforts put in by him, the 46th All India Police Duty Meet 2002 held at Bangalore was conducted in an excellent manner. He played a major part in the publication of crime related data with caption “Crime in Karnataka” for the years 2000 and 2001. Mr. T. Mudiyal, Director General and Inspector General of Police, Karnataka State, Bangalore graded him “*outstanding*”.

G 36. For the period pending 31.3.2004, Mr. T. Mudiyal recorded him as follows:

H “A very knowledgeable and disciplined officer. He applied his mind to all the details and executes the work to near perfection. He is a willing worker and his skills of communication are excellent. In the field of computerization in the Department he has done extremely

good work. He can anticipate and prepare himself to various situations very well. A

Grading : *Outstanding.*”

37. For the period ending 31.3.2005, Mr. K.K. Misra, Chief Secretary, Government of Karnataka, Vidhana Soudha, Bangalore made the remarks as follows: B

“*General Assessment:* An officer with a most pleasing personality. Endowed with a sharp and inquiring mind, he has tremendous conceptual ability as he has been proved by the quantum leap achieved in Karnataka Police Computerization during his stewardship. He has absolute clarity in both oral and written communication. His proven analytical and planning abilities are evident in the excellence seen in his work. His leadership qualities and initiative have always come to the fore particularly in the way he has harnessed the limited resources at the SCRB and initiated several e-governance projects taking police computerization to great heights. Attention to details is one of his virtues. With his trademark hard work & Industry he has earned an unimpeachable reputation as a conscientious officer with a sound judgment and a flair for taking correct and lightening quick decisions. His speed of disposal is remarkable. He is ever willing to accept responsibility readily with a smile. His relations with subordinates, colleagues and general public are very cordial. He has evinced an extraordinary interest in the development of subordinates and used training as a tool for the purpose, having implemented computer based training at the PS level. His tribes and weaker sections of society is not only unquestionable but is tinged with compassion. *A brilliant officer with innovative ideas. Truly an asset to the IPS.*” C D E

38. In column 5, the remarks made are as under: F

“He has very rich experience in use of computer in Police Department.”

39. In column 6, “For the reasons brought out above, the officer richly deserves *outstanding grading.*” G

40. For the period ending 31.3.2006, Mr. B.S. Sial, Director General & Inspector General of Police, Karnataka State, Bangalore assessed him as follows:

“He is well versed in his area of responsibility and has been acquitting himself excellently in those fields. He is industrious, intelligent H

A and has clarity of mind with very good communication skills. He is an officer with initiative, judgement and promptitude and takes decisions. He is always willing to accept challenging responsibilities. He has cordial relations with subordinates and superiors and good public relations. His attitude towards scheduled castes, scheduled tribes and weaker sections is cordial, understanding, compassionate and empathetic.

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3. Integrity : *beyond doubt*

4. Grading : *Outstanding.*”

C 41. From the above remarks made by the different authorities at different points of time, it will be evident that the appellant is an officer of outstanding qualities and merit. Except for the impugned remarks made by the reporting officer and by the second respondent as the reviewing authority, he has been consistently graded as “outstanding”, “very good” and “excellent” and has also been entrusted with various responsibilities. It is true that in his representation he has used intemperate language, mainly against respondent No.2, on an erroneous assumption that the adverse remarks had been made by the said respondent, but use of such intemperate language has to be looked at objectively after careful consideration of all the Annual Confidential Reports for all the years which are also before us. It will have to be considered whether the remarks made by the reporting officer and the reviewing officer were sufficient in themselves to merit the overall assessment of “average” as against the consistently excellent remarks in the confidential reports both before and after the period in question. In fact, the remarks of the Additional Chief Secretary and Principal Secretary to the Government, Home and Transport Department, while disagreeing with the general assessment made by the second respondent of the appellant’s performance from 14.7.2000 to 28.2.2001, also merits consideration.

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42. The confidential report is an important document as it provides the basic and vital inputs for assessing the performance of an officer and further achievements in his career. This Court has held that the performance appraisal through C.Rs. should be used as a tool for human resource development and is not to be used as a fault finding process but a developmental one. Except for the impugned adverse remarks for a short period of about 150 days, the performance of the appellant has been consistently of high quality with various achievements and prestigious postings and meritorious awards from the President of India. We have already seen that the appellant has been

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graded as “very good”, “excellent” and “outstanding” throughout his career. It is difficult to appreciate as to how it could become adverse during the period of 150 days for which the adverse remarks were made. Furthermore, despite such adverse remarks, the Government of Karnataka, considering his merit and ability and outstanding qualities, has already promoted the appellant as the Inspector General of Police.

43. Although, the remarks made by the reporting officer has been questioned by the appellant as if they had been made by the respondent No.2, the Court still has to make an assessment as to whether the said remarks were merited by the appellant on account of his consistently good performance. Even his outburst against the respondent No.2 in his representation appears to be a fall out of such presumption which was certainly not expected of an officer of the rank and caliber of the appellant. But, in our view, the same should not come in the way of an otherwise unblemished and outstanding career.

44. In our view, the High Court was prejudiced by the intemperate outburst of the appellant in his representation, which led to the dismissal of the writ petition. On account of such prejudice, the High Court chose to ignore the consistently good record of the appellant and based its judgment on the basis of the language used by the appellant in his representation. Furthermore, the High Court also failed to appreciate that remarks such as “anything but smiling”, “cannot vibe with his seniors” and “his decision making was governed by his paradigm” are not remarks which are adverse or could have been used to justify the average rating in the appellant’s A.C.R.

45. In order to satisfy ourselves we had called for the entire service record of the appellant and upon perusal of the same, we find that the remarks of the reporting officer for the period in question were contrary to his consistent performance. The observation of the respondent No.2 that the appellant was an arrogant officer is followed by his remark that his knowledge and work is good. Such an observation, in our judgment, cannot be the basis of an overall rating of average.

46. The Tribunal also appears to have been prejudiced by the intemperate language used by the appellant against the second respondent. The Tribunal while holding that such language was totally unacceptable also imposed cost of Rs.3,000/- on the appellant to be paid to the second respondent. It is not in dispute that the said cost has been paid by the appellant to the second

A respondent. However, for the same reasons as those indicated above, we are of the view that the Tribunal also committed an error in overlooking the otherwise consistently good track record of the appellant.

B 47. For the reasons aforesaid, we allow the civil appeal and set aside the order passed by the Tribunal and the High Court in Writ Petition No.3310/2005. The authorities are directed not to treat the appellant's performance during the period in question as average. The appellant should also desist from using intemperate and abusive language in future while discharging his official functions.

C 48. There will be no order as to costs.

V.S.S.

Appeal allowed.