

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP NO. 18627 OF 2016
DECIDED ON : 08.09.2016

Devi Singh

...Petitioner

versus

The State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present : Mr. S. S. Sahu, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J. (Oral)

1. The petitioner was charged of criminal offences in two FIRs: one lodged under the Excise Act while the other registered under the provisions of the Prevention of Corruption Act, 1988. The petitioner is a policeman. The police department itself registered these cases against him. In the Excise Act case, the petitioner was discharged by the trial Court, which means that not even the charge was framed. In the Prevention of Corruption Act case, the petitioner was acquitted as no evidence was found against him of demanding or accepting bribe. His presence was not established at the spot. The trial Court acquitted the petitioner and did not resort to give him the benefit of doubt. The petitioner was found innocent of

both the allegations levelled against him.

2. Leave aside the two criminal proceedings; the petitioner was tried in departmental inquiries initiated against him for the same offences as were involved in the criminal cases and which have been filed. The petitioner is innocent in the criminal trials and in the departmental inquiries. There is no dispute that during the relevant period; which constitutes the subject matter of the challenge in the present petition for expunging the adverse remarks, the petitioner's ACRs for the period 01.04.2006 to 01.05.2006 and 19.06.2006 to 31.03.2007 were recorded adverse to him by the reporting officer which will if left on service record affect his chances of promotion and may visit him with evil civil consequences for other service benefits. When all the obstacles stood removed from his way, then the petitioner made a representation to the reporting officer to review the ACRs in the changed circumstances and to upgrade them since the foundation of the remarks stood obliterated with the discharge in the one of the charges in the criminal case and acquittal in the other presently coupled with the dropping of the departmental proceedings. In the ACR sheet the petitioner's integrity had been observed to be dishonest by the Superintendent of Police, Hisar. In the column of 'General remarks', he was dubbed to be an unreliable and dishonest officer. These remarks are of very serious nature which may normally have not called for any interference but when they are juxtaposed with the criminal case registered against the petitioner during the same period then the result of the proceedings would certainly have a direct bearing on them. This Court may still have refrained from interfering but interference in the opinion of this Court is warranted in motion hearing at

the first hearing as the impugned actions have no legs to stand on especially in view of the conclusive reasons recorded and assigned by the Director General of Police, Haryana, in his orders passed on the representation made to him by the petitioner for expunging the adverse remarks in the changed scenario. The Director General of Police, Haryana records in para. 7 of his order dated 13.01.2015 in no uncertain terms the following reasoning, on which in the opinion of this Court, then the case tilts and leans heavily in favour of the petitioner, to quote:-

“Since, the representationist (Head. Constable Devi Singh No.135/HSR) has been acquitted in both the criminal cases and both the departmental inquiries initiated against him have since been filed. As such there is no basis to sustain the adverse remarks recorded in his ACR for the period from 01.04.2006 to 01.05.2006 and 19.06.2006 to 31.03.2007. However, as per government institutions issued vide No.2784-3S-70 dated 22.03.1971, there is no provision to entertain second representation against the adverse remarks.”

(emphasis added)

3. The Director General of Police, Haryana has taken a firm and positive view that there is no basis to sustain the adverse remarks recorded in the petitioner's moot ACR for the moot period but still Haryana Government instructions dated 22.03.1971 went on to hold by sticking to the letter of the instructions that the instructions disabled him to entertain a “second representation” against the adverse remarks and therefore he was not empowered to cure the malady. Even assuming that there were instructions dated 22.03.1971, which say as much in a forgotten era in the development of law the same would be liable to be declared illegal because they obstruct justice and for justice, there can be unlimited representations

so that all signs of bureaucratic misinterpretation of law and looking at a case from the wrong and myopic angle are removed from the face of official record to restore the way to administrative justice. This is where the writ of certiorari comes into play for justice administered through the writs in Article 226 of our Constitution.

4. With a view to resolve this matter immediately and without needless delay in inviting responses in writing by way of written statements only to defend the indefensible at the cost of the petitioner's rights for no sufficient reason, this Court considers this a fit case to issue notice of motion to the State of Haryana through its law officer to cure the error of reasoning.

5. Therefore, on the asking of Court, Mr. Harish Rathee, learned Senior DAG, Haryana, is requested to accept notice on behalf of the respondents and waive service upon them through summons. Two copies of the petitions have been supplied to him in the Court.

6. In view of the order proposed to be passed and the grave error in the reasoning of the order of the Director General of Police, Haryana, it would not be necessary to receive reply from the State to defend as said earlier, the indefensible.

7. Mr. Harish Rathee has been gracious enough to submit that there are subsequent instructions of the Government which cure the ill effects and shortcomings of the Government instructions dated 22.03.1971 and permit representations to be decided after rejection in the changed circumstances and supervening events which go to the root of the matter and ensure that justice is done. Instructions cannot be read to obstruct the

path to justice. Rejection can never be for all times to come in the face of newfound material justifying departure. Besides, a wrong in hindsight can always be cured by the administrator for which there are no limitations prescribed in the enacted law.

8. It is always open to the administrative authority to reconsider cases on the basis of future events that have transpired which alter the complexion of the case. In this case, acquittal, discharge in the criminal cases and exoneration in the departmental inquiries, removes the very basis of recording adverse remarks for the disputed period recorded on the same set of allegations as in the FIRs and regular enquiry stands washed out as held by the Director General of Police himself in para 7, of the order quoted and reproduced above. This Court relies strongly upon the finding of Director General of Police, Haryana himself when he observes that *“there is no basis to sustain the adverse remarks recorded in his ACR for the period from 01.04.2006 to 01.05.2006 and 19.06.2006 to 31.03.2007”*.

9. Then I may ask what else remains adverse on record of the petitioner with regard to the subject-matter to postpone declaration of his rights to time and tide of litigation and judgment in case notice of motion is issued today returnable on a future date and leave the case hanging fire when ultimately the orders will inevitably be to remand the case for reconsideration by the authorities in accordance with law.

10. In view of the above facts and circumstances the petition is allowed in *limine*. As a corollary of the discussion above, the impugned orders dated 05.07.2016 rejecting the mercy petition and further order dated 20.08.2014 passed by the Director General of Police, Haryana to the extent

adverse are annulled by certiorari issued.

11. Consequently, the orders subsequently forwarded to the Administrative Head of the Home Department, Government of Haryana for proceedings are set-aside. The respondent-State is directed to reconsider the matter and to pass a fresh reasoned order in accordance with law after hearing the petitioner in case there is anything else adverse to him, which is not forthcoming from the record of the writ file. A direction is issued that on remand the exercise be done within two months from the date of receipt of certified copy of this order. Order dasti.

(RAJIV NARAIN RAINA)
JUDGE

SEPTEMBER 08, 2016
shalini

Whether speaking/reasoned ?

Yes

Whether reportable ?

Yes