

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

**CWP No. 10408 of 2015
Date of Pronouncement: 03.02.2017**

Dharam Pal Sharda

...Petitioner

Versus

State of Punjab & Others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Pawan Kumar, Senior Advocate with
Mr. Vipin Kumar, Advocate
for the petitioner.

Mr. Rupam Aggarwal, DAG, Punjab
for respondent Nos. 1 and 2.

Mr. D. S. Patwalia, Senior Advocate with
Mr. Sehaj Bir Singh, Advocate
for respondent No. 3.

None for respondent Nos. 4 and 5.

JAISHREE THAKUR, J.

The instant writ petition has been preferred under Article 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for quashing the impugned order dated 14.03.2015 (*Annexure P-5*) by which the petitioner has been granted 2.5 marks in his Annual Confidential Report (*for short 'ACR'*) for the years 1993-1994 with a prayer that the ACR for the said years be upgraded to 'Very Good' and consequently he be given all benefits from the date when his juniors were promoted.

2. In brief, the facts of the case are that the petitioner came to

be appointed as Audit Officer in the year 1987. His ACR for the years 1993-1994 was recorded by the then Secretary Cooperation as being 'Doubtful'. The petitioner filed a statutory representation for expunging these remarks but the same authority who had recorded the ACR decided the said representation while exercising the powers of Financial Commissioner, Cooperation. The petitioner filed a writ petition bearing **CWP No. 7900 of 1999** challenging the remarks recorded in the ACR as well as the order dismissing his representation. The petitioner also faced proceedings under Section 7 of the Prevention of Corruption Act and was sentenced by the Special Judge, Hoshiarpur vide order dated 05.03.2001, on the basis of which he was dismissed from service and remained out of service w.e.f. 16.10.2002 to 23.02.2011. The petitioner herein challenged the said conviction by filing a criminal appeal to the High Court and vide order dated 08.04.2010, the High Court while allowing the appeal by giving him the benefit of doubt, set aside the order dated 05.03.2001. Consequently, the petitioner was reinstated on 23.02.2011. The writ petition bearing **CWP No. 7900 of 1999** was also allowed by an order dated 12.11.2014 and the remarks as recorded in the ACR was set aside with a direction to the Secretary Cooperation to re-examine the adverse remarks in the ACR for the period 01.04.1993 to 31.03.1994. After the matter was remanded back, the Secretary Cooperation revisited the ACRs of the petitioner. While relying upon instructions No. 4/6/2000-3PP1/13720 dated 06.09.2001 (**Annexure P-6**) which laid down the scheme for evaluation of marks to ACRs as 'Outstanding' – 4 marks, 'Very Good' – 3 marks, 'Good' – 2 marks and 'Average' – 1 mark, 2.5 marks were granted to the petitioner

for the years 1993-1994 by taking average of the ACRs for 12 years as per the formula suggested by the High Court while disposing of **CWP No. 7900 of 1999**. Aggrieved against awarding of 2.5 marks by the impugned order dated 14.03.2015, the instant writ petition has been preferred.

3. Learned Senior counsel appearing on behalf of the petitioner contended that the respondent concerned has not graded the petitioner correctly. It is argued that a circular has been issued on 29.07.2011 (**Annexure P-10**) which specifies as to how ACRs are to be recorded of an employee and as per the performa circulated, the ACR is to be recorded and overall grading has to be made in the ACR on a numerical grading. The same is reproduced below:

Numerical Grading	Recording
81-100%	Excellent
61-80%	Very Good
51-60%	Good
31-50%	Average
30%	Below Average

4. It is also submitted that the petitioner is entitled to rounding off, of 2.5 marks to 03 marks as given to him and in case that is done, he would have the necessary marks to be considered for promotion. It is argued that if the grading is done in a numerical manner then the remarks would become 'Very Good' which would in turn entitle him for 03 marks as per the instructions dated 06.09.2001 which again would give him the necessary marks to be considered for promotion to the post of Chief Auditor.

5. Per contra, learned counsel for the respondent-State and

private respondent urge that pursuant to the decision of the High Court in ***CWP No. 7900 of 1999***, the ACRs of the petitioner for the years 1993-1994 was recorded as 'Good'. This was done keeping in view the decision of the High Court to award marks to the petitioner after considering the average of entire ACRs as available. It is submitted that 12 years' ACRs of the petitioner were taken into account and he was assessed 2.5 marks by taking the average of the same. It is also submitted that since the ACR of the years 1993-1994 were to be revisited and it has to be done as per the instructions dated 06.09.2001 and not on the basis of the circular issued on 29.07.2011 (***Annexure P-10***) which provided for numerical grading. It is also argued that the petitioner could not ask for rounding off the marks as the same was impermissible. It is also urged that since he does not have the requisite 15 marks, he could not be considered for promotion.

6. I have heard learned counsel for the parties and have perused the record of the case.

7. The question that needs to be decided is whether there has been a compliance of the orders passed in ***CWP No. 7900 of 1999*** while remanding the matter back to the Secretary Cooperation giving a direction that the average ACRs of the petitioner have to be considered and he should be graded accordingly. The Secretary Cooperation in compliance with the orders passed in ***CWP No. 7900 of 1999***, looked at 12 ACRs of the petitioner and while relying upon the instructions dated 06.09.2011 (***Annexure P-6***) awarded 2.5 marks.

8. The contention as raised by the learned senior counsel for the petitioner that he would be entitled to rounding off, of 2.5 marks is

impermissible as per the law laid down in *Orissa Public Service Commission & Ors. Vs. Rupashree Chowdhary & Ors., (2011) 8 SCC 108*, wherein, the Hon'ble Apex Court has held that:

“There is no power provided in the statute/Rules permitting rounding off or giving grace marks so as to bring up a candidate to the minimum requirement. In our considered opinion, no such rounding off or relaxation was permissible. The Rules are statutory in nature and no dilution or amendment to such Rules is permissible or possible by adding some words to the said statutory rules for giving the benefit of rounding off or relaxation.”

9. In the case of *Bhanu Pratap vs. State of Haryana and others, (2011) 15 SCC 304*, the Hon'ble Apex Court has also held that:

“Somewhere a line has to be drawn and that line has to be strictly observed which is like a Lakshman Rekha and no variation of the same is possible unless it is so provided under the Rules itself. Both the Selection Committee as also the appointing authority are bound to act within the parameters of the Rules which are statutory in nature and any violation or any relaxation thereof whether by way of giving grace marks or rounding off would be acting beyond the parameters prescribed which would be illegal.”

10. The second contention as raised that the ACR should have been graded on a numerical basis on the basis of the circular that was issued in the year 2011 is also not sustainable on account of the fact that there were clear cut directions given by the High Court in *CWP No. 7900 of 1999* which is as under:

"In re-examining the adverse remarks in the ACR for the period 1st April, 1993 to 31st March, 1994, the Secretary, Cooperation Punjab, Chandigarh shall remain guided by the ACRs of the petitioner recorded prior to 1st April, 1993 and after 31st March, 1994 and may take the average of those remarks as guidance while passing an appropriate order exercising the power of review as no better solution can be found in the peculiar circumstances

and the predicament Mr. C. L. Bains has placed this Court for his improper actions which law forbade."

11. The respondents having adhered to the formula as laid down by this Court, which judgment has become final as it was not challenged by the petitioner herein, gave the petitioner 2.5 marks. As per the circular dated 06.09.2001 (***Annexure P-6***), issued by the Department of Personnel, ACRs for the last five years are to be taken into consideration for promotion and the criteria prescribed for promotion were as under:

(1) The case pertaining to the promotions as Head of Departments would be decided strictly on the basis of merit-cum-seniority. The minimum bench mark for promotion for such posts would be 'Very Good'. The marking system adopted earlier in instructions dated the 29th December, 2000 would be followed and a minimum of 15 marks would be required to be considered as Very Good. The Officer who is graded as Outstanding would supersede the officer graded as Very Good.

(2) For promotion to posts falling in Group 'A' other than Head of Departments, the minimum bench mark will be Very Good with atleast 12 marks. Amongst those meeting this criteria, there would be no supersession.

(3) In the case of promotion to posts falling in Group 'B' the minimum bench mark will be 'Good' and there would be no supersession i.e. promotions would be made strictly on seniority-cum-merit.

(4) For making promotion in all the categories there should not be any adverse remarks in the ACRs under consideration.

12. As per the above, the petitioner would be required to obtain 15 marks in the last five years which criteria has not been fulfilled by the petitioner. The petitioner not having the requisite marks would not be entitle for being considered for promotion. Therefore, in case the petitioner had any grievance regarding the formula to be applied for

awarding of marks/grading for the years 1993-1994 in his ACR, he should have challenged the orders so passed and stressed that the circular dated 29.07.2011 should have been applied. There is no infirmity in the order passed by the Secretary Cooperation while awarding him 2.5 marks for the year 1993-1994 which amounts into grading of 'Good'. By rounding of the marks has sought by the petitioner he would be awarded 'Very Good' which would be a quantum elevation from the grading 'Good'.

13. Therefore, in view of the above no ground is made out to interfere in the impugned order dated 14.03.2015 as the same has been passed in consonance with the directions as issued by the High Court.

14. Hence, the instant writ petition is dismissed being devoid of any merit.

February 03, 2017
Ansari

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No