

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 02.09.2016

CWP No.13969 of 2013 (O&M)

Kashmiri Lal

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Namit Kumar, Advocate, for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

RAJIV NARAIN RAINA, J.

1. This petition has been brought by Kashmiri Lal for expunging the adverse remarks recorded in his confidential rolls and for quashing the punishment of warning issued to him. His career has been clouded by adverse remarks recorded in his Annual Confidential Roll (henceforth "ACR") for the brief period from 29.12.2008 to 31.03.2009. He has been ignored for promotion to the post of Assistant Sub Inspector of Police. Mr. Vikas Arora, IPS the then Superintendent of Police, Yamunanagar, being the reporting officer, recorded the following remarks for the aforesaid period:

- | | | |
|----|--|--------------------------|
| 1. | Honesty | Reputation is not good. |
| 2. | Hardworking | Improvement is required. |
| 3. | Knowledge with
reference to Writings,
Rules & Orders | Improvement is required. |
| 4. | Capacity and intelligence | Improvement is required. |
| 5. | Quickness in disposal of | He kept pending matters |

	work	relating to Arms License.
6.	Reputation for honesty	Reputation is not good.
7.	Capability for promotion (Also write in this column; whether the employee can do his duties satisfactorily)	Cannot do.
8.	Fault, if any	Punishment of Censure has been awarded due to concealing of facts.
Grading:	Outstanding, Very Good, Good, Average, Below Average	Below Average.

Improvement is required in the working.

2. During the relevant period, the petitioner was posted as Arms License Clerk, when one Jasbir son of Ram Dayal resident of Village Kalesar, District Yamunanagar moved a complaint against the petitioner before the Superintendent of Police, Yamunanagar alleging that he had submitted an application for an arms license, which had been sanctioned by the Superintendent of Police, Yamunanagar and despite that the petitioner was “harassing him mentally by calling him time and again” to the office. On the basis of the complaint, the petitioner was placed under suspension by Mr. Vikas Arora, IPS and a preliminary inquiry was entrusted to DSP (HQ), Yamunanagar by order dated 28.01.2009. The suspension was approved by the Inspector General of Police, Ambala Range, Ambala Cantt on 03.02.2009. The enquiry officer investigated the matter and exonerated the petitioner of the alleged charge in his report dated 18.02.2009 submitted to the disciplinary authority. The petitioner was reinstated to service on 04.03.2009 and the action was approved by the Inspector General of Police, Ambala Range, Ambala Cantt. The suspension period from 28.01.2009 to 03.03.2009 was ordered to be treated as period spent on duty for all intents

and purposes vide order dated 02.04.2010. Although the petitioner was found innocent in the enquiry, yet the then Superintendent of Police, Yamunanagar issued a show cause notice to him on 26.06.2009 calling upon him to explain why he should not be punished. The petitioner filed a reply to the show cause notice and after considering the same, the petitioner was warned to be more careful in future vide penalty order dated 18.08.2009 “for his misconduct and negligence of keeping the Arms License file pending with him without any reason”. The same officer recorded ACR for the period of three months, when the complaint of Jasbir Singh was in process, which remarks have been reproduced above.

3. The adverse remarks were communicated to the petitioner vide memo dated 28.04.2009 by the Inspector General of Police, Ambala Range, Ambala Cantt. His further representation to the Director General of Police, Haryana was unsuccessful and it was dismissed after hearing the petitioner personally on 06.08.2009.

4. The petitioner is confronted with two-fold obstacles placed in his way for promotion from Head Constable to Assistant Sub Inspector. Firstly, the warning issued to him to remain more careful in future, which is a minor punishment and may not stand in the way of promotion if it were standing alone. However, the ACR for the period of three months during which the petitioner was suspended and the complaint processed, his ACR was damaged by the then Superintendent of Police while referring to the episode in the complaint that petitioner kept pending matters relating to Arms License. Those remarks stands watered down in view of the charge not being proved in the preliminary fact finding enquiry and the warning issued, which may also not be justified in view of the exoneration without recording reasons of dissent. At any rate, what is gravely damaging to the petitioner,

are the remarks in 'Honesty' column, where it has been recorded that 'his reputation is not good'. It has been further recorded that punishment of "censure" has been awarded due to concealing of facts. However, the punishment order at Annex P-4 dated 18.08.2009 issues warning, but not censure. It appears that the Superintendent of Police was not conscious of the distinction between 'warning' and 'censure' in the range of minor punishments, which according to the petitioner's counsel reveals non-application of mind in committing an apparent mistake of law and fact.

5. The other damaging part of the ACR for three months is that he has been graded 'Below Average' with the remarks that improvement is required in the working as is mentioned in at least three columns of the ACR. If the ACR is recorded as 'integrity doubtful' with grading 'Below Average', the petitioner would lose his chances of promotion. The petitioner is before this Court impugning the order dated 28.04.2009 conveying the adverse remarks for the period of three months i.e. from 29.12.2008 to 31.03.2009, with copy placed at Annex P-3 and the order of punishment dated 18.08.2009 at Annex P-4.

6. Mr. Namit Kumar, learned counsel appearing for the petitioner, has raised several contentions praying for directions setting aside of the ACR and the punishment orders based on the complaint of Jasbir Singh. He has centered his argument on the anchor of the clear-cut instructions issued by the Haryana Government on 12.12.1985 dealing with the subject of recording of adverse remarks regarding 'integrity' of an official. In making 'report regarding integrity', the Government decided that "a special mention should invariably be made regarding the integrity of the officer to which Government attach the greatest importance. It should be clearly stated if the officer is suspected of corruption or is believed to be corrupt and this

opinion should generally be fortified by reasons, which may be in the possession of the reporting officer. Any ill-considered remarks and grading in this respect may do a lot of mischief and harm. On the other hand, the reporting officers must be quite honest and frank in the column “Defects, if any” or elsewhere. Government observes that reporting officers are still following the practice of making non-committal remarks like no complaint received. The instructions go on to say that Government views such comments with disfavor and desires that the practice of making non-committal entries in column relating to integrity should cease. Reporting officer should give a definite opinion on the integrity of their subordinates while writing their confidential reports”. It is argued that the reporting officer has violated these instructions and entered non-committal remarks in the impugned ACR and same deserves to be expunged on this score alone. The reporting officer has used his non-committal remarks as a lever to award punishment to the petitioner without any cogent reason on valid ground backing it. Both the ACR and the punishment order are inextricably interwoven and one is difficult to separate from the other and, therefore, Mr. Namit Kumar argues that the action of the reporting officer is illegal, arbitrary and against the principles of natural justice.

7. During the period under consideration, the petitioner had been placed under suspension and as a result and effectively the period covered by the ACR is less than three months and there are instructions, which desists reporting officer to record ACRs when the period of assessment is less than three months or is effectively short of it.

8. On this aspect, it is the counter contention of Ms. Shruti Jain Goyal that no mala-fides can be alleged against the reporting officer since the same officer who downgraded the ACR of the petitioner for the period

29.12.2008 to 31.03.2009, recorded 'Good' remarks in the ACR of the petitioner pertaining to subsequent period from 01.04.2009 to 08.03.2010.

9. The question immediately arises is as to the nature and character of the remarks recorded for the period from 01.04.2008 to 28.12.2008, which was a substantial period of 9 months during the assessment year. The answer seems to be that if there is anything seriously adverse in those ACRs then the argument of Ms. Shruti Goyal seems to cut both ways. If the same Officer had graded the official (petitioner) in the remarks acceptable to promotion standards by way of grading, honesty and integrity, and if they were not in doubt, that casts a huge shadow on the moot period of three months to consider holding that they were not based on bona fide assessment, but as a knee jerk reaction to the complaint of Jasbir Singh that the petitioner deserves to be punished anyhow. Even though the petitioner was found innocent in the preliminary enquiry, but still the Officer issued warning without any sufficient evidence to dislodge the findings of the DSP (HQ) exonerating the petitioner of the charge leveled in the complaint lodged by a private person. If the Superintendent of Police, Yamunanagar did not agree with the preliminary enquiry report, he should have done either of the two things available to him in law i.e. (i) he should have conveyed the preliminary enquiry report and sought a reply from the official; & (ii) he should have ordered a regular departmental enquiry into the charge, where the petitioner would have opportunity to explain. He did neither. The procedure followed was, to the least, hybrid in character and ill-effect, even though he was dealing with a case of minor punishment. The petitioner could not be dunked in the pool of misconduct without granting him fair hearing and fair opportunity to prove his innocence before the

punishing authority and for meeting out a fair decision based on tangible material of which there is none present on record of the writ file.

10 The Supreme Court in State of U.P. Vs. Yamuna Shankar Mishra, 1997 (2) SCT 234 while dealing with a case of a harmful confidential report of an Officer observed that the Officer writing the confidential report should share the information with concerned official to enable to correct himself. If despite giving such opportunity the subordinate officer fails to perform duty, correct his conduct, the same may be recorded in confidential report. What is true for correction of conduct is truer in the case of criminal charge of misconduct alleged even in the matter of recording of ACRs and an employee is entitled to fair and objective assessment although based on subjective satisfaction. It is not known, whether Jasbir Singh's complaint was supported by an affidavit which is a gray area, but the Court need not go into this for the reasons that follow on the predominant issues raised by the petitioner. It is apparent that the adverse remarks in the ACR were recorded in a bit of hurry, which fact is betrayed by the good remarks recorded by Mr. Vikas Arora, IPS for the assessment year next following which confirms that the assessment for the three months in question was solely motivated by the false complaint which swayed the reporting officer. The period of suspension from 18.01.2009 to 04.02.2009 left very little real time for assessment of work and conduct and the rule against recording ACR for a period of less than three months comes into play and this is how Mr. Namit Kumar calculates the period of three months and he may not in his submission wide of the mark.

11. As regards this contention, Ms. Shruti Jain Goyal counters that as per instructions dated 02.03.1971 (Annex P-12), the reporting officer was not denuded of his jurisdiction to record ACR of the petitioner by treating

the period less than three months. She submits that Mr. Namit Kumar is not correct in contending that the period of suspension of 36 days has to be excluded while counting the total period of three months. In this regard, she submits that as per these instructions issued for recording the ACR of an official, the reporting officer should have seen the work of his subordinate officer for a minimum period of three months. From a bare perusal of the instructions, it is evident that there is no bar therein for recording of ACR for an Officer for a period of less than three months as it is not in dispute that the petitioner had worked under the reporting officer for a period of more than three months, when the ACR in question was recorded by the reporting officer. Since the period of suspension has been treated as period spent on duty for all intents and purposes vide order dated 02.04.2010, then by legal fiction the reporting officer would be deemed to have assessed the work and performance of the petitioner during the entire period of three months. She submits that the law is well settled on the issue that writing of ACR is an administrative function performed by the competent authority keeping in consideration the character, ability, integrity, reliability and responsibility of the officer concerned and the Court can interfere only when the reporting officer has exceeded his jurisdiction or acted in an arbitrary manner. She relies on the Division Bench judgment of this Court reported as Davinder Singh V. State of Haryana, 2011 (3) SCT 758 (paras.15 & 16) to rebut the case of the petitioner as represented by his learned counsel.

12. It is the further contention of Mr. Namit Kumar that there was no material or cogent evidence with the respondents justifying the recording of adverse remarks contrary to the letter and spirit of the instructions dated 12.12.1985 and the law laid down in the judgments reported as Commissioner, Kendriya Vidyalaya Sangathan & other Vs. A.K.Kaushal,

2011 (1) SCT 681 and B.B.Kaushik Vs. State of Haryana & another, 2015 (3) SCT 630 would help him in the cause of his client. He has also produced the full statement of ACRs of the petitioner, which paper was taken on record as Mark-A in the interim order dated 03.12.20013, which reflects the confidential rolls of the petitioner from 1996 to 2013. The tabulation is reproduced below:

Sr.No.	Period	Remarks
1.	22.02.1996 to 31.03.1996	Less than 3 months
2.	22.05.1996 to 10.12.1996	Need some improvement in work
3.	10.12.1996 to 31.03.1997	Good
4.	01.04.1997 to 31.03.1998	Good
5.	01.04.1998 to 31.03.1999	Good
6.	01.04.1999 to 10.10.1999	Good
7.	12.10.1999 to 18.10.1999	Less than 3 months
8.	20.10.1999 to 31.03.2000	Good
9.	01.04.2000 to 31.05.2000	Less than 3 months
10.	27.05.2000 to 04.11.2000	Good
11.	04.11.2001 to 31.03.2001	Good
12.	05.05.2001 to 31.03.2002	Good
13.	05.04.2002 to 30.07.2002	Good
14.	01.08.2002 to 02.01.2003	Good
15.	03.01.2003 to 31.03.2003	Less than 3 months
16.	01.04.2003 to 31.03.2004	Good
17.	01.04.2004 to 18.03.2005	Good
18.	01.04.2005 to 25.07.2005	Good
19.	26.07.2005 to 27.01.2006	Good
20.	12.07.2006 to 31.03.2007	Good
21.	25.04.2006 to 10.07.2006	Less than 3 months
22.	01.04.2007 to 03.08.2007	Good
23.	03.08.2007 to 31.03.2008	Good
24.	01.04.2008 to 24.12.2008	Good
25.	29.12.2008 to 31.03.2009	Except column No.3, 4, 8 & 13 all columns of ACR are adverse (copy

		enclosed)
26.	01.04.2009 to 08.03.2010	Good
27.	01.04.2010 to 22.10.2010	Good
28.	25.10.2010 to 31.03.2011	Good
29.	11.04.2011 to 19.05.2011	Less than 3 months
30.	09.05.2011 to 31.03.2012	Good
31.	01.04.2012 to 31.03.2013	Awaited

13. A survey of his ACRs outweighs and outbalances the damaging remarks made for the period in question and in dispute and tilts the balance of justice in favour of the petitioner. The remarks can be viewed as stray and ill-conceived without due reflection and an abuse of power in rejecting outright the report of the DSP (Headquarter) without sufficient reasons. I find no objective assessment in the impugned ACR in the face of the report. I thus find no justification for punishment at all. The petitioner's character and integrity should not have so easily and lightly allowed to be tarnished by the stroke of the pen of the then Superintendent of Police, Yamunanagar. If these road blocks placed in the way of the petitioner are removed, as they eminently deserve to be, then the petitioner would have a right for consideration for promotion to the post of Assistant Sub Inspector with effect from the date when his junior(s) was/were promoted in the year 2013. The State has not disputed that persons junior to the petitioner were promoted as ASIs. The petitioner is a member of the executive clerical staff of Constables.

14. It may also be noticed that the impugned order rejecting appeal for expunging the adverse remarks vide orders dated 06.08.2009 and 07.06.2010 are both cryptic and non-speaking and do not satisfy the test of recording reasons explained in the constitution bench of the Supreme Court in S.N.Mukherjee Vs. Union of India, AIR 1990 SC 1984 and Union of India & others Vs. E.G.Nambudiri, AIR 1991 SC 1216 and fail the test of

judicial scrutiny on the touchstone of reasonableness. The adverse remarks made against the column of 'Honesty' are unfair and are not recorded in compliance of the instructions dated 12.12.1985 on the subject matter of what should accompany such remarks which may mar careers in government service. They are sweeping and general in nature and are not based on objective criteria or an objective assessment. Subjective satisfaction is not personal satisfaction of an Officer it has to be rational. It must relate to some materials on record to justify a remark such as "reputation is not good" and not a positive or definitive statement that the official is honest or dishonest and from where such a statement can be reasonably supported. There are no degrees of honesty and dishonesty in discharging duties and responsibilities on public posts. Though serious doubt based of tangible instance may be enough. Each case would have to be examined carefully and independently. Interference is limited but not unknown in cases of adverse remarks and no hard and fast rules ought to be laid down.

15. If the matter was serious enough in the complaint, which it is apparently not in the face of the report, then the matter could not have been dropped at the level of warning or censure without fair opportunity given to rebut the impression in the mind of the reporting officer. The respondents have failed to support the adverse remarks by reliable material on record and to rebut the contentions of the petitioner that the ACR for the period in question was not recorded in a bona fide manner. Those remarks deserve to be expunged especially in the light of the entire service record of the petitioner in Mark-A. The petitioner has been seriously prejudiced and deprived of opportunity to effectively refute the adverse entries in the ACR on the ground that the adverse entries were without any just cause or legal justification.

16. In *E.G.Nambudiri's* case, the Supreme Court held that in rejecting a representation against adverse entries in the confidential rolls of an official, reasons for rejection must exist on record though it is not necessary to communicate the reasons in absence of rules/instructions. However, when an order of the authority is challenged in Court, the authority should place reasons, which must exist on record i.e. existing record and it is not permissible to the authority to support the order by reasons not contained in the record. The Supreme Court observed that the authority is required to consider the questions raised by the Government servant and examine the same in the light of comments made by the officer awarding adverse entries and the officer countersigning the same.

17. There is sufficient merit in the submissions of Mr. Namit Kumar on the issues raised and pressed and I accept them as the operating reasons for determining this case in favour of the petitioner. Interference is preeminently called for to remove the above noticed errors from the record by writ of certiorari. The contentions raised by the police department are rejected. The adverse remarks in dispute appear to be incongruous when juxtaposed with the entire ACR/Grading record of the petitioner tabled in paragraph 12 above.

18. For the foregoing reasons, the instant petition is allowed. The impugned orders Annex P-3, Annex P-4 and all other consequential orders are quashed. The adverse remarks for the period in question are ordered to stand expunged from the petitioner's service record. The punishment order based on the private complaint which failed in the hands of the enquiring authority is held unsustainable and is set aside. There was no warrant to bypass the fact finding report of the DSP (HQ) indicating that the petitioner was not guilty. In the circumstances, the "below average" grading for the

short period in question must also fall and is hereby set aside. Accordingly, the respondent – Department is directed by mandamus to consider the petitioner’s case for promotion as ASI from the date when his junior(s) were promoted in accordance with rules; and to do so, in the event of promotion with all consequential benefits that may logically follow.

02.09.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*