

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 10663 of 2004 (O&M)

Date of Decision : February 16, 2016

D. K. Bhardwaj Petitioner
vs.
State of Haryana and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

* * *

Present : Mr. Gurminder Singh, Senior Advocate
with Mr. J. S. Gill, Advocate
for the petitioner.

Mr. Harish Rathee, Senior DAG, Haryana.

* * *

DEEPAK SIBAL, J. :

C. M. No. 1864 of 2016 :

Through this application, orders of Central Administrative Tribunal, Principal Bench at Delhi and Chandigarh Bench, Chandigarh are sought to be placed on record as Annexure P-14 and Annexure P-15 respectively.

Allowed as prayed for.

CM stands disposed of.

Main Case :

Through the instant petition, the petitioner seeks quashing of adverse remarks in his Annual Confidential Reports (ACRs) pertaining to the periods from 04.05.1992 to 21.08.1992, 01.04.1994 to 04.01.1995 and 18.06.1997 to 31.03.1998, as also the orders dated 12.07.2000 (Annexure P-9), 08.02.2002 (Annexure P-11) and 16.12.2003 (Annexure P-13), vide which the representations of the petitioner for expunging the aforesaid adverse remarks have been rejected. The petitioner further prays for the issuance of a direction to the respondents to issue in his favour an Integrity Certificate, as required for promotion to the Indian Police Service under Regulation 5 (5) of the Indian Police Service (Appointment by Promotion) Regulations, 1955 (hereinafter referred to as – the 1955 Regulations).

After hearing counsel for the parties and perusing the record, the relevant facts, which have emerged are that the petitioner seeks his induction as a member of the Indian Police Force, for which he has been provisionally selected, subject to his production of an Integrity Certificate to be issued by the State of Haryana, which has been withheld on account of adverse remarks against the petitioner recorded for the periods from 04.05.1992 to 21.08.1992, from 01.04.1994 to 04.01.1995 and from 18.06.1997 to 31.03.1998.

Learned senior counsel appearing on behalf of the petitioner

submitted that the adverse remarks recorded in the ACRs for the periods from 04.05.1992 to 21.08.1992, from 01.04.1994 to 04.01.1995 and from 18.06.1997 to 31.03.1998 were pertaining to general slackness in the discharge of duties by the petitioner, but there was nothing in them doubting the petitioner's integrity and that being so, there was no reason for the State to deny the required Integrity Certificate, which was needed as per Regulation 5 (5) of the 1955 Regulations for the induction of the petitioner as member of the Indian Police Force. In support of his submissions, the attention of the Court was drawn to each of the ACRs, which, as appended with the writ petition, are as under :-

ACR for the period from 04.05.1992 to 21.08.1992

*“Confidential
Registered*

From

*Director-General of Police,
Haryana*

To

*Superintendent of Police,
Ambala.*

Sr. No. 184 .S. 93, Dated 4.2.93

Subject : Adverse Remarks.

Sir,

*Shri Daya Kumar Bhardwaj, Deputy
Supdt. of Police 4.5.92 to 21.8.92 when he was
under training period on the one side where his*

honesty, moral character, impartiality etc. are pointed as correct where on the other side adverse remarks are also shown :-

“The officer is below average, he did not take keen interest in completing the task within stipulated time, he does not have knowledge of police work and English or Hindi language and shrink mind from the work. During the time of selection he was selected for anti-terrorist training in B.S.F. Hajari Bagh, but he remained absent with an excuse of sickness from PTC Madhuban where he was sent for pre-training course and he did not attend training at Hajari Bagh. Thus, whenever he remained incharge of Police Station he did not understand the work and could not write CDs by his own hands.”

Displayed irresponsible traits and had to be severely pulled up.

2. Shri Daya Krishan Bhardwaj, Deputy Supdt. of Police is directed on the basis of above mentioned remarks that he should bring reform in his working and the employee should confront with the given remarks because he is now under-training at Distt. Ambala under you.

3. After receiving the copy of above given remarks attached herewith may kindly be sent to the office as soon as possible.”

xx xx xx xx

ACR for the period from 01.04.1994 to 03.01.1995

“CONFIDENTIAL/REGISTERED

From

Director General of Police, Haryana.

To

*The Commandant,
3rd Battalion,
Haryana Armed Police, Hisar.*

No. 1241/SS dated 21.12.1995

Sub :- Adverse Remarks.

..

*The following adverse remarks have been
recorded in the Annual Confidential Report of Shri
Daya Krishan Bhardwaj, DSP for the period from
1.4.1994 to 3.1.1995 :-*

- i) Loyalty to the Govt. : Needs to be more
in power without
regard to political
and party feelings.*
- ii) General Remarks : i) Lack of maturity.
ii) Needs to be more
careful towards
his duty and
responsibility*

*The above remarks may kindly be conveyed
to Shri Daya Krishan Bhardwaj, DSP as presently
he is working under you.*

Receipt on the additional copy may kindly

be taken from the concerned officer and the same be returned to this office immediately.”

xx xx xx xx

ACR for the period from 18.06.1997 to 31.03.1998

“CONFIDENTIAL

From

Director General of Police, Haryana.

To

*Superintendent of Police,
Rewari.*

No. 1309/SS (98) dated 14.9.98.

Subject : Adverse Remarks.

Memo :

The Moral character etc. of DSP Daya Krishan Bhardwaj have been recorded as good in his confidential report for the period from 18.6.97 to 31.3.98 and the following adverse remarks had also been entered :-

- | | |
|--|---|
| <i>1. <u>Loyalty</u></i> | <i><u>Not out of suspicion</u></i> |
| <i>2. General controlling Capacity</i> | <i>Not appreciable.
Never performed any work worth to be appreciated with his own initiative.</i> |
| <i>3. Commanding Capacity</i> | <i>Weak</i> |
| <i>4. Interest in</i> | <i>Never takes</i> |

*learning Modern
investigating
Methods and
Modern modes
police working*

- | | |
|--|---|
| 5. <i>Capability
relating to inquiry
and prevention</i> | <i>Nil</i> |
| 6. <i>Practical knowledge
of Criminal Law
and process</i> | <i>Quite unaware of Police
Work nor do any effort
to learn.</i> |
| 7. <i>Credibility</i> | <i>Not trustworthy</i> |
| 8. <i>Parade skill</i> | <i>Imperfect</i> |
| 9. <i>Defect if any and
whether the same
has been given in
the notice of any
letter.</i> | <i>Delay in working of each
work because he does
not know how to do and
does not have self-
confidence. Warning
from DIG/GR/CID.
Dated 23.12.97, 2.12.97,
8.10.97 and 6.10.97,
suggestion/warning
was given to bring
reform in working in
writing and verbally
again and again.</i> |
| 10. <i>General Remarks</i> | <i>He does not know
working of Investigating
Officer, Inquiry Officer,
and even of H.C. or
Constable. He does not
have self-confidence.
Afraid from taking
decision. During this
period, works done by
him, are not worth to be
appreciated. All the</i> |

cases of Serious crime in his Police Station remained untraced. No guidance was given by him. He had been giving money to politicians but he had never paid the money from his pay and had been giving them after collecting from the people.

Period from 1.4.97 to 31.3.98 working remained below average. As far as professional capacity/ability of the officer is concerned, the same was also found to be below average.

3. DSP Shri Daya Krishan Bhardwaj is being advised regarding the above mentioned adverse remarks that he should bring improvement in his work and DSP should be informed regarding the above mentioned adverse remarks.

4. The copy of the above mentioned remarks attached herewith be handed over to DSP and the receipt taken from him be sent to this office immediately. [Emphasis supplied]"

While highlighting the contents of the afore-quoted ACRs, it was submitted that there was nothing contained in the ACRs, which doubted the petitioner's integrity, and therefore, the action of the State in withholding the Integrity Certificate was arbitrary.

The original record was summoned and perused, which

revealed that for the period from 18.06.1997 to 31.03.1998, the petitioner's integrity had been doubted. A perusal of the document annexed with the petition as Annexure P-7, which purportedly was a copy of the ACR of the petitioner for the period from 18.06.1997 to 31.03.1998 showed that this fact had been withheld by the petitioner. Rather, the column with regard to 'Integrity' has been substituted by the petitioner by 'Loyalty', changing the entire complexion of things. A copy of the original ACR is ordered to be placed on the record of the case as Annexure-A and a true translation of the same is as under :-

Confidential Report Form (13.17)

Name : - Sh. Daya Krishan Bhardwaj
Designation : - Deputy Superintendent of Police (Headquater).
Period to which the report is concerned:- 18.06.97 to 31.03.98.
Appointment(s) held during the reporting period:- Deputy Superintendent of Police (Headquater), Rewari.

Class of Report	"A"	"B"	"C" (tick marked with initials).
1. <u>Honesty</u>			<u>Doubtful</u>
2. <u>Moral Character</u>			<u>Average</u>
3. <u>Alertness and Moral Courage in disclosing the immoral activities of subordinates.</u>			<u>Courageous</u>
4. <u>Popularity regarding appropriate behavior and extending amicable relations with general public.</u>			<u>Satisfactory</u>

- | | |
|---|--|
| 5. Communal Impartiality | Satisfactory |
| 6. Loyalty towards ruling Government without political and factionalism sentiments. | -do- |
| 7. Relations with fellow officers and behavior towards subordinates | -do- |
| 8. Common controlling power and Organizational capacity. | Not Satisfactory. Did not do any good work by taking any initiative. |
| 9. Personality and Initiative | Satisfactory |
| 10. Capacity to lead | Satisfactory |
| 11. Interest in Modern methods of Inquiry and Police methods. | Do not take any interest. |
| 12. Capacity relating to prevention and investigation. | Zero. |
| 13. Practical experience of criminal law and procedure. | Neither he knows anything about the work of police nor he takes any interest in learning the same. |
| 14. Credibility | Not worthy to be believed. |
| 15. Efficiency in parade. | Does not know properly. |
| 16. Comments regarding work done for development and protection of SC/ST. | |
| a) Behavior towards SC/ST | Satisfactory. |

b) *Quality of promptness
towards social justice* -do-

c) *Capability to take effective
and quick step to stop
and prevent the atrocities
towards SC/ST and ensure justice
to them.* -do-

Suggestion Note

***In addition to verbal warning, a written warning was also given to
mend his ways.***

16. *Effective capability for the
development SC/ST.* -do-

17. *Allegation, if any and whether
attention of concerned officers have
been invited through another letter.* Commits delay in every
work as he does not know
how to work. He lacks
confidence

*Warnings have been
issued by D.I.G/(illegible)
and D.I.G/C.I.D.*

18. *Whether the officer remains present
at Headquater after office time and
also during holidays?* Yes

19. *Role in control and prevention of
communal rites (only for non-IPS/SP,
D.S.P and Inspectors).* The need did not arise.

20. *Execution of flood relief and
rehabilitation works.* -do-

21. *General Remarks:- He does not know the work of investigation
officer, supervisory officer, head constable and constable of the
police. He lacks confidence. He is afraid of taking decisions. During
this period, he did not (misprint) any work. All the cases relating to
heinous offences at his police stations remained untraced. He did not
give any guidance. He kept on doing "begars" of politicians and did*

not pay expenses thereof from his own salary. He kept on doing their (politician's) works while demanding money from the people.

Sd/-

Sohan Lal

*Superintendent of Police,
Rewari.
14.04.1998.*

Comments of District Magistrate.

Period 01.04.1997 to 31.03.1998.

Comments of Deputy Inspector General of Police: - Working remained below average (misprint) far as the professional capacity/ability of the officer is concerned the same was also found to be below average.

Sd/-

*P.V. RATHEE
I.P.S
26.07.1998*

*Deputy Inspector General of Police,
Gurgaon Range, Gurgaon.*

Comments of Director General of Police.

Seen. To be Conveyed.

Sd/-

*The Then Director General of Police
Haryana.*

[Emphasis supplied]

The ACR for the period from 18.06.1997 to 31.03.1998, as annexed by the petitioner as Annexure P-7, when compared to the original, clearly shows that the petitioner has, for mala fide reasons, withheld from

the Court the most crucial column in his ACR. In fact, he had substituted the word 'Integrity' with 'Loyalty' and on the basis thereof, built up his entire case that since there was nothing in the afore-quoted three ACRs doubting his integrity, he should be issued the Integrity Certificate.

A perusal of the Annexure P-7 further shows that the same has been attested by the counsel for the petitioner to be a "true copy" of the original, but since the original is in vernacular, the same could only be a true translation and not a true copy.

The column of "integrity doubtful" in his ACR for the period from 18.06.1997 to 31.03.1998 was an extremely crucial fact, which the petitioner, for apparent oblique motives, withheld from this Court. I am shocked that the State, while responding to the writ petition, also did not point out this suppression of fact on the part of the petitioner as the same was revealed only on perusal of the original record by me.

In view of the above, I am of the opinion that the petitioner has not come to the Court with clean hands, and therefore, on his behest, I am not inclined to exercise my jurisdiction under Article 226 of the Constitution of India. Discretionary relief under the writ jurisdiction is not to be made available to a person like the petitioner, who has attempted to mislead this Court.

The aforesaid view of mine finds support from the judgment of

the Apex Court in **Kishore Samrite vs. State of U.P. and others – 2013 (2) SCC 398**, wherein it was held as under :-

“33. *The party not approaching the Court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under [Article 136](#) of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to abuse of the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make “full and true disclosure of facts”... [Emphasis supplied]*

On a similar issue, the Apex Court in **Dalip Singh vs. State of Uttar Pradesh and others – 2010 (2) SCC 114** has observed as follows :-

“6. *In [Prestige Lights Ltd. V. State Bank of India](#) (2007) 8 SCC 449, it was held*

that in exercising power under [Article 226](#) of the Constitution of India the High Court is not just a court of law, but is also a court of equity and a person who invokes the High Court's jurisdiction under [article 226](#) of the Constitution is duty bound to place all the facts before the court without any reservation. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain petition filed under [Article 226](#) of the Constitution. [Emphasis supplied]”

Similarly, in a Full Bench judgment of this Court in **Jai Singh Rathi and others vs. State of Haryana and others – AIR 1970 (Punjab)**

379, suppression of facts was condemned by holding as under :-

“20. It was pointed out by Mr. Nambyar that in their petition the petitioners have totally suppressed their part of the conduct both on February 4 and 5, 1969, in that they persistently disobeyed and defied the Chair and their conduct was not, in the least, orderly in the House, They also suppressed the fact that after the introduction of the budget the opposition walked out and took no part in the proceedings of the House in regard to the

acceptance of budget estimates, money grants and the passage of the appropriation bill He referred to this observation of Viscount Reading C. J., in [Rex v. Kensington Income Tax Commissioners](#), (1917) 1 KB 486, at page 495. Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not Candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one. which should only be used in cases which bring conviction to the mind of the Court that it has been deceived."On this consideration also the petitioners are not entitled to the exercise of the discretion of this Court in their favour so far as [Article 226](#) of the Constitution is concerned."

To the same effect is another Full Bench judgment of this Court in the case of **Chiranji Lal and others vs. Financial Commissioner**

Haryana and others – AIR 1978 (Punjab) 326,

“9. *It is, thus, plain that even at the stage the writ petition was filed, the petitioner therein were more than well aware that the identical issues of law and fact regarding which they claimed relief in this Court had already been already been conclusively decided against them in a civil Court to which they had themselves resorted. Nevertheless, they deliberately and conclusively suppressed this fact entirely from the writ Court. There can hardly be any doubt that if all these facts were candidly disclosed at that stage as the writ petitioners were bound to do, then the Court would have stayed its hands altogether or in any case would have been very reluctant and chary to grant any interim relief. This is not all. In the writ petition it was further averred that no other remedy was available to the petitioners. This has to be viewed in the context of the fact that meanwhile the writ petitioners had then filed an appeal against the order of the learned Subordinate Judge which to their knowledge was pending decision and in which also they were seeking the identical relief. There can be, thus, no manner of doubt that the averments in this context were deliberately and calculatedly designed*

to keep the writ Court in the dark with regard to these material facts and to procure an interim or ultimate relief by keeping these facts out of the way. It is perhaps equally significant that during this interval the writ petitioners continued to proseture remedy by way of appeal before the Additional District Judge, Kamal and ultimately he dismissed the same on merits after considering all the arguments raised on behalf of the appellants (writ petitioners) on August 17, 1976. Nevertheless, this fact was also not remotely sought to be brought to the notice of this Court at any stage on behalf of the writ petitioners.

10. In the aforesaid context, we cannot but hold that there has been mala fide and calculated suppression of material facts which, if disclosed would have disentitled the petitioners to the extraordinary remedy under the writ jurisdiction or in any case would have materially affected the merits on both the interim and ultimate relief claimed. We categorically reject the plea of the writ petitioners that the failure to mention all these material facts clearly within their knowledge was either inadvertent or was occasioned by any bona fide ommission. [Emphasis supplied]

On this issue, a Division Bench judgment of this Court in the case of **Pawan Kumar vs. State of Haryana and another – 1994 (5) SLR 73** has held as under :-

“13. The principle which can be deduced from the above referred decision is that the party who seeks relief from the High Court in exercise of reequitable jurisdiction under Article 226 of the Constitution of India must come with all bona fides, must make true, candid and full disclosure of the relevant facts. Its conduct must be above board. There should be no attempt by a party to mislead the Court. The petitioner is under an obligation to collect all material facts with due care and attention and he will not be heard to say that facts were not within his knowledge although the same could have come to his knowledge had he taken due care and had made efforts to find them out. The High Court will be fully justified in declining exercise of extraordinary jurisdiction in favour of a party who is guilty of suppression veri and suggestio falsi or who makes an attempt to mislead the Court.

14. In this case, the petitioner has made a deceitful attempt to mislead the Court and, therefore, we find little

justification to give relief to him. [Emphasis supplied]”

In view of the aforesaid discussion on facts and the settled position of law, the present petition is dismissed. For having not come to the Court with clean hands, the petitioner is burdened with costs, which are quantified at ₹ 50,000/-.

(DEEPAK SIBAL)
JUDGE

February 16, 2016
monika