

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.28678 of 2013 (O&M)

Date of Decision: 10.3.2016

Chamkaur Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Lakhwinder Singh Mann, Advocate for the petitioner

Mr.Nikhil K.Chopra, DAG, Punjab

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. The author of the adverse remarks recorded in the petitioner's ACRs for the period 2006-2007 has retracted from those remarks and recommended expunging of the same. Therefore it is argued that they deserve to be expunged unless the reporting officer was suborned by the petitioner to backtrack. In the written statement, no such stand has been taken that the Reporting Officer was browbeaten by the petitioner to withdraw the comments and on that account, he changed his view. Therefore, no comment can be made by this Court, except to infer that the recommendation is genuine.

2. Besides, the so called adverse remarks are mere *ipse dixit* made by the reporting officer are not supported by any tangible evidence to form an opinion. They are at best a personal and subjective view made generally and without due reflection which can hardly be said to be objective assessment of work and conduct of the petitioner during the period of assessment. They are as arbitrary as are neither here nor there and no sense is capable of being derived from the

use of such language which defines nothing of the manner of speech, or what

sort of “behaviour” is required for promotion and which of the orders was disobeyed or from which quarter was political pressure was applied. These are not the words which should be used while recording ACR. There should be sufficient precision in the use of words. They are in any case at best advisory on which promotion could have been properly denied. The remarks are reproduced below:-

“(a) Your way of talking is not good.

(b) If you improve your behaviour, then only you can be considered for the promotion.

(c) You do not obey the orders of your seniors and exerts political pressure.”

3. The petitioner's representation to the superior officer for expunging the remarks remained unsuccessful when representation was rejected by the impugned order dated 2nd August, 2013 vide Annex.P-17 passed under the directions of this Court in CWP No.24587 of 2012 filed by the petitioner. The only reason used against the petitioner to decline the prayer is that he made no enquiries as to the result of the recording of the adverse remarks of the ACRs for two years and the delay in doing so is to be read against him.

4. In the representation filed before the competent authority dated 14th July, 2013, the petitioner, on the query put by the reviewing authority, answered that he thought all the while that the adverse remarks have been expunged, in view of the recommendation made by the reporting officer of which he was apprised by the reporting officer. The other reason shown is that the petitioner has woken up after the promotion of person junior was made on ignoring his claim from which it is inferred by the reviewing authority that the petitioner was not himself serious about his representation. There could be no doubt that the recommendation made by the reporting officer is part of official record since

the Superintendent has written to the Assistant Director (Official-I) of the Department of it. Furthermore, the recommendation of the Superintendent Technical, ITI, Nabha dated 30th August, 2007 (Annex P-3) which recommends expunging of the adverse remarks is recited in the contents of paragraph 8 of the writ petition.

5. In the written statement filed by the State, in the reply to the contents paragraph 8 of the writ petition have been admitted as a matter of record which amounts to an admission. It is well settled that what is not specifically denied, stands admitted. In view of this incontrovertible position, the impugned order dated 2nd August, 2013 (Annex.P-17) does not deserve to be sustained. The Director, TEIT Department has taken into account irrelevant considerations while the relevant consideration has not been examined as to the effect of the reporting officer withdrawing his remarks which removes the basis of the adverse remarks. Normally, interference in matters relating to remarks recorded in the ACR suffers narrow and restricted jurisdiction under Article 226 of the Constitution, but in a case where the hurtful remarks have been recommended to be removed by its author in toto, then there is no reason why those remarks should be allowed to stand and be used against the petitioner in the future detrimental to his interest. Time is not the essence in the present case when it involves recurring cause of action of loss of promotion and therefore a ground like delay etc. should not be used where valuable rights are involved which are in the nature of a fundamental right [Articles 14 & 16] causing recurring financial loss. The ACRs are the real wealth of an officer which marks his future career and ill-thought out remarks may result in serious damage and injury to a person aggrieved by the sting of the remarks with no tangible material to substantiate them. Interference is eminently called for in this case

order dated 2nd August, 2013 (Annex P-17) is quashed. Insofar as promotion of the petitioner is concerned with effect from the date his juniors were promoted that issue is left to be decided by the Administrator in the first instance since the only obstruction in the way of promotion in the year 2009 was the adverse remarks recorded in the year 2006-2007 for which reason person junior stole a march over the petitioner. When the solitary impediment is removed from the way of the petitioner, the petitioner would remain at liberty to make a demand for justice to the competent authority amongst the respondents claiming ante-dated promotion from the date the admitted junior was promoted. The petitioner would be free to file a supplementary appeal to the competent authority and together with copy of this petition, both of which will be taken up and decided within three months from the date of receipt of a certified copy of this order. The opportunity granted to the petitioner to request for promotion is for the reason that the case for ante-dated promotion of the petitioner has not been considered by the Department so far because of the adverse ACRs there being no occasion to do so by Departmental Promotion Committee. The view that the administrator takes is not known, and therefore, cannot be judicially reviewed at this stage. That part is left to the promoting authority to consider in accordance with law.

(RAJIV NARAIN RAINA)
JUDGE

10.3.2016

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