

In the High Court of Punjab and Haryana at Chandigarh

C.W.P. No. 15096 of 2016
Date of Decision: March 29, 2017

Subhash Chand

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Anil Kshetarpal, Sr. Advocate with
Mr. Saurabh Garg, Advocate,
for the petitioner.

Mr. Karan Sharma, AAG, Haryana

P.B. Bajanthri, J. (Oral)

1. In the instant writ petition, petitioner has questioned the validity of orders dated 11.04.2016 (Annexures P/11 and P/12 respectively) and further sought for expunging adverse remarks recorded in the Annual Confidential Reports (hereinafter referred to as the “ACRs”) vide communication dated 12.05.2015 (Annexures P/3 and P/4 respectively).

2. The petitioner while working as Assistant Sub Inspector, competent authority has passed adverse remarks for the period from 05.10.2013 to 31.03.2014, 01.04.2014 to 08.06.2014 and 03.07.2014 to 23.11.2014. Petitioner was facing two disciplinary proceedings as on the date of communication of adverse remarks for the aforesaid period. Petitioner has been exonerated in both the disciplinary proceedings on 11.02.2014 and 05.12.2015. Petitioner submitted representation to the higher authority for expunction of adverse remarks for the three spells stated supra. The competent authority passed orders dated 11.04.2016 (Annexures P/11 and P/12) while confirming the ACRs for the aforesaid period. Hence, the present writ petition.

3. Learned counsel for the petitioner vehemently contended that the competent authority who has passed orders dated 11.04.2016 vide Annexures P/11 and P/12 has not taken into consideration that the petitioner has been exonerated in both the disciplinary proceedings on 11.02.2014

and 05.12.2015 despite that he has upheld the adverse remarks recorded by the competent authority to the extent in column no.10 that the petitioner was facing a DE for negligence in investigation work and so also in column no. 18 in Annexure P/12. It was further submitted that as on 11.04.2016 there was a new development that the petitioner has been exonerated in the disciplinary proceedings, therefore, the competent authority who has passed the orders on 11.04.2016 has not applied his mind to the extent of column nos. 10 and 18 respectively in the ACRs. Further, the contention raised by the petitioner in his representation has not been taken into consideration even though the same has been recorded, however, no finding has been given in the orders dated 11.04.2016. Therefore, orders dated 11.04.2016 (Annexures P/11 and P/12) are liable to be set aside.

4. Per contra, learned State counsel submitted that admittedly petitioner was facing disciplinary proceedings while writing the ACRs for the above-mentioned spells and it has been rightly recorded that the petitioner was facing disciplinary proceedings for negligence in investigation work. Even though the petitioner has been exonerated at the same time the conduct of the petitioner is required to be taken into consideration at the time of writing the ACRs, therefore, there is no infirmity in the orders dated 11.04.2016.

5. Heard learned counsel for the parties.

6. Curx of the matter is that whether the competent authority who has passed the orders dated 11.04.2016 is a speaking order or not. Further is there any consideration of the petitioner's representation against the ACRs or not.

7. Perusal of the orders, it is crystal clear that even though the competent authority has recorded the petitioner's contention in the representation, however, the same has not been either accepted or rejected. In other words, there is no consideration by the authority. That apart in the ACRs against column honesty, it has been written as doubtful so also honesty doubtful which is not supported by any material. In the absence of material, writing such adverse remarks would be without hearing the petitioner. That apart writing of doubtful or honesty doubtful is a conclusion and it is not supported by any reasons. In the present case, undisputedly

petitioner has been exonerated in both the proceedings, consequently, the matter is required to be reconsidered by the competent authority who has passed the orders dated 11.04.2016, hence Annexures P/11 and P/12 dated 11.04.2016 are set aside, reserving liberty to the author of Annexures P/11 and P/12 to pass fresh orders after due consideration of the petitioner's representation. Petitioner is also given liberty to file an additional representation, if any, within a period of two weeks. If such representation is made, the same shall be considered by the competent authority while passing orders.

8. With the above observations, instant writ petition stands allowed.

March 29, 2017
vkd

[P.B. Bajanthri]
Judge

Whether speaking / reasoned : Yes

Whether reportable : No