

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 15369 of 2000(O&M)

Date of decision: 8.12.2016

Rajbir Singh

... Petitioner

Versus

State of Haryana & ors.

... Respondents

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

Present: Mr. Suresh Monga, Advocate,
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

RAJIV NARAIN RAINA, J.(Oral)

It is not necessary to go into the litigation history of this case in any detail which began with the departmental proceedings initiated against the petitioner for committing service misconduct ending in a civil court decree on a challenge thereto where the inquiry was held to be neither fair nor proper and directions were issued to the Police Department to conduct the inquiry de novo. In the fresh inquiry, the petitioner pleads that he was exonerated. It may be noticed that Civil Suit was filed on August 4, 1994 praying for declaration that the findings of the inquiry officer in his report dated December 31, 1993 and the order of penalty dated February 11, 1994 passed by the punishing authority were illegal, non est and ab initio void. That was the end of the chapter, the decree attaining finality.

The grievance in this petition is against recording of adverse remarks of 'integrity doubtful' in the confidential report of the petitioner for the year 1993-94 i.e. more specifically for the period April 1, 1993 to

December 12, 1993 and then again January 6, 1994 to March 31, 1994. The remarks in the ACR are dated October 7, 1994 and it is not disputed that they were conveyed in time. It is also apparent, as pointed out by Mr. Monga, that Integrity of his client was recorded as dishonest, Moral Character as below average accompanied with the remarks that the petitioner is an indisciplined policeman. However, in the General remarks, it has been recorded by the Reporting Officer that the petitioner is a “low grade Head Constable” and was earlier awarded punishment of stoppage of one future increment with permanent effect for accepting illegal gratification of ₹25/- from Jagir Singh, r/o Beera Badhi. These remarks have been recorded by the Superintendent of Police, Hisar. It is the contention of Mr. Monga that the basis of recording adverse ACR stands removed because ultimately the petitioner was exonerated in the inquiry by the then disciplinary authority vide orders dated March 16, 1999 (Annex P-6) and it follows that on both counts, that is, for accepting bribe and for misbehaving with the public stand washed out. The remarks became final and it was only after the exoneration of the imputations of misconduct that the petitioner approached the authorities against the adverse ACRs doubting his integrity with a prayer to expunge them.

In the written statement filed by the State while contesting the case, it has been objected to as a ground of dismissal of the petition that the petitioner did not file a representation against the adverse remarks to the higher authorities within the prescribed period of limitation determined by instructions. Therefore, the present petition is not maintainable being barred by limitation prescribed for filing representations against conveying adverse ACRs. In the reply, it is revealed that during the service career of the

petitioner his work and conduct was not found up to the mark and as such, the petitioner had been awarded five punishments. He was censured thrice once in 1979 and twice in 1992. He was warned in 1992 for dereliction in duty and in the remote past in 1974, the petitioner was awarded 15 days punishment drill for willful absence and for consuming liquor.

Be that as it may, this defence based on past record of service is of no consequence to the judicial review of the impugned order rejecting the representation of the petitioner against adverse ACRs vide order dated May 17, 2000 (Annex P-13).

The representation filed belatedly after about 5 years of recording of the adverse ACRs doubting integrity has been rejected by the department citing Haryana Government instructions issued by the Chief Secretary to Government of Haryana vide letter dated August 14, 1987 which prescribe that a representation against adverse remarks should be entertained only if it is received within 45 days from the date of receipt of the letter communicating the adverse remarks to the official concerned. The instructions proceed to relax the rules where the authority dealing with the representation is empowered to entertain the representation within three months of the expiry of the said period if he is satisfied that the official had sufficient cause for not submitting the representation in time. On the ground of delay, representation has been rejected.

The question whether pendency of litigation in the civil court was sufficient cause to the petitioner not to make a representation against adverse remarks. The petitioner could have filed a representation by taking all his pleas and then it would be for the authorities to keep decision pending awaiting the end of litigation with time consumed in holding a

fresh inquiry as directed by the civil court decree and thereafter, to consider the question of punishment or exoneration depending on the result and final decision of the punishing authority. There is hardly any valid explanation on file as to why the petitioner did not act promptly when there were no impediments in raising grievance in writing in the time allowed. This is against the petitioner.

There is another vital aspect pointed out by Ms. Shruti Goyal from the impugned order dated May 17, 2000 (Annex P-13) that while rejecting the representation as being time barred, the Inspector General of Police, Hisar, added the note against the column of General Remarks in the following words:-

“DE conducted afresh and the same was filed on 16.3.1999 by SP/Hisar.”

The narrow issue which arises for determination is whether there is any significant error in the impugned order dated May 17, 2000 rejecting the representation of the petitioner as time barred. Mr. Monga argues that he is before a court of equity and it can override the instructions in order to do justice. Moreover, there is no other tangible material against the petitioner from where it can be said that his integrity was doubtful since the sting of the adverse remarks had been removed by the result of the inquiry afresh on March 16, 1999 leading to declaration of innocence. The argument at first instance appears plausible but equity can only to rescue as equity fails in the presence of law which is direct on the subject matter. Any order passed by this Court overwriting the impugned order would amount to destruction of the instructions dated August 14, 1987 issued by the Chief Secretary to Government of Haryana under Article 162 of the

Constitution. There appears to be two stages built into the instructions; one ending at 45 days where no explanation is required and the other till a period of 3 months where satisfaction of the manager of the instructions would be necessary to be recorded in writing. There is no explanation other than pending proceedings in the petition, for the petitioner not to have made representation on time and pleaded therein to keep it pending co-terminus with the fresh inquiry proceeding culminated and till the clouds were dispelled. This may be a technical view of the letter dated August 14, 1987 but the law is hard because it is the law. Government instructions are law are in private interest meant to be obeyed and if not rights can suffer waiver or acquiescence. A direction from the court as sought would rewrite the instructions which I am not prepared to issue. Bar of limitation leaves no room for discretion in the administrator adhering to executive instructions. Besides, a writ of certiorari is per se not maintainable against recording of adverse ACRs.

I find no palpable error in the reasoning assigned in the impugned order non-suiting the petitioner on bar of limitation or one that is an impossible view or is so irrational or perverse as a reasonable man of ordinary intelligence would not take and accordingly I would find no merit in the petition and would hereby dismiss the same.

Dismissed.

(RAJIV NARAIN RAINA)
JUDGE

8.12.2016

monika

Whether speaking/reasoned *Yes*

Whether reportable *Yes*