

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 8421 of 2013 (O&M)

Date of decision : March 31, 2015

EHC Parmeshwar Nath,

..... Petitioner

v.

State of Haryana and others,

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. SN Yadav, Advocate
for the petitioner.

Ms. Shruti Goel, AAG Haryana

1. **Whether Reporters of Local Newspapers 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 ?**

Ajay Tewari, J (Oral)

The petitioner has challenged the adverse remarks recorded against him for the period 1.5.2010 to 31.3.2011.

On 23.4.2013, the following order was passed :-

“ The petitioner has filed the instant writ petition seeking the expunging of the adverse remarks recorded in his ACR for the period 01.05.2010 to 31.03.2011.

Learned counsel for the petitioner would argue that at the stage when such adverse remarks were recorded, a departmental enquiry had been initiated against him and the same was pending. Learned counsel would refer to the findings recorded in the inquiry proceedings at Annexure P-7, whereby, it has been concluded that the allegations levelled against the petitioner were totally baseless. Accordingly, it has been argued that the very basis for recording of the adverse remarks vide memo dated 23.06.2011 (Annexure P-3) would now be non-

existent.”

Thereafter, on 14.7.2014, the following order was passed :-

“ Counsel for the respondents prays for an adjournment to produce the records, whereby the representation submitted by the petitioner against the adverse annual confidential remarks conveyed to him vide letter dated 23.06.2011 (Annexure P-3) was considered by the Inspector General of Police, Hisar Range, Hisar while passing the order dated 02.11.2011 (Annexure P-5).

Adjourned to 19.01.2015.”

Counsel for the respondents has shown to the Court the record from where it is seen that before considering the representation of the petitioner, the comments of the Reporting Officer were also sought. The adverse remarks recorded in the report are as follows :-

- “ 1) Discipline - Not Disciplined.
- 2) Integrity - Not Honest.
- 3) Reliability – Not reliable.
- 4) Moral Character - Not Good.
- 5) General Remarks – A departmental has been opened against him for extorting money and misbehaving with his employees on 21.7.2010.

You are advised to remove this defect and to reform your conduct.”

Counsel for the petitioner has argued that once the inquiry culminated in favour of the petitioner, there had to be some other basis for the remarks recorded. He has relied upon certain instructions of the Government, as per which certain safeguards have been given for avoiding prejudice to employees against motivated remarks. He has also placed reliance on the decision of this Court in Ranbir Singh v. The State of Haryana and others, CWP No.8403 of 2006, decided on 24.12.2008, wherein it was held as follows :-

“10. It was pointed out by the counsel for the petitioner that yet another person who had been implicated in the

same criminal case had also obtained the adverse entry but when he was acquitted, the adverse entry had been expunged but it was not so done for the petitioner only because at the time when the representation was disposed of, the result of the criminal case had not been made available. This issue is not without relevance for a similar entry for yet another employee who had been similarly entered with adverse remarks found the expunction of remarks happening when the criminal case ended in acquittal. It is not possible to believe that any other material was available or there were any other considerations for the Government to apply a different yardstick for the petitioner alone.

12. It is not possible to see from the records that the Reviewing Officer had any other objective criterion to make adverse entries than the fact of his involvement in the criminal case. The representation made against the adverse remarks has been disposed of by the Inspector General on 03.05.2005 with the cryptic observation that the representation was duly considered and rejected as devoid of merit. The result of the criminal case had not been available at the time when the subject was taken up by the Inspector General of Police and that had entailed the rejection of his representation. The counsel also refers us to the relevant instructions which detail the reasons to be recorded wherever adverse entries are made. He states that no reasons have been given in the ACR for the adverse entries apart from the reference to the pendency of a criminal case. His contention was that there was no other material before the Reviewing Officer than the pendency of the criminal case to make the adverse entry and when the criminal case ended in acquittal, the entry was also required to be expunged. He would further contend that even apart from the criminal court judgment, the departmental proceedings which had been taken up against the petitioner, had exonerated him and the retention of adverse entry in the ACR was, therefore, most unjust.”

Counsel for the respondents has, however, argued that the above mentioned decision is completely distinguishable on facts in so much as here the representation of the petitioner was considered and even the comments of the Reporting Officer were sought and thereafter, a detailed order was passed. She has urged that in the absence of mala fides, the

Courts should be reluctant to interfere with the assessment of subordinate

officers by their superiors because this could hamstring the entire administrative machinery.

In my opinion, the arguments raised by counsel for the respondents are more meritorious. It is not open to a Court to substitute its own opinion for the opinion of the Authority which is in the best position having regard to its knowledge of the employee and his conduct. It is well known principle of administrative law that when relevant considerations have been taken note of and irrelevant aspects eschewed from consideration and that no relevant aspect has been ignored and the administrative decisions have nexus with the facts on record, the same cannot be attacked on merits. Judicial review is permissible only to the extent of finding whether the process in reaching decision has been observed correctly and not the decision as such. Moreover, a perusal of paras 10 and 12 of the decision of this Court, extracted above, reveals that there is difference in facts and, therefore, that decision is distinguishable. Consequently, finding no merit in this writ petition, the same is dismissed with no order as to costs.

March 31, 2015
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(AJAY TEWARI)
JUDGE