

(1990) 12 GAU CK 0003

Gauhati High Court

Case No: Civil Rule No. 147 of 1985

Om Prakash Bhatta

APPELLANT

Vs

Union of India (UOI)
and OthersRESPONDENT

Date of Decision: Dec. 12, 1990**Acts Referred:**

- Civil Services (Classification, Control and Appeal) Rules - Rule 5, 6, 6A, 7
- Constitution of India, 1950 - Article 226

Citation: (1991) 2 GLR 317**Hon'ble Judges:** A. Raghuvir, C.J; B.P. Saraf, J**Bench:** Division Bench

Advocate: N.M. Lahiri, G.N. Sahewalla, as Amicus Curiae, S.A. Lasksis, H.A Sarkar and A. Rai, for the Appellant; Sk. Chand Mohammad, Sr. Central Govt. Standing Counsel, for the Respondent

Judgement

A. Raghuvir, C.J.

Om Prakash Bhatta the writ Petitioner was recruited in the Defence Department of the Govt. of India, He was imparted training at the Indian Military Academy, Dehradun and on September 27, 1963 appointed as 2nd Lieutenant in the army. Two years later he was promoted as a Captain. On October, 20, 1967 he joined the C.R.P.F. at Ajmer as Deputy Superintendent of Police. On October 20, 1969 he was promoted to the post of Assistant Commandant, Later as Commandant of 39th Battalion he joined C.R.P.F. at Mizoram on July 2., 1973.

2. On November 9, 1981 Om Prakash was posted at the Dumdum International Airport where he worked upto September 22, 1983. While working at Dumdum Airport he was served with two (sic) relating to his confidential roll. The first letter relates to year ending with March 31, 1983: "You have been described as a smart, energetic, experienced and able officer. (It has operationally though). In your operational ACR for the year ending

31.3.83, it has been mentioned that your relations with local authorities need improvement." The Petitioner was asked to submit representation if any lift this regard. On September 17, 1984 another letter was served relating to the succeeding year where again another entry was made: "The discipline of 2nd Bn. under your command in Calcutta was not upto the mark as there were several cases of indiscipline not the Unit including theft in the godown of FCI guard and there were incidents which brought a bad name to the force. It has also been mentioned in your Operation ACR for the period from 1.4.83 to 22.9.83 that your operational performance was not very satisfactory, your relation with local authorities were not very cordial and your capability to handle operational situation with track and presence of mind is poor. Operationally it was also Assessed that your handling of the battalion showed deterioration in the matter of discipline and example of officer, Representation, if any, may please be made within one month of this communication."

3. The Petitioner made representation against the two impugned letters. The remarks contained in the first letter were allowed to stand. As respects the second letter the subject matter is under consideration by the authorities when this Writ petition is filed on March 1, 1985. During the debate on our request the learned Advocate General of Meghalaya addressed the court. Learned Counsel for the Petitioner, the learned Standing Counsel for the Union of India and the learned Advocate General of Meghalaya cited relevant cases.

4. This Court has the power to quash the impugned two letters (sic) that sense the instant writ petition is maintainable. The question at issue is whether power under Article 226 is to be exercised to correct entries in a confidential roll and whether it is advisable to (sic)ourage such petitions. In considering the two facets of the issue this Court perforce of the statutory rules have regard to the legal character of the entries in character rolls or sometimes also called (sic)dential rolls.

5. No enquiry is held before any entry is made and no regular enquiry is made following the entry. In a case where an employee was compulsorily retired the confidential roll of the person concerned was scrutinised at great length by the Supreme Court in (1978 2 SCC 876, R.L. Butail v. Union of India, in that case it (sic) held such a dossier is "intended to be a general assessment of was performed by a Government servant subordinate to the reporting authority, that such reports are maintained for the purpose of services as data of comparative merit when questions of promotion, confirmation etc. arise. They also show that such reports are not ordin(sic) to contain specific incidents upon which assessments are made except in cases where as a result of any specific incident a censure or a warning is issued and when such warning is by an order to be kept in the personal file of the Government servant. In such a case the officer making the order has to give a reasonable opportunity to the Government servant to present his case."

6. Whether entries should be preceded by any enquiry was(sic)dered next in that case and as a general rule it was held no (sic)uiry preceding the entry is held. The contention

that an (sic) would be necessary was held to be "misapprehension" as (sic) entries in law are not penalties under the Central Civil Services (Classification, Control and Appeal) Rules. It was explained (sic) (entries are annual assessment of work done by an employee. (sic) remarks are weighed when a question of promotion arises or (sic) comparative merit of persons eligible for promotion are considered. Adverting to the enquiry hold after the entry is made it was observed. Whenever a Government servant is aggrieved by an adverse (sic) he has an opportunity of making a representation. Such a (sic)cation would be considered by a higher authority, who, if (sic) would either amend, correct or even expunge a wrong entry, so (sic) it is not as if an aggrieved Government servant is without reme(sic) Making an adverse entry is thus not equivalent to imposition of (sic) penalty which would necessitate an enquiry or the giving of a (sic)sonable opportunity of being heard to the concerned Government servant." The ratio in the case shows entries are not penalty under the C.C.A. Rules.

7. The Supreme Court made a suggestion as respects entries [Amar Kant Choudhary Vs. State of Bihar and Others](#), "Before concluding we wish to state that the Central Government and the State Governments should now examine whether the per(sic) system of maintenance of confidential rolls should be continued Under the present system entries are first made in the confide(sic) sell an officer behind his back and then he is given an opportunity (sic) to make a representation against any entry that may have been made against him by communicating the adverse entry after considerable delay. Any representation made by him would be considered by a higher authority or the State Government or the Central Government, as the case may be, some years later, as it has happened in this case, by which time any evidence that may be there to show that the entries made were baseless may have vanished...order to avoid such a contingency, the Government may consider the Introduction of a system in which the officer who has to make entries in the confidential roll may be required to record his remarks in the presence of the officer against whom remarks are proposed to be made after giving him an opportunity to explain any circum (sic) that may appear to be against him with the right to make representation to higher authorities against any adverse remarks.... This would curtail the delay in taking action on the representation.... The Executive itself should therefore devise effective means to mitigate the hardship caused to the officers who are subjected to such treatment.... It is needles to state that a non-disgruntled bure(sic) adds to the efficiency of administration." These suggestions fell on deafears as no attempt was made to amend the Rules. Thus it is seen no enquiry is required to be hold as entries are not considered punishments. The employer from time to time makes these to correct the conduce to the employees.

8. In the case of [Gurdial Singh Fijji Vs. State of Punjab and Others](#), the Utility of such entries was highlighted: "The principle is well-settled that in accordance with the rules of natural Justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communciated to the person concerned so that he has an opportunity to improve his work and conduct or 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, either the adverse report is justified.

8A. The next aspect to consider is what is the scope of enquiry when this Court is approached under Article 226 of the Constitution. For determination of the issue we may consider the time element involved in these cases. Ordinarily confidential rolls are to be maintained once or twice in a year. The Supreme Court in the case of (1967) 2 SCC 602, *State of Haryana v. P.C. Wadhwa* held under Rule 5 of the Rules, a confidential report assessing the performance character, conduct and qualities of every member of the service shall be written for each financial year, or calendar year, as may be specified by the Government, ordinarily within two months of the close of the said year. Rule 6 provides that the confidential report shall be reviewed by the reviewing authority ordinarily within (sic) month of its being written. Under Rule 6-A, the confidential report after review, shall be accepted with such modifications as may be considered necessary, and countersigned by the accepting authority ordinarily within one month of its review. Thus, the whole process from the writing of the confidential report to the acceptance thereof has to be completed ordinarily within a maximum period of (sic) months. Further under Rule 7 the adverse remarks, if any, is(sic) confidential report shall be communicated to the officer con(sic) within three months of the receipt of the confidential report., the a total period of seven months has been laid down as the maximum period within which adverse remarks, if any, have to be com(sic)cated to the officer concerned. In the above case Rules under (sic) India Services Act 61 of 1951 were scrutinised. In all cases under statutory Rules more or less six or seven months are required to complete these enquiries. It is well known that courts in India cannot and do not dispose of the petitions within a period of six months Normally it takes more than six months for any petition to be disposed of. These exigencies of the circumstances have to be considered is the background of the fact that these entires are not Punishments Ordinarily Article 226 courts will not interfere with evidence (sic) quash any evidence while exercising power under Article 226 of the Constitution. AS for example in a criminal case a confession (sic) under coercive circumstances, even if true is not quashed in (sic) proceeding except at the Sessions trial. This is the second (sic) to ho borne in mind while exercising powers under Article 226 of the the Constitution. To set this scenario one observation of the Supreme Court is apposite. This observetion is made in AIR. 1987 SC 592. *R.S. Dass v. Union of India*: "It cannot be said (sic) a days if one is aware of the facts and service record of office are in the hands of senior officers is a sufficient safeguard. These has been considerable in the intrinsic sense of fairness as In the senior officers by all concerned. From the instance of conduct of many, some of senior officers and men in high position, it cannot be said that, such erosion is not only unjustified."

9. Finally we come to the powers in certiorari proceedings where powers are not exercised as appellate authorities. What has been said by House of Lords conveys the idea in a significant manner in that case (1982) 3 All ER 141, *Chief Constable of the*

North (sic) Police v. Evans. The law lords explained judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Lord Brightman in that case observed: "judicial review is concerned, not with the decision but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power."

10. the instant case after the letter on June 13, 1983 was communicated Om Prakash Bhatta submitted explanation. In that explanation he stated that the Home Secretary, Govt. of India visited during Assembly election in West Bengal. He appreciated his work the General Manager., IAAI Calcutta Airport appreciated his performance at the Dum Dum Airport. The Ministers who visited Calcutta frequently appreciated his performance. Six Ministers, two DGs. ten, twelve DIGs, five SPs and Senior officers including the Director General all had appreciation for the work done by him. the Zonal Manager, F.C.I. thanked the CRPF personnel for the good work done by them at JJP, Brooklyn and Coss(sic)pore Depots the general public and local authorities appreciated when the pen-o-wee deployed for extinguishing fire. The Minister of State of Govt. of India had appreciation for his work and "In spite of all these efforts made by me for maintaining and furthering the good relation with local authorities as well as visiting dignitaries, I am (sic) to note that my operational need improvements. It is not (sic) in what way the relation is to improve. During post I have not received any communication on the subject from (sic) authorities either verbally or in writing. In this connection para 8 of MHA's CM. No. 51/14/60 Estt (A) dated 31.10.1960 copy enclosed) is quite clear..." The Deputy Director (Estt) of C.R.P.F. considered the explanation and allowed the entry to remain on the character We make it clear that the Respondent authorities (sic):determine the representation of the Petitioner as respect the second letter dated September 17, 1974. This order is not to be understood to have decided issues touching that impugned letter.

11. the Petitioner it is seen from the facts that he informed of the adverse entries. The Petitioner's explanation was con(sic)dered and in that sense the principle of audi alteram partem was complied with. In all the facets of these proceedings it is not for the courts to evaluate the performance of the Petitioner.

12. For the aforesaid reasons the writ petition has no merit the th(sic)fore fails. No. order as to costs.