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CRITICALLY ANALYZING THE ROLE OF
JUDICIARY ON MAINTAINING
EFFECTIVENESS AND PRINCIPLES OF
NATURAL JUSTICE UNDER ANNUAL
CONFIDENTIAL REPORTS

By: Parul Chourse & Abhishek Sunar

ANNEXURE – I

DECLARATION

I Abhishek Sunar and Parul Chourse, declare that the Submitted Research Article entitled “Critically Analysing The Role of Judiciary on Maintaining Effectiveness and Principles of Natural Justice under Annual Confidential Reports” is our original work and no part of it has been published anywhere else in the past. We take full responsibility, that if in future, the paper is found invalid according to basic rules, the last decision will be of the Authorities concerned. We acknowledge all the sources from which the ideas and extracts have been taken and hereby attest that this work is free from any form of plagiarism that will lead to the disqualification of this paper.

Abhishek Sunar & Parul Chourse

Date: 14.03.2022

ABSTRACT

The Annual Confidential Reports as suggests are the yearly reports which are almost essential in every sector of the public and the private undertakings within the sphere of the government. The term Annual Confidential Reports insinuates a report which is generally prepared by the senior employees for their subordinates by tracking the records in the form of proclivities and tasks carried out in a proficient manner. The rationale behind maintaining the Annual Confidential Report purports to acquire a proper knowledge of the government servants and to overview the grade diary which is essential in the matters of utter promotion in the services. The main purpose of this study is to ascertain the facts which are dubious between the personnel and their superior in charge concerning to the matters of transparency and departmental biasness which in turn has impacted the norms of propitious governance. The surge in the cases concerning promotions and deputations has embarked the grievous character have startled the judiciary in the recent times. The narrative of astute proportion in the civil services has been questioned recently as the government has not resolved this prevailing issue due to its desultory approach and humbug narratives. Wherefore, this paper further expounds upon the innate issues and panacea regarding the same while dwelling into various committees recommendations including the observations which will be deciphered for the purpose of addressing the notion of the study concerning civil services at par and upholding the Constitutional mandates including the principles of natural justice in India.

Keywords: Annual Confidential Report, Government, Grade Diary, Promotion, Employees, Judiciary, Panacea, Proclivities, and Recommendations.

CHAPTER – 1

INTRODUCTION TO ANNUAL CONFIDENTIAL REPORTS

1.1. Introduction:

The Annual Confidential Reports are those yearly reports which are almost essential in every sector now that we can envisage. Even when we talk about those organisations which are in the private sector, also keep the annual records of their employees. The same culture is also followed in the government sector where the employers working in any public sector deems to have a separate record of each and every employee working under them for the reason to calculate their growth in their professional journey.

The term annual confidential report is very much clear from its own words which means an report generally prepared by the immediate senior of that employee which tracks his or her records in the form of activities and tasks carried out by them, their behaviour towards the junior employees, the proficiency of them in carrying out the day to day work assigned to them and in furtherance of any requirement thereon.

Now, before moving on into more detail aspect of the same it becomes essential to know the rationale behind maintaining the annual confidential reports. The reason for doing is to have a proper knowledge of the government servants wherein it also serves as a grade diary for them which is very much vital when it comes to the matters of promotion. Yes, at the time of promotion the grades occupied by these civil servants in their

annual confidential reports will acts as the prime basis to succeed further in their career.

The main objective to have these annual confidential reports is to boost the confidence of these government employees and to assess their strengths and weaknesses by providing timely feedback in order to improve their working proficiency to obtain the desired results in the stipulated time. The journey of these appraisal reports commences much before at their training time itself prior to their actual posting job. When the civil servants is being selected and is being sent for training, they undertake different sort of tasks and routine provided to them as part of their training, the trainers take note of that from the initial period itself and starts framing their appraisal report. The advantage of this appraisal report is that when the civil servant is being deputed to their concerned ministry for their tenure of service then the appraisal report made in the training days serves as the Performa manual for their senior officers and concerned department as well. It will encompass that of capability, ability, strengths and weaknesses, attitude and behaviour, speed, and accuracy of work, organising technique and skills required to carry out any tasks assigned to them.

When the same civil servant starts working under his or her concerned ministry then it becomes the duty of his or her senior officials under whom they are being designated to work upon and carry out the same functions which are in turn is required to prepare the annual confidential reports. It is the duty of the immediate senior to have a close look on any civil servants activities who are working under him or her in order to make a good annual report.

1.2. Purpose of the Present Study:

Herein, the Researchers are undertaking an evaluation –

- To understand the current ACR system in the country India;
- Whether the system of ACR is effective in today's time or not; and
- To what extent judiciary has effectively maintained the universal principles of natural justice in this category.
-

1.3. Major Problems Identified under the Present Study:

1st Problem: No communication of all kinds of remarks to the concerned civil servant.

2nd Problem: Issue of maintainability of *audi alteram partem* rule in practicality.

3rd Problem: Interpretation of Article 311(2) of the Constitution of India.

Now, when we talk about the first lacuna or problem, then in most of the practical cases it has been seen that not all kinds of remarks whether good or bad is being communicated to the civil servant whose annual confidential report is being prepared upon. This is being known to them when they becomes eligible for promotion but at the same time is being rejected for the reason that the remarks obtained by them is not scripted into promotion category. Therefore, this is a lacuna faced by so many civil servants where they have no indication of their performance remarks and hence face severe consequences.¹

¹Dev Dutt v. Union of India AIR 2008 SC 2513.

The second lacuna or problem identified here is that in many cases the judiciary has overlooked the principles of natural justice and especially the principle of *audi alteram partem* due to the various unexplained reasons which is again a fallacy in the current appraisal system as whatever is the matter or circumstance there should not be any avoidance of reasonable opportunity of being heard as it leads to the violation of fair trial principle.²

Lastly, the third lacuna or problem identified here is the interpretation of Article 311 clause 2 of Indian Constitution. This article is very much debated as at many times this clause has been used so recklessly that it has led to permanent dismissal of any civil servant and without following any transparent proceedings. This also becomes a prime concern as it shifts the whole burden only to civil servant without any back support from their concerned department.³

1.4. Current ACR System in India:

At present, the pattern of penning down the annual confidential reports is being administered under All India Services (Confidential Roll) Rules 1970 for the civil servants who comes under the purview of All India Services as stated by the Department of Personnel and Training.⁴ These rules are provided by the central government and are applicable to both central and state civil servants, though for the state civil servants there are separate confidential reports prepared by the concerned officer.

As per Section 5 of The All-India Services (Confidential Rolls) Rules 1970 states that;

*“a confidential report, accessing the performance , character, conduct and qualities of the member of service shall be written for every member of the service shall be written for each financial year or calendar year, as may be specified by the government”.*⁵

The main objective behind writing these annual confidential reports of these civil servants is to assess the performance and note down the skills of the civil servant, to keenly observe the character of him or her towards seniors and junior officials in the concerned department, to see their honesty and conduct towards the department, punctuality while coming to office, etc.

Before knowing in detail, the contents of these annual confidential reports it is vital to take a look as to how this concept came to India. Since, it is indisputable that the civil services bestowed in India due to the emergence of the British with numerous variations and the system of writing these reports is one of the components which India eventually derived from the British.

In India, ACR has gone through several amendments and changes with its writing structures, scope of changing remarks, timely completion of these reports and a lot more. These changes were brought into the current system through the establishment of various Committees which not only evaluated the existing structure but has also deeply researched upon various other countries annual confidential report structures too.⁶

Why writing ACR is important for government employees? It is necessary due to the following reasons:

² *Union of India v. Tulsiram Patel* 1985 3 SCC 398.

³ *Ibid.*

⁴ DEPARTMENT OF PERSONNEL AND TRAINING, <https://dopt.gov.in/hi/committeereports/present-system> (last visited March 13, 2022).

⁵ All India Services (Confidential Rolls) Rules 1970, § 5 (India).

⁶ Mohammad Ashrafu Haque, *Performance Appraisal System of Bangladesh Civil Service: An Analysis of its Efficacy*, 13 IPMR (2012).

1. First, it is important to improve the performance of the civil servants in their present job.
2. Second, it is important to assess their potentiality and to prepare them in a better manner for their present job.
3. Lastly, it is also important to comprehend the stature of promotion, continuation of service including the matters in question before the court of law for departmental enquiries.

Subsequently, the role of our honourable judiciary here is of immense status for the very reason involving the dismissal or removal of any civil servant from their position and being suspended for any criminal charge per se then the onus is upon the judges and the concerned adjudicators to evaluate the matter in a holistic manner.

CHAPTER – 2

COMPONENTS AND AUTHORITIES UNDER ANNUAL CONFIDENTIAL REPORTS

2.1. Components of ACR⁷:

There are different contents of any annual confidential report which totally depends on that organisation and departments⁸ where it is going to be prepared. Generally, under the civil services it is being divided into five sections which are as follows⁹:

1. Personal Details of the civil servant;
2. Preparation of Vigilance Report;
3. Report by Reporting Authority;
4. Report by Reviewing Authority; and
5. Report by Accepting Authority.

2.1.1. Personal Details:

This is the first component under the ACR which consists of basically all the personal information¹⁰ of any civil servant working under the services for the time being. It is made up of the name, year of that report, department of working, any special tasks carried out and other kind of related data which deems necessary by the concerned officer to be filled in. The details may vary depending upon the type of post the particular civil servant is holding on.

2.1.2. Preparation of Vigilance Report:

The term vigilance itself suggests as to what does the work of concerned officer are while preparing the vigilance report¹¹ of any civil servant. Here, the concerned officer has the most crucial and impartial role as he/she supervises and keeps a close vision of each step of the civil servant whose report is being prepared. He becomes active only when there are any departmental proceedings commenced in any particular department and to know the truth from the ground level and to know whether there should be any chances given to that particular civil servant or not, the concerned vigilance report prepared will help to resolve and answer all

⁷ The All-India Services (Confidential Rolls) Rules, 1970, § 2, 4, 5 and 6 (India).

⁸ ANNUAL CONFIDENTIAL REPORT, <http://www.mati.gov.in/compendium/chap17.pdf> (last visited March 12, 2022).

⁹ A Reference to the Report on *Annual Confidential Reports* by Surabhi Shivpuri, NATIONAL JUDICIAL ACADEMY (last visited March 12, 2022), National Judicial Academy, India (nja.gov.in).

¹⁰ The All-India Services (CR) Rules, 1970, Rule 4 (India).

¹¹ G CONNECT, Hota Committee Report - Conclusion of major penalty period within 8 months (gconnect.in) (last visited March 13, 2022) - A reference to the Report of the Committee of Experts on Disciplinary and Vigilance Inquiries.

these questions.

2.1.3. Report by Reporting Authority:

As per Section 2(e) of The All-India Services (Confidential Rolls) Rules 1970¹², reporting authority means; *“Such authority or authorities supervising the performance of the member of the Service reported upon as may be specifically empowered in this behalf by the Government”*

Here, the reporting authority is the immediate senior of the concerned civil servant under whom he or she carries out their duties for the allotted time. The preparation of ACR commences after the civil servant has completed the duty of ninety days under the concerned immediate senior. Basically, this is also the eligibility criteria for the officer who is preparing the report.

Under this, the matter which needs to be filled is with respect to time of arrival and leaving from office, behavioural grounds towards every other official, any special ability and skills, previous achievements if any. Therefore, after making detail analysis, there are certain remarks which needs to be given to every civil servant and they are; Below Average, Average, Good, Very good, or outstanding. These remarks are very much necessary to obtain promotion after certain period of service¹³.

2.1.4. Report by Reviewing Authority:

According to Section 2(f) of The All-India Services (Confidential Rolls) Rules 1970¹⁴, reviewing authority means;

“Authority or authorities supervising the performance of the reporting authority as may be specifically empowered in this behalf by the Government”

The term itself suggesting its explanation that the work of this concerned authority is to review the report prepared by the reporting authority in order to check and review if all the details entered by the concerned officer is true or not. If there is any requirement to change or alter the information provided by them or not, it is the duty of the reviewing authority to look upon the matter.

After going into detail assessment of the report the reviewing authority again if there are any changes then those changes will be communicated to the reporting authority with the mention of reasonable reasons for those changes and will also provide grades based on their evaluation to the concerned civil servant.

2.1.5. Report by Accepting Authority:

As per Section 2(a) of The All-India Services (Confidential Rolls) Rules 1970¹⁵, accepting authority means; *“Such authority or authorities supervising the performance of the reviewing authority as may be specifically empowered in this behalf by the Government”*

The work of this authority is so crucial that this is the mandate which is going to determine the finality of the ACR of any concerned civil servant. This authority observes in depth the observations submitted by the

¹² The All-India Services (Confidential Rolls) Rules, 1970, § 2 (India).

¹³ Purohit, B., Martineau, T., *Is the Annual Confidential Report system effective? A study of the government appraisal system in Gujarat, India*, HUM RESOUR HEALTH (March 13, 2022, 8:30 AM), *Is the Annual Confidential Report system effective? A study of the government appraisal system in Gujarat, India | Human Resources for Health | Full Text (biomedcentral.com)*.

¹⁴ The All-India Services (Confidential Rolls) Rules, 1970, § 2 cl.f (India).

¹⁵ The All-India Services (Confidential Rolls) Rules, 1970, § 2 cl.a (India).

reviewing authority along with the grades allotted to the civil servants.

The accepting authority should also check whether there was timely submission of the annual confidential reports of any officer and if not then there should be reasons specified for the purpose of delays.

CHAPTER – 3

A.C.R COMMITTEES

3.1. Committee under the chairmanship of Dr. N. C. Saxena:

This committee was established in the year 1985 with the purpose to review the system of this performance appraisal system and its major recommendations were as;

- There should only be two set of forms for writing and filling up of the reports;
- The performance appraisal report should be made in a very simplified manner where only those things needs to be highlighted of any civil servant by the officer who is making the report which highlights the performance of the concerned civil servant;
- If in case, any kind of bad or adverse remark is being expunged in the annual confidential report of the civil servant then that grade must be changed in his or her overall report at the end;
- The report of the civil servant must contain only that information which relates to his or her duties and responsibilities to carry out the concerned tasks;
- It is the duty of the accepting authority to check whether there was timely submission made by the concerned officers or not. If the annual confidential report is not submitted on time which has been allotted then the reasons for delay must be record and submitted within reasonable time;
- A separate column needs to be there in order to write the remarks which the officer is required with training needs; and
- In case of any kind of representation being made due to obtainment of adverse marks in annual confidential reports then all this must be disposed of within the time limits of six months.

However, it should be noted that the recommendations as provided above was not incorporated as due to the fact that, the Government of India still needs to study this appraisal report system in detail and must also refer and see how other countries work upon this.¹⁶

3.2. Surendra Nath Committee Report:

Lt. Gen (Retd.) Surendra Nath Committee gave its committee recommendations in the year 2003 to the Department of Personnel & Training¹⁷ under the name of “*the system of performance appraisal, promotion, empanelment and placement*”. The committee said that there are so many challenges which have been faced by the civil services in our country and the struggle to make it better still continues. This report was made in a holistic manner wherein it meant that its applicability extends the domain of the civil services as well to

¹⁶ DEPARTMENT OF PERSONNEL AND TRAINING, <https://dopt.gov.in/hi/committeereports/present-system> (last visited March 11, 2022)

¹⁷ A Reference to the *Report of the Group Constituted to Review the System of Performance Appraisal, Promotion, Empanelment and Placement for the All-India Services and Other Group 'A' Services*, (last visited March 13, 2022, 9:30 AM) Microsoft Word - SurendraNathCommitteeReport2003.doc (darp.gov.in)

other organisations.

After studying in detail, the recommendations laid down by the committee report under the chairmanship of Dr. N.C. Saxena¹⁸, this present committee divided the current performance appraisal system into two segments which they named as the strengths and weaknesses of the current performance appraisal system. They are;

Strengths of Performance Appraisal System:

- Certain degree of discipline was being made in the system and the same was maintained for every year.
- It also encourages officers to be more skilled and work accordingly.

Weaknesses of Performance Appraisal System:

- It is a non-transparent system as it does not communicate all kinds of entries or remarks to the civil servants.
- The monitoring system of this current appraisal system is very weak due to delay in submission of reports.

Additionally, two issues were formulated out from the abovementioned observations. *Firstly*, there was no focus on exceptional work for example; crisis situation. There is no provision of creativity at all. *Secondly*, there is no provision of feedback from junior civil servants or junior officials on leadership, team work, behavioural and reputation aspects.

Subsequently, in this report, to make the performance appraisal system more effective consideration was given in Japanese Civil Services¹⁹ where the importance was given mainly to the performer's ability and capability to do the work by assessing their potential and giving recognition to their good performances which was missing in the Indian Performance Appraisal System.

The major recommendations of this committee are as follows;

- There should be more focus on the effective system of recording and monitoring the appraisal reports;
- Since, the making of confidential reports was done in a very restrictive manner so there is the need for greater openness;
- The report should be verified after its completion since to know all the facts incorporated under it is true to the best knowledge or not;
- The remarks whether good or bad must be communicated in every circumstance in order to improve the working proficiency of the civil servants;
- There should be proper training given to the concerned officers who are writing the reports in order to make a good ACR as it is going to reflect all the positions held by any civil servants under the department; and

¹⁸ Supra Note 16.

¹⁹ Koshi Endo, 'Japanization' of a Performance Appraisal System: A Historical Comparison of the American and Japanese Systems, 1 SOC. SCI. JPN. J. 247, 247-262 (1998).

- There should be an establishment of referral board who is going to review the report thoroughly and in case if any remark filled in wrong then the civil servant has the right to claim it before the board.

Wherefore, at present the department has incorporated majorly the recommendations of this committee only. But still it has been found out in the practical aspect that the same is not being done and due to this there is no transparency between them which is still a hurdle to great extent.

CHAPTER – 4

JUDICIAL PRONOUNCEMENTS

The present chapter has been divided into two parts namely; based on giving importance to public interest over fair trial principle and the other is on giving importance to fair trial principle. The same has been done for the very reason that in so many cases which has been decided over by the judiciary and also it has been observed that the remarks is not been communicated even it is a good remark or an adverse remark which makes it difficult for the civil servants to get their seats in promotion and even if they are eligible for promotion they still may face difficulties to get promotion as when their names are not in the list of promotion then after filing for the same it has been seen that they have not be communicated of their respective remarks during their tenure.²⁰

PART 1 - Based on giving importance to public interest over Fair Trial Principle:

*Union of India v. Tulsiram Patel*²¹

In this case the respondent was a permanent auditor in the Regional Audit Office. Orders were issued for stopping his increment for one year, where-upon he went to the Regional Audit Officer, demanded an explanation for the same but haven't got the proper reply. The respondent was brought before Controller General of Defence Accounts, the disciplinary authority, imposed upon the respondent the penalty of compulsory retirement under clause (1) of Rule 19 of the Civil Service Rules.

Then, thereafter, his departmental appeal was dismissed and further filed writ petition in the High Court where the high court observed that the department has not observed the natural justice principles by not affording an opportunity to be heard and also did not provide proper reasons for his conviction by the disciplinary authority, therefore their orders are defective.

Then the appeal was filed in the apex court where the issue raised there was;

Whether dismissal, removal, or reduction in rank of a government servant under the second proviso of Article 311(2) without holding any inquiry is in public interest and not violative of Article 311(2) of the Constitution of India?

The apex court reversed the judgment pronounced by the High Court stating that the disciplinary authority was right in dismissing the civil servant without holding enquiry.

*Satish Nambiar v. Union of India*²²

²⁰GOVERNANCE NOW, *When 'good' is not good enough*, (March 13, 2022, 5:00 PM), <https://www.governancenow.com/news/regular-story/-when-good-is-not-good-enough>.

²¹(1985) 3 SCC 398.

Here the petitioner was holding the post under American Consulate General at Bombay and after his return from abroad he continued his job at the same place was few months when the orders came that he needs to quit his job for public interest. Case was filed at the High Court of Bombay where the judgment was in favour of the department.

The issue in this particular case was that;

Whether the order passed by the competent authority suffers from any illegality or not?

The petitioner argued that there were no justifiable reasons mentioned when he was removed from services. The court stated that, “*when the government had acted on the opinion of the security agency that it is likely to affect the security of the country then the department’s decision was right and there is no requirement to grant hearings to the petitioner*”.

PART 2 - Based on giving importance to Fair Trial Principle:

***Swatantar Singh v. State of Haryana and Ors.*²³**

The petitioner was on the post of Sub-Inspector where adverse remarks were made in his annual confidential reports. His appeal to make representations was rejected. Also, as per the contention of the petitioner there was no communication of remarks to him where he can improve himself and also there was no opportunity given to represent him before the disciplinary authority. The court held that the rejection in this case is neither arbitrary nor illegal.

***Dev Dutt v. Union of India*²⁴**

In this case the appellant was not communicated of good remarks in his Annual Confidential Reports and due to which he faced difficulties in upgradation. The court held that the good entry must be communicated and the appellant if chooses can make representation if not satisfied. By not allowing making representations it is the violation of Article 14²⁵ of the Indian Constitution and also it affects the rights of the persons and also violated natural justice principles.²⁶

CHAPTER – 5

CONCLUDING OBSERVATIONS

In light of the surpassing discussions and illustrations, it has been opined that the domain of expansion in delivery justice has been seen more in number in promotion cases when compared to persons who have been alleged for criminal charges. Also, the question of fair trial is questionable since denial of opportunity of being heard is being snatched in numerous cases which has affected the justice delivery mechanisms across the nation. The right of getting opportunity to prove his or her innocence should be given irrespective of the charges being imposed upon that person while adhering to the rules of natural justice and the mandates provided under the parent Constitution.

²² AIR 2008 SC 158.

²³ AIR 1997 SC 2105.

²⁴ AIR 2008 SC 2513.

²⁵ Umamageswari Maruthappan, *Understanding Equality under Article 14 of the Indian Constitution in Light of Some Landmark Judgements*, LAWYERSCLUBINDIA, (March 14, 2022, 9:30 AM), *Understanding Equality Under Article 14 Of The Indian Constitution In Light Of Some Landmark Judgements* (lawyersclubindia.com) –

A reference to the Right to Equality Before Law - The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

²⁶ *State of Maharashtra v. Public Concern for Governance Trust & Ors.* 2007 (3) SCC 587.

Furthermore, in assessing the values towards the annual confidential reports wherein, the government servants are facing severe consequences not merely because that they have committed any mistakes but in contrast if there is any kind of adverse remarks in their reports then it is surely the work of immediate superior authority or the reporting authority who has been in charge of preparing the confidentiality reports of the concerned personnel. Through the abovementioned illustrations, it understandable that the lack and proper communication barriers between the personnel and their supervisory authorities have adversely impacted in the matters related that of promotion and deputation of the civil cadres. Whereupon, these cases come into limelight when any of the government servant applies for promotion and is being rejected just because his/her annual confidential reports remarks were shown as “good” instead of “very good” and also there are instances where in few cases if there is any “adverse remarks” none of them is being communicated to personnel which impedes and serves as a hindrance in their professional career and deputation. Henceforth, due to the lack of transparency within the department itself has created enormous impediments between the various level of authorities in their respectable domains which in turn has led to the surge in multiplicity of court cases with regard to fair and reasonable trial while addressing its authenticity and implications foregoing challenging the aspects of promotion and deputation in question.