

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.22883 of 2011

Date of Decision: July 31, 2015

Daya Nand

...Petitioner

Versus

The State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Jaspal Singh Maanipur, Advocate,
for the petitioner.
Dr.Sushil Gautam, DAG, Haryana,
for the State.

AMIT RAWAL, J. (Oral)

The challenge in the present writ petition is to the order dated 10.12.2009/8.1.2010 (Annexure P-5), whereby the appeal of the petitioner against the communication of adverse remarks dated 17.9.2009 (Annexure P-1) has been dismissed and the order dated 27.5.2010 (Annexure P-8), whereby the revision filed against the order passed in appeal has also been dismissed.

This Court during the course of the hearing, while noticing the contentions of the parties to the lis, passed the following order on 11.7.2014:-

“Petitioner has impugned the adverse Annual Confidential Report (for short 'ACR') for the year 2008-09 dated 17.09.2009 (Annexure P-1).

Counsel for the petitioner has placed reliance upon the communication dated 20.11.2009 (Annexure P-4) which is comments submitted by the Reporting Officer i.e. Superintendent, District Jail, Narnaul, with regard to the adverse remarks recorded by him in the ACR of the petitioner. He, on the basis of this, contends that the ACR as recorded cannot sustain as in these comments whatever adverse comments have been given to the petitioners have been found to be not correct/true by the same Reporting Officer.

When the counsel for the State was confronted with this document, he, on instructions from Joginder Singh, Clerk, O/o Director General of Prisons, Haryana, and on the basis of records states that the same reporting authority had subsequently sent another communication substituting the same and stated that the earlier comments were wrongly typed and sent. In this substituted letter, he stated that he stood by the adverse comments which have been recorded in the ACR of the petitioner vide letter dated 20.11.2009 (Annexure P-4).

Let an affidavit to this effect be filed by the respondents and the said letter be also placed on record. It be also mentioned in the affidavit as to on which date, the substituted letter was diaried and despatched from the office of Superintendent, District Jail, Narnaul and when the said letter was received in the office of Director General of Prisons, Haryana.

Needful be done within a period of four weeks.

List for further consideration on 21.11.2014”.

In response to the said order, the State has filed an affidavit dated 30.1.2015, wherein in Paragraph 3 following averments have been made:-

“That against these adverse remarks, petitioner had filed an

appeal dated 12.07.2009 before the Director General of Prisons, Haryana. The Director General of Prisons, Haryana vide his office letter No.32818 dated 04.11.2009 sought the comments of the Superintendent, District Jail, Narnaul. The Superintendent, District Jail, Narnaul vide his office letter No.5088 dated 20.11.2009 had sent his comments through Sh.Umar Mohammad Khan, Sub Assistant Superintendent Jail, which were received and diaries at Sr.No.7153 dated 23.11.2009 of the Diary register of the office of the Director General of Prisons, Haryana. In these comments, the Superintendent, District Jail, Narnaul recommended to expunge the adverse remarks reflected in the ACR of the year 2008-09 of the petitioner. After due consideration of facts and circumstances, the then Director General of Prisons, Haryana vide this office order dated 10.12.2009 rejected the appeal of the petitioner on merits. Copy of the letter dated 23.11.2009 is annexed as Annexure R-1.”

On perusal of the aforementioned averments in the affidavit, it is to be concluded that the Superintendent, District Jail, Narnaul vide his letter No.5088 dated 20.11.2009 had sent his comments to the then Sub Assistant Superintendent Jail, which were received in his office and diaries at Sr.No.7153 dated 23.11.2009 and the recommendation of the Superintendent, District Jail, Narnaul was to expunge the adverse remarks and despite that the Director General of Prisons without noticing the aforementioned facts, rejected the appeal.

There is another aspect which cannot escape the notice of this Court. The Superintendent, District Jail, vide another letter bearing same No.5088 dated 20.11.2009, had again sent the comments in the month of April, 2010, which were received in the office of Director General of

Prisons, Haryana vide Sr.No.2209 dated 5.4.2010, wherein the report was otherwise, i.e., it was recommended not to expunge the remarks. It is strange that the aforementioned recommendations have been made after the decision of the appeal, which was decided on 10.12.2009. It appears that the Director General of Prisons was oblivious of the recommendations dated 20.11.2009 of the Superintendent, District Jail while rejecting the appeal. The revision filed by the petitioner also met with the same fate.

Since the Director General of Prisons had not taken into consideration the letter dated 20.11.2009, I deem it appropriate to set-aside the order dated 10.12.2009 (Annexure P-5) and as well as order dated 27.5.2010 (Annexure P-8) passed by the Revisional Authority and remand the matter back to the Director General of Prisons, Haryana to decide the appeal of the petitioner. In essence, the appeal of the petitioner is restored to its original number.

The Director General of Prisons is directed to pass a detailed order after taking into consideration the aforementioned facts and the first recommendations dated 20.11.2009 received vide diary No.7153 dated 23.11.2009, much less, by giving opportunity of hearing to the petitioner, much less, in accordance with law.

It is expected that the Director General of Prisons, Haryana shall decide the appeal within a period of four months from the date of receipt of certified copy of this order.

The writ petition is accordingly disposed of.

July 31, 2015
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(AMIT RAWAL)
JUDGE