

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

CWP No.11413 of 1993

Date of Decision: 25.05.2015

Charanjit Singh Walia, Assistant

....Petitioner

Versus

The State of Haryana and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Ms. Harpriya, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. D.A.G., Haryana
for the respondent-State.

DAYA CHAUDHARY, J.

The prayer in the present petition is for quashing of order dated 10.06.1993 (Annexure P-1), vide which, the claim of the petitioner for crossing of Efficiency Bar w.e.f. 09.08.1975 has been rejected. A further prayer has also been made for issuance of direction to the respondents to promote the petitioner w.e.f 26.06.1976 as an Assistant on the basis of seniority list along with all consequential benefits arising therefrom.

Briefly, the facts of the case, as made out in the petition, are that the petitioner earlier filed **CWP No.10572 of 1992**, which was disposed of on **05.08.1992** by Division Bench of this Court and the following order was passed :-

“ After hearing the learned counsel for the petitioner, we dispose of the petition by directing the respondents to consider the representations Annexures P-20 to P-23 with

writ petition in accordance with rules and decide the same by passing speaking orders within three months.”

On the basis of directions issued in the earlier petition, the claim of the petitioner was considered and rejected.

The petitioner joined the respondent-department in the year, 1971 as he was selected as a direct recruit through Haryana Subordinate Services Selection Board. On 19.08.1974, he qualified the departmental type writing test. He was to cross his Efficiency Bar w.e.f 09.08.1975 but he was not found suitable for crossing the same as per Government instructions as he had earned average reports during the period 1971-72, 1972-73 and 1973-74. When the petitioner was eligible to be considered suitable for crossing the Efficiency Bar, no enquiry was pending but on 12.08.1975, his previous reports were taken into consideration and he was found un-suitable to cross the Efficiency Bar. The petitioner along with 31 other officials of the department were placed under suspension vide office order dated 12.09.1975. A charge sheet was also issued to the petitioner on 16.09.1975 alleging therein that he had submitted false medical reimbursement bills. Thereafter, on the basis of reply submitted by the petitioner, he was exonerated in the criminal case instituted by the department and was reinstated into service on 01.03.1977. Petitioner made a representation to the respondent-department with regard to his crossing of Efficiency Bar w.e.f 09.08.1975 but he was not allowed because of average reports.

Learned counsel for the petitioner submits that the average reports of the petitioner cannot be considered as bad as these reports were never conveyed to him. Learned counsel also submits that the work and conduct of the petitioner was to be assessed on the basis of total reports as there was no adverse remarks against him except the average reports.

It is also the argument of learned counsel for the petitioner that subsequently, the petitioner was also promoted to the post of Assistant being the senior most but he was not given the seniority. Had the Efficiency Bar been allowed to the petitioner w.e.f. 09.08.1975, he would have been confirmed as an Assistant w.e.f. 01.05.1984, the date when his junior, namely, Shri O.P. Batra, was confirmed as an Assistant. Learned counsel also submits that the action of the respondents is not only arbitrary but discriminatory as well. At the end, learned counsel for the petitioner submits that the petitioner be allowed to cross the Efficiency Bar w.e.f. 09.08.1975 and to grant him all consequential benefits arising therefrom.

Learned counsel for the petitioner has relied upon the judgment of Hon'ble the Apex Court in ***Dev Dutt vs Union of India (UOI) and others AIR (2008) SC 2513*** in support of his contentions.

Learned counsel for the respondent-State has raised a preliminary objection that the petitioner has failed to implead the persons as necessary parties, who are likely to be affected, in case, the relief is granted to the petitioner. He also submits that the Efficiency Bar of the petitioner, which was due to him on 09.08.1975 as a Clerk but it was stopped vide order dated 12.08.1975 on the basis of his service record and the petitioner had made a representation against the said order. Subsequently, he was found fit to cross the Efficiency Bar w.e.f. 01.08.1978 and was, therefore, granted the benefit of crossing the same. The petitioner was not promoted from the post of Clerk to the post of Assistant on the basis of his service record as he was not having the requisite 50% good reports as per existing Government instructions. The petitioner was promoted to the post of Assistant vide order dated 30.11.1981 and hence, his seniority was decided finally on the post of Assistant vide order dated 27.04.1982 but the petitioner has not challenged those orders of promotion

or seniority. Rather, this petition has been filed and that too after an inordinate delay of more than seven years, which is liable to be dismissed on the ground of unexplained delay and laches.

Learned counsel for the respondent-State also submits that the instructions, by which, the petitioner was not allowed to cross the Efficiency Bar, have been quashed by this Court. He also submits that the petitioner was not promoted rightly to the post of Assistant in the month of May/June, 1979 and he was also awarded punishment of stoppage of two grade increments without future effect. Subsequently, the petitioner was promoted and his seniority viz-a-viz other Assistants was to be decided.

Learned State counsel also submits that as per ratio of judgment in case ***Baikuntha Nath Das and another vs Chief Distt. Medical Officer, Baripada and another JT 1992(2) S.C. I***, even the uncommunicated average and adverse reports can be considered in the case of Government employees.

Heard the arguments of learned counsel for the parties and have also perused the impugned order and other documents on the file.

Admittedly, the petitioner was working as an Assistant in the Office of Engineer-in-Chief PWD (B&R). When he was not allowed to cross the Efficiency Bar, he filed ***CWP No.10572 of 1992***, which was disposed of by this Court vide order dated ***05.08.1992*** with a direction to the respondents to consider the representations of the petitioner in accordance with rules and decide the same by passing a speaking order within a period of three months.

However, in pursuance of said directions, the representation of the petitioner was considered and the same was rejected vide order dated 10.06.1993. The impugned order of rejection is subject matter of challenge in the present petition on the ground that he was not allowed to cross the

Efficiency Bar because of average reports, which were never communicated to him. The average report cannot be considered as an adverse for the purpose of crossing the Efficiency Bar. A further prayer has also been made in the present petition for issuance of direction to the respondents to promote the petitioner w.e.f 26.06.1976 as an Assistant on the basis of seniority list along with all consequential benefits arising therefrom.

Now the question for consideration by this Court is as to whether the average reports can be considered as adverse remarks when the same have not even been communicated to the concerned employee.

No doubt, the object and purpose in communicating the average report is to afford an opportunity to the employee to improve his work and conduct and to make representation to the concerned authority against these remarks, if any. The purpose is also to improve his efficiency in the work. The average remarks in the Annual Confidential Report, in case, that is not conveyed, are not only going to prejudice the interest of the petitioner but will also deny the future prospects, if they are considered to be adverse. The petitioner was not allowed to cross the Efficiency Bar because of his average reports and was not even promoted despite being the senior most.

In the absence of any communication, an employee does not get an opportunity to make any representation and as such, his future prospects are likely to be affected at the stage of promotion or at the time of passing of any order, which is going to be passed on the basis of his/her service record. The issue with regard to consideration of average report as adverse remarks was before Hon'ble the Apex Court in ***Sukhdev Singh vs Union of India and others 2013(8) JT 270***, wherein, it was held as

under :-

“8. In our opinion, the view taken in *Dev Dutt* that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR – poor, fair, average, good or very good – must be communicated to him/her within a reasonable time.”

In the present case, the petitioner was never communicated the average reports and because of uncommunicated reports, he was not allowed to cross the Efficiency Bar.

Hon'ble the Apex Court in ***Dev Dutt's*** case (supra) has held as

under :-

“ 8. “Learned counsel for the respondent relied on a decision of this Court in [Vijay Kumar vs. State of Maharashtra & Ors.](#) 1988 (Supp) SCC 674 in which it was held that an un-communicated adverse report should not form the foundation to deny the benefits to a government servant when similar benefits are extended to his juniors. He also relied upon a decision of this Court in [State of Gujarat & Anr. vs. Suryakant Chunilal Shah](#) ,1999 (1) SCC 529 in which it was held:

"Purpose of adverse entries is primarily to forewarn the

government servant to mend his ways and to improve his performance. That is why, it is required to communicate the adverse entries so that the government servant to whom the adverse entry is given, may have either opportunity to explain his conduct so as to show that the adverse entry was wholly uncalled for, or to silently brood over the matter and on being convinced that his previous conduct justified such an entry, to improve his performance".

On the strength of the above decisions learned counsel for the respondent submitted that only an adverse entry needs to be communicated to an employee.

9. We do not agree. In our opinion every entry must be communicated to the employee concerned, so that he may have an opportunity of making a representation against it if he is aggrieved.

In the present case the bench mark (i.e. the essential requirement) laid down by the authorities for promotion to the post of Superintending Engineer was that the candidate should have 'very good' entry for the last five years. Thus, in this situation the 'good' entry in fact is an adverse entry because it eliminates the candidate from being considered for promotion. Thus, nomenclature is not relevant, it is the effect which the entry is having which determines whether it is an adverse entry or not. It is thus the rigours of the entry which is important, not the phraseology. The grant of a 'good' entry is of no satisfaction to the incumbent if it in fact makes him ineligible for promotion or has an adverse effect on his chances.

11. Hence, in our opinion, the 'good' entry should have been communicated to the appellant so as to enable him to make a representation praying that the said entry for the year 1993-94 should be upgraded from 'good' to 'very good'. Of course, after considering such a representation it was open to the authority concerned to reject the representation and confirm the 'good' entry

(though of course in a fair manner), but at least an opportunity of making such a representation should have been given to the appellant, and that would only have been possible had the appellant been communicated the 'good' entry, which was not done in this case. Hence, we are of the opinion that the non-communication of the 'good' entry was arbitrary and hence illegal, and the decisions relied upon by the learned counsel”

The said judgment has been followed in case ***Dr. Gurdev Singh Bhardwaj vs State of Punjab and others 2012(4) SCT 635***, wherein, it has been held that the Annual Confidential Reports, which have been assessed to be average and have not been communicated to the employee, are to be ignored while determining the bench mark.

Similar view has been held in judgment of this Court in ***Raghubir Singh, Sub-Inspector, Police Lines, Karnal vs State of Haryana, through the Director General of Police, Haryana, Chandigarh 2012(1) SCT 205***.

In the present case also, the average reports were not conveyed to the petitioner and on the basis of those reports, the petitioner was not allowed to cross the Efficiency Bar.

Accordingly, in view of the facts and law position as discussed above, the present petition is allowed and the impugned order dated 10.06.1993 is set aside. The respondents are directed to make proper reckoning of the monetary entitlements and grant the same to the petitioner within a period of three months of receipt of copy of the order.

25.05.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE