

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

**CWP No.21628 of 2014 (O&M)
Date of decision: 17.03.2016**

Insp. Virender Singh

.....Petitioner

Versus

The State of Haryana and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.N. Yadav, Advocate,
for the petitioner.

Mr. Rajesh Gaur, Addl. A.G., Haryana.

Ritu Bahri, J.

The petitioner is seeking a writ of certiorari for quashing the order dated 03.03.2006 (Annexure P-9) passed by the Director General of Police-respondent No.2, vide which, after a gap of more than six years, the order dated 21.05.1998 expunging adverse remarks in his ACR, has been set aside. Further prayer has been made to quash the orders dated 05.11.2009 and 02/09.07.2014 (Annexures P-11 & P-13 A), whereby his appeal has been dismissed.

The petitioner, while posted as Head Constable in Police Station, Govt. Railway Police, Rewari, allegedly confined Sh.Ram Avtar son of Ram Narayan in police lock-up illegally and deprived him of case and a sliver ring on the intervening night of 26/27.05.1987. After conducting a departmental enquiry, punishment of censure was inflicted on him vide order dated 23.05.1988 (Annexure P-1). The said punishment order was

dated 07.05.1990 (Annexure P-3). On the basis of aforesaid allegation, adverse remarks of doubtful integrity were recorded in his ACR for the period from 08.07.1987 to 24.11.1987 (Annexure P-2) by Superintendent of Police. The petitioner was due to cross the efficiency bar w.e.f. 01.05.1994 in the pay scale of Rs.1200-30-1560/EB-40-2040/-. But due to his adverse service record i.e. "honesty doubtful", it was held up. The representation made by the petitioner against adverse remarks in his ACR, was rejected by the DIG, Railways & Commando, vide his order dated 20.12.1994 being time barred. His second representation was rejected with the remarks that the second representation was not maintainable. Thereafter, he filed another representation dated 08.09.1997, which was accepted by the Deputy Inspector General of Police, Railways & Commando, Haryana and adverse remarks were expunged. The main reason for expunging the adverse remarks was that the punishment of censure had been quashed by the then DIG/R&C (H) vide his order dated 07.05.1990. Hence, there was no material left to sustain the adverse remarks in the ACR. Earlier orders rejecting the representations dated 20.12.1994 and 04.05.1995 were reviewed and the adverse remarks in the ACR were expunged vide order dated 21.05.1998 (Annexure P-6A). Thereafter, a show cause notice dated 01.12.2005 (Annexure P-7) was issued to the petitioner to reconstruct the adverse ACR. The petitioner gave his reply (Annexure P-8) to the said show cause notice and thereafter, the impugned order dated 03.03.2006 (Annexure P-9) reconstructing the adverse ACR was passed by the Director General of Police, Haryana. The main ground for reconstructing the adverse ACR was that a third representation was not maintainable against the adverse remarks, as per Government instructions dated 22.03.1971. Even a

second representation would not lie against the adverse remarks. The third representation was unlawfully accepted by the then DIG/Railways & Commandos, Haryana vide order dated 21.05.1998. Appeal against the above said order was dismissed vide order dated 05.11.2009 (Annexure P-11) passed by the Financial Commissioner & Principal Secretary to Government of Haryana, Home Department. Ultimately, the review petition filed by the petitioner was dismissed on 09.07.2014 (Annexure P-13A).

The stand taken by the respondents in their written statement is that the petitioner had filed a representation against the adverse remarks in the year 1990 i.e. after the lapse of prescribed period of three months. His representation was rightly rejected being time barred on 07.12.1994 (Annexure P-4A). His second representation was not entertained as per letter dated 04.05.1995 (Annexure P-5). He was rightly not allowed to cross the efficiency bar on account of adverse entries in his ACRs. However, vide order dated 21.05.1998 (Annexure P-6A), his adverse remarks were expunged and thereafter, vide order dated 03.03.2006 (Annexure P-9), they were reconstructed. After dismissal of his review application on 09.07.2014 (Annexure P-13A), the present petition has been filed by the petitioner. It has been further stated that even the present petition challenging the adverse ACR recorded in the year 1987 and reconstructed in 2006, is time barred. The petitioner had been promoted as Inspector on 26.06.2014 and now he has been retired from Government service on 30.11.2014.

In **Randhir Singh Vs. State of Haryana and others**, CWP No.867 of 2007, decided on 29.03.2007 (Annexure P-16), a Division Bench of this Court was examining a case of adverse remarks of 'doubtful integrity', which were reflected in the ACR of the petitioner for the period from

01.04.1995 to 02.07.1995. Representation against the adverse confidential report was made on 23.11.2001 i.e. after a gap of six years, which was dismissed being belated. The Division Bench observed that the petitioner had filed a civil suit at Sirsa against the punishment order dated 25.05.1995 and the appellate order dated 16.07.1996, whereby the punishment of stoppage of two increments with cumulative effect was imposed upon him. The suit was decreed by giving liberty to the department to initiate a fresh enquiry. The State after considering the matter, decided to file the same on 11.07.2002. In the above background, a second representation dated 11.08.2003 seeking expunction of the adverse remarks was made. The second representation was on account of a fresh cause of action after the civil suit had been decreed and the department had refused to initiate fresh enquiry vide order dated 11.07.2002. Vide order dated 26.08.2003, the Director General of Police, Haryana, expunged the above said ACR. However, the successor Director General of Police, Haryana after issuing a show cause notice, set aside the order dated 26.08.2003 on the ground that a second representation for expunction of adverse remarks could not be entertained in view of the Government instructions **dated 22.03.1971**. These instructions permit filing of only one representation for expunction of adverse report. Since the very basis, on which the annual confidential report was recorded, had been annulled vide judgment and decree dated 24.05.1999 and the Government, vide order dated 11.07.2002, had decided to file the matter, the adverse remarks were wholly unjustified in the facts and circumstances of the case. Hence, on account of fresh cause of action, after 11.07.2002, the representation dated 11.08.2003 was rightly entertained by the Director General of Police by expunging the adverse

remarks. The ratio of the aforesaid judgment has been followed by a Co-ordinate Bench of this Court in **SI Gheesa Ram Vs. State of Haryana and others**, CWP No.796 of 2012, decided on 18.11.2013 (Annexure P-15). This was a case where FIR No.30 dated 20.08.2008, under Section 7/13 of the Prevention of Corruption Act, 1988 had been registered against the petitioner. For want of sanction under Section 197 Cr.P.C., the cancellation report had been accepted. Even in the departmental proceedings, he had been found to be innocent. The Superintendent of Police, Kurukshetra had accepted the enquiry report and found him to be innocent. The period of suspension was treated as period spent on duty and in this backdrop, the first representation could not have been rejected being time barred. Even the second representation could not have been rejected on the ground that no second representation lies against the adverse remarks as per Haryana Government instructions dated 22.03.1971. Ultimately, the impugned order rejecting the representations were set aside and the department was given direction to pass a speaking order.

In the facts of the present case, even though the petitioner has since retired on 30.11.2014, but entry of adverse remarks in the ACR would cause a mental agony throughout his life, especially when the very basis for recording the ACR did not exist. The departmental proceedings and censure awarded to him had been quashed. After the Government had decided not to initiate fresh proceedings, there was no reason to retain the adverse ACR in the record of the petitioner. Following the ratio of the judgment passed by the Division Bench of this Court in **Randhir Singh's** case (supra), this Court is of the view that after the adverse remarks of ACR was expunged vide order dated 21.05.1998 (Annexure P-6A), the show

cause notice dated 01.12.2005 (Annexure P-7) and thereafter, the impugned order dated 03.03.2006 (Annexure P-9) reconstructing the adverse ACR could not have been passed by the respondent-authorities.

In view of the above discussion, the present petition is allowed and the impugned orders dated 03.03.2006, 05.11.2009 and 02/09.07.2014 (Annexures P-9, P-11 & P-13 A) are set aside. No order as to costs.

17.03.2016
ajp

(RITU BAHRI)
JUDGE