

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.12733 of 1995 (O&M)

Date of Decision: 18.02.2016

Harbhajan Lal

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ravi Sharma, Advocate,
for the petitioner.

Mr. Harkesh Manuja, Addl. AG, Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. Heard learned counsel for the petitioner and for the State of Punjab at length and perused the record on the writ file with their assistance.
2. The claim in this petition was for promotion to the post of Deputy Superintendent of Police. The petitioner was ignored when Departmental Promotion Committee met to decide cases for promotion from Inspector to DSP. The petitioner was handed out an adverse ACR recording "Integrity Doubtful" by the 3rd respondent. There were other remarks which the Court is informed stand expunged by the superior authority but not the remarks doubting integrity. The reporting authority, i.e., the then Senior Superintendent of Police, Ludhiana had made the red ink entry on two grounds, one that the accused was involved in a corruption case registered against him. Secondly, he had been warned vide Memo 84/Steno dated

January 18, 1989 but had shown no improvement despite warning. These ACRs related to the assessment year from August 01, 1988 to March 31, 1989.

3. The warning letter has been placed at Annex P-3. The warning has been issued on the basis of a report submitted by the Assistant Superintendent of Police, Ludhiana that one Balbir Singh s/o Gurdit Singh had disclosed to the Police that he was an active opium smuggler for the past several years and paid bribe (protection money) of Rs.10,000/- per month to the Station House Officer, Police Station, Dakha to turn his face. The SHO of Police Station, Dakha was none other than the petitioner. He was warned that criminal proceedings would be initiated against him if any tangible legal evidence is made available against him. He was further warned that in future if these shortcomings were not removed it could be reflected in his ACRs.

4. At least one thing appears certain from a reading of the warning letter that there was no tangible evidence available on the date when the warning was issued. The warning thus rests on hearsay evidence which would normally be inadmissible under the Indian Evidence Act, 1872, that too coming from a criminal via a policeman spoken to in confidence or whatever that means. Be that as it may, the criminal trial against the petitioner failed when the Special Judge, Ludhiana by judgment dated November 25, 1993 acquitted the accused including the petitioner of offences allegedly committed under sections 420, 406, 467, 468 and 471 of IPC read with section 120-B IPC. The Special Judge, Ludhiana has recorded in his judgment:-

“It is virtually a case of no evidence and the learned Public Prosecutor had thus to concede that there was no legal evidence to establish any of the charge framed against any of the accused.

11. I have thus no hesitation to hold that the prosecution has miserably failed to prove the charges levelled against the accused. Consequently, they are acquitted of all the charges framed against them.”

Pronounced in open court.”

5. It is taken that the judgment is final as nothing has been placed on record to suggest that the State filed Leave to Appeal against acquittal in the High Court. It may be briefly mentioned that the trial was *inter alia* for some acts of commission in a lucky draw lottery scheme etc.

6. It is also an admitted fact that the departmental inquiry was conducted against the petitioner on the same charge as was laid in the criminal trial which has led to the exoneration of the petitioner. The Commandant Ist India Reserve Battalion, Patiala in his order at Annex P-11 dated March 28, 1994 has returned the following finding while dropping the inquiry:-

“I after going through the departmental enquiry, statements of witnesses and evidence collected during the enquiry and finding of the Enquiry Officer and came into this conclusion that the finding of the enquiry conducted by the Enquiry Officer is totally correct and I agree with the same. As no charge has been proved against Inspector Harbhajan Lal No. R-6, during the departmental enquiry. So this departmental enquiry is filed.”

7. The cumulative effect of the acquittal order by the Special Judge, Ludhiana (Prevention of Corruption Act, 1988) and the exoneration in the domestic inquiry removes the basis of the first of the twin reasons constituting material for recording the remarks of “Integrity Doubtful” in

Column 5 of the ACR Memo (P-1). It is axiomatic that when the major operative reason of involvement in a criminal trial underlying casting doubt on integrity of the petitioner during the period under report no longer exists and when the other adverse remarks have been expunged, the offensive remarks cease to hold any water. However, what remain are the effect of the contents of the warning letter and the threat extended by the 3rd respondent to the petitioner of the possible fallouts of the recorded warning issued to him. Since there is no clarity on this point nothing can be said with any certainty for the present and the same should be left in the first instance to be re-examined by the competent authority in the Police Department and to opine on as to its effect on the career of the petitioner while he was in service.

8. Nevertheless, what remains to be examined in this case presently is the impugned decision at Annex P-14 dated May 16, 1995 rejecting the case of the petitioner for promotion to the rank of DSP due to unsatisfactory record of service on the twin issues discussed above and the order dated August 05, 1995, Annex P-13 rejecting the representation of the petitioner against recording of ACR. Both these orders are impugned in this petition.

9. I have heard the learned counsel for the parties at some length in order to examine and consider whether the impugned orders at Annex P-13 & P-14 contain sufficient and germane reasons supporting rejection and I find none contained on the face of the orders. Since the impugned orders are cryptic, non-speaking and passed without due application of mind they cannot survive in the eyes of law. They have to be set aside. However,

setting aside of the orders would not mean that the matter ends there or that the second part of the adverse ACRs becomes non-existent since the fate of that would depend on supervening facts, if any, required to be taken into consideration by the competent authority. It is well settled that recording of reasons is a facet of reasonableness in Article 14 of the Constitution of India and an order which is deaf, dumb and blind cannot be supported in law nor can such an order be judicially reviewed in absence of reasons recorded in writing gravely affecting the rights of parties without knowing what has weighed in the mind of the administrator.

10. Therefore, the only reasonable way to resolve the residual dispute is to set aside the orders and remand the case to the Director General of Police, Punjab to re-examine the case of the petitioner for promotion to the post of DSP from the due date when the junior was promoted and the petitioner ignored for “unsatisfactory record of service”.

11. I should not part with the order without noticing the Division Bench judgment of this Court in **Amrik Singh v. The State of Haryana and others**, 1995 (2) SLR 769 on which the learned counsel for the petitioner has relied on to submit that ACRs are not immune from judicial review and interference in such like matters is permissible for violation of the law, mala fide or patent arbitrariness. Adverse ACRs may result in denial of promotion and other service benefits. While recording adverse ACRs questioning integrity of an officer an onerous obligation is placed on the reporting officer or other authority, who makes adverse remarks regarding integrity, to be extra cautious and careful while doing so which generally should be fortified by reasons. Any ill-considered remarks in this

respect may do a lot of mischief and harm by inadequate observation.

12. As a result of the above discussion, and save and limited to the above extent, this writ petition is allowed. The impugned orders Annex P-13 & P-14 are quashed. The matter is remanded to the competent authority in the respondents to revisit the impugned orders with the help of record and it would pass a fresh order with respect to the remnants of the warning letter in accordance with law but without revisiting the criminal case and the dropping of the charges for the same alleged offences. That chapter stands concluded in favour of the petitioner.

13. In case, the petitioner makes a request for personal hearing, the same shall be granted. It is made clear that the two issues involved in this case; one of adverse ACRs whilst the other of denial of promotion will be considered and decided by the authorities competent to do so i.e. DGP, Punjab and/or the Home Secretary, Punjab keeping in view the rules and instructions on the subject prevailing during the period of reporting together with the subsequent events of acquittal and dropping of the inquiry vide order dated March 28, 1994 Annex P-11. It is further directed that the matter being an old one it deserves expeditious disposal in remand proceedings since it is being remitted after two decades of pendency of the petition. In the hope and trust of the court placed on the respondent authorities it will be the endeavour of the competent authority to pass final orders within three months from the date of receipt of a certified copy of this order made available to it. In case the petitioner is found entitled to promotion from back date when junior was promoted the same shall be granted including consequential seniority and further promotions notionally,

if any. Monetary benefits will be controlled, in the first instance, by rules and instructions of the Punjab Government on the subject issued from time to time.

(RAJIV NARAIN RAINA)
JUDGE

18.02.2016
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