

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 24204 of 2011

Date of Decision : February 17, 2016

Satbir Singh Petitioner
vs.
State of Haryana and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. Pawan Kumar, Senior Advocate
with Mr. Rozer Kumar Aggarwal, Advocate
for the petitioner.

Ms. Shruti Jain Goel, AAG, Haryana.

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DEEPAK SIBAL, J. :

Through the present petition, challenge is made to the order dated 01.04.2008 (Annexure P-5), through which, the date of enlistment of the petitioner in Promotion List-E, promotion as Sub Inspector (SI) and confirmation as SI have been changed from 01.04.1980 to 01.10.1984, 01.04.1984 to 14.11.1984 and 31.01.1985 to 31.08.1987 respectively.

After hearing learned counsel for the parties and perusal of the record, the uncontroverted facts, which need to be noticed are that in the

year 1971, the petitioner was appointed as an Assistant Sub Inspector (ASI) in the Haryana Police. Between the years 1972 to 1974, the petitioner was conveyed several adverse remarks including remarks with regard to doubt on his integrity. The petitioner's representation against the aforesaid remarks was considered and rejected through order dated 19.07.1975 by the Deputy Inspector General of Police (DIG). As per the applicable instructions, the effect of the adverse remarks on the petitioner's confirmation and further promotion was to remain for 10 years, but disregarding the same, in the year 1975, the petitioner was confirmed as an ASI and consequently, through order dated 14.11.1984, promoted as SI, which through order dated 06.02.1986, on his representation was ante dated to 01.04.1980. Thereafter, the petitioner was confirmed on Promotion List-E w.e.f. 31.01.1985.

As noticed above, the petitioner's representation, against the adverse remarks communicated to him, was rejected by the Deputy Inspector General of Police, through order dated 19.07.1975. However, after a lapse of over 15 years, the petitioner made a second representation dated 29.10.1990 for expunction of the adverse remarks conveyed to him for the period from 1972 to 1974, which, through order dated 01.01.1991, was accepted by the then Deputy Inspector General of Police and resultantly, his adverse remarks stood expunged. When this fact came to the knowledge of the Director General of Police, Haryana, he issued notice to the petitioner so as to why the order dated 01.01.1991 be not withdrawn.

As per the Show Cause Notice, a second representation, under the applicable Rules and instructions, did not lie particularly after a lapse of over 15 years and that a successor-in-office could not review the order of his predecessor. The petitioner submitted reply to the Show Cause Notice, which was considered and rejected through order dated 19.02.1996. As a result thereof, order dated 01.01.1991 was held to be without jurisdiction and ordered to be withdrawn. Based on the aforementioned order of the DGP, Haryana, the petitioner was issued Show Cause Notice so as to why the dates of his promotion given earlier be not changed accordingly. After considering his reply to the Show Cause Notice, the impugned order was passed.

The order impugned in the present petition is primarily based on the afore-referred order dated 19.02.1996 passed by the DGP, Haryana. The petitioner was well aware of the passing of the aforesaid order dated 19.02.1996 as the same was preceded by a Show Cause Notice, to which the petitioner had also filed a reply. However, a perusal of the writ petition shows that the petitioner has not disclosed the factum of the proceedings undertaken by the DGP leading to the passing of order dated 19.02.1996. This fact and the order has been withheld by the petitioner, which according to me, was crucial. Conveniently, the petitioner has bye-passed the order dated 19.02.1996 passed by the DGP, Haryana to wrongly project that the petitioner, in the year 1986, was ordered to be promoted as SI w.e.f. 01.04.1980 and after the passage of nearly 20 years, he received a Show

Cause Notice so as to why his dates of confirmation and promotion be not changed. The crucial intervening event, which took place in the year 1996 and which formed the basis for the change of the petitioner's date of confirmation and promotion was conveniently bye-passed. For suppression of this fact, I conclude that the petitioner has not come to the Court with clean hands and as per the settled law, for doing so, he has disentitled himself to be even heard on merits.

Irrespective of the above, after having heard learned senior counsel for the petitioner, I am of the opinion that the petitioner, even on merits, has no case. The order dated 19.02.1996 passed by the DGP, which forms the basis of the order impugned in the present petition, has not been challenged and once there is no challenge to that order, it would be virtually impossible to set aside the order impugned in the present petition.

The main thrust of the arguments of the learned senior counsel appearing for the petitioner is that the impugned order dated 01.04.2008 seeks to review the earlier order dated 01.01.1991 passed in favour of the petitioner expunging the adverse remarks recorded against him between the years 1972 to 1974 and this, according to him, is not permissible in view law laid down by this Court in **L. P. A. No. 398 of 2011 – State of Haryana vs. ASI Dharambir Singh** decided on **18.05.2011** and a judgment of a Single Bench of this Court in **C. W. P. No. 206 of 2007 – ASI Dharambir Singh vs. State of Haryana**, decided on **11.05.2010**.

It is further submitted that the benefit of confirmation,

promotion and placement in Promotion List-E granted to the petitioner between the years 1984 to 1986 could not have been withdrawn through the impugned order dated 01.04.2008 i.e. after the delay of over 22 years and that too, especially when the petitioner had retired in April 2009.

The argument of the learned senior counsel for the petitioner that a successor-in-office cannot review an order passed by his predecessor, in fact, cuts the petitioner's case itself. On 19.07.1975, the petitioner's representation against the adverse remarks conveyed to him doubting his integrity had been rejected by the concerned DIG. After 15 years of its rejection, the petitioner, seeking the same relief, moved another representation which, through order dated 01.01.1991, was accepted by the then DIG, a successor in office of the earlier DIG, who had earlier rejected the petitioner's representation.

Once the concerned DIG had rejected the representation made by the petitioner against the adverse remarks conveyed to him, then that order, on another representation, could have not been reviewed and overruled by his successor-in-office, especially after a lapse of 15 years, in the absence of any statutory provision to back the same.

The mischief resulting through order dated 01.01.1991, when brought to the notice of DGP, Haryana i.e. the highest police functionary in the State, was rightly corrected through order dated 19.02.1996 after following the principles of natural justice. In fact, it was the duty of the DGP, Haryana being the highest police functionary in the State to take such

corrective measures. This was also in line with the law settled by the Apex Court in **Vinod Kumar vs. State of Haryana and others – 2013 (16) SCC 293**, wherein it was held as under :-

“19. Thus, if wrong and illegal acts, applying the aforesaid parameters of judicial review can be set aside by the courts, obviously the same mischief can be undone by the administrative authorities themselves by reviewing such an order if found to be ultra vires. Of course, it is to be done after following the principles of natural justice. This is precisely the position in the instant case and we are of the considered opinion that it was open to the respondents to take corrective measures by annulling the palpably illegal order of the earlier DGP, Haryana.”

Thus, the order dated 01.01.1991, expunging the adverse remarks pertaining to doubtful integrity of the petitioner, was rightly overruled by a superior officer in the hierarchy and as a consequence, the adverse remarks of doubtful integrity against the petitioner were revived on his service record.

Even otherwise, the second representation made by the petitioner after 15 years of the rejection of the first, as per the applicable Rules and instructions, did not lie. Rule 13.7 of the Punjab Police Rules, 1934 (hereinafter referred to as – the Rules) read with the instructions of the Government of Haryana dated 28.08.1962 and also 21.05.1971 and the

standing order dated 08.02.1999 clearly provide that no second representation against the conveyed adverse remarks is maintainable.

In this regard, the following observations of the Apex Court in **Vinod Kumar's** case (*supra*), while interpreting Rules 13.7 and 14.7 of the Rules, can usefully be referred to :-

“16. Thus, these Rules only pertain to recording of ACRs. There is no provision in the Rules containing any procedure for dealing with representations against the ACRs. That is provided in 1962 and 1999 Instructions, already taken note of above. Therefore, the High Court rightly rejected the contention of the appellant predicated on these Rules. Thus, we find that on the face of it, the second representation preferred by the appellant, in which the ACRs were expunged was not permissible. It was not only contrary to 1962 and 1999 Instructions, but was made after 9½ years from the date when first representation against the ACR was rejected.”

In view of the afore-referred authoritative pronouncement by the Apex Court, while interpreting Rules 13.7 and 14.7 of the Rules read with the applicable Instructions/standing order, the petitioner's second representation made in the year 1990 was not maintainable and thus, the order passed thereupon was resultantly, without jurisdiction.

As per the stand of the State of Haryana, in its written statement, which is un rebutted, the effect of the adverse remarks pertaining

to doubtful integrity was to remain, as per the applicable Government instructions, for a period of 10 years and since the adverse remarks were for the period 25.06.1974 to 30.09.1974, their effect was to be till 30.09.1984. Resultantly, through the impugned order dated 01.04.2008, the enlistment of the petitioner in Promotion List-E, promotion as SI and confirmation as SI, after following the principles of natural justice, were changed from 01.04.1980 to 01.10.1984, 01.04.1984 to 14.11.1984 and 31.01.1985 to 31.08.1987 respectively.

In view of the facts and the position of law, as noticed above, the impugned order dated 01.04.2008 needs no interference.

Resultantly, finding no merit in the present petition, I order dismissal of the same with no order as to costs.

(DEEPAK SIBAL)
JUDGE

February 17, 2016
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