

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No.17123 of 2015

Date of decision: 03.10.2017

ASI-Mohinder Singh

...Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.S.K.Nehra, Advocate, for the petitioner.

Mr.Harish Rathee, Sr.DAG, Haryana.

G.S. SANDHAWALIA, J. (Oral)

The present writ petition has been filed under Article 226 of the Constitution of India, challenging the recording of the adverse remarks in the ACR for the period from 01.04.2012 to 31.03.2013 (Annexure P-2). Challenge has also been raised to the order dated 30.11.2013 (Annexure P-5) whereby the Inspector General of Police, Karnal Range, Karnal, rejected the representation of the petitioner by passing a non-speaking order.

Counsel for the petitioner has drawn the attention of this Court to the recording of the adverse remarks on account of Average rating and unreliability in Annexure P-2. Reference has been made to (column No.17) wherein the stoppage of 3 annual increments vide order dated 15.10.2012 (Annexure P-1) whereby the petitioner had wrongly arrested one Ashok Kumar in FIR No.42/12 lodged under Sections 279, 337, 304 IPC, at Police Station Radaur, has been recorded.

It is the case of the petitioner that his appeal against the said order dated 15.10.2012 had been allowed on 09.05.2013 (Annexure P-3) by respondent No.3 and only a censure had been imposed. It had been observed that the right person had been correctly arrested, namely, Ashok

Kumar, since Dr.Ajesh Goel met him and told him that the said person was driving the car. It is the case of the petitioner that once that was so, his representation against the adverse remarks which he had filed (Annexure P-4) should have been duly considered by the same respondent while deciding the objections against the adverse remarks recorded.

It is, accordingly, argued by Mr.Nehra that once the foundation, as such, of the stoppage of 3 annual increments, with permanent effect, no longer existed, the representation should have been given positive consideration. He, further submits that even otherwise, a comprehensive representation running into several pages have been filed and specific ground had been taken that the appeal filed by him had been accepted by the same officer on 09.05.2013. The reasons recorded in the impugned order dated 30.11.2013 read as under:

“During personal hearing the representationist was unable to disprove any of the adverse remarks by extending any justified contentions. The undersigned has carefully gone through the relevant record of this case and found that adverse remarks recorded in the ACR of the Representationist for the period from 1.4.2012 to 31.3.2013 are justified. As such the undersigned find no merit in the Representation of ASI Mohinder Singh No.153/A and the same is thus rejected being devoid of merit. The representationist may be informed accordingly under intimation to this office.”

From the perusal of the above, it would be clear that respondent No.3 has given no such valid reason for rejecting the representation. Reliance upon the judgment of the Apex Court in M/s

Kranti Associates Pvt. Ltd. & another Vs. Sh. Masood Ahmed Khan & others 2010 (9) SCC 496, by the counsel for the petitioner is well justified. The impugned order does not contain any reason vide which this Court could satisfy itself as to whether the reasoning is justified and liable to be upheld, especially once the major penalty imposed itself had been set aside. It has, accordingly, been held by the Apex Court as under:

“51. Summarizing the above discussion, this Court holds:

- a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
- b. A quasi-judicial authority must record reasons in support of its conclusions.
- c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
- f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
- g. Reasons facilitate the process of judicial review by superior Courts.
- h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the

principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due

Process”.”

Accordingly, the present writ petition is allowed and the order dated 30.11.2013 (Annexure P-5) is set aside. It is further directed that respondent No.3 shall decide the said representation afresh, keeping in view the above observations, within a period of 3 months from the receipt of the certified copy of this order.

03.10.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No