

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

CWP No.2262 of 2015

Date of Decision:20.04.2017

Rajender Parsad

... Petitioner

Vs.

State of Haryana and another

... Respondents

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

Present : Mr. R.K. Malik, Sr. Advocate with
Mr. Bhupinder Malik, Advocate for the petitioner.

Mr. Ravi Dutt Sharma, Addl. A.G. Haryana.

P.B. BAJANTHRI J. (Oral)

In the instant petition, the petitioner has questioned the validity of order dated 29.8.2013 (Annexure P-6) by which his claim for 1st ACP which is due on 1.1.1996 has been rejected on the score that the petitioner do not fulfill the requisite criteria of 70% satisfactory annual confidential reports.

The petitioner is stated to have been appointed as Patwari on 10.2.1986. He has completed 10 years of service in the year 1996. Grant of ACP scheme was introduced in the year 1998. As on the date of introduction of ACP scheme, the petitioner was placed under suspension and he was facing disciplinary proceedings and it was concluded in exoneration so also regulating the suspension period as duty on 22.4.2013. Thereafter, the petitioner approached the respondents for extending the benefit of 1st ACP as and when he completed 10 years of service. The same has been rejected with reference to the confidential reports for 10 years has been taken into consideration and petitioner do not fulfill the criteria of 70% of good confidential reports.

Learned counsel for the petitioner submitted that for 10 years from 1986 to 1996, the petitioner has earned the following confidential report:

“1986-87	Good
1987-88	Average
1988-89	Below Average
1989-90	Below Average
1990-91	Below Average
1991-92	Good
1992-93	Average
1993-94	Good
1994-95	Good
1995-96	Not available”

Learned counsel for the petitioner submitted that confidential reports for the year 1987-88, 1988-89, 1989-1990 and 1992-93 were not communicated, even though, confidential report has been written as average and below average. Further for the year 1995-96, the confidential reports are not available. Therefore, it was pointed out vide Anneuxre P-4 relating to convey of adverse remarks in which it is stated that no notice should be taken of adverse remarks if they have not been conveyed. In the present case, for four years confidential reports were not conveyed and for one year, it was not available. Consequently an average of five years is required to be taken into consideration. In other words, average of 5 years read with 70%, the petitioner had four good remarks. Therefore, he is entitled for 1st ACP as and when it is due to the petitioner. Therefore, calculation method of 70% of satisfactory confidential reports for 10 years is not correct in the present case.

Per contra, learned counsel for the respondents vehemently contended that even though the petitioner has not been communicated annual confidential reports for the years 1987-88, 1988-89, 1989-1990 and 1992-93 and confidential report is not available for the year 1995-96 but

still the petitioner had below average for the years 1988-89, 1989-90 and 1990-91 and average for the years 1987-88 and 1992-93. Therefore, the competent authority has rightly rejected the petitioner's claim for the grant of 1st ACP on the ground that he did not fulfill the criteria of 70% satisfactory confidential reports.

It was further submitted that vide No.1002/SK dated 22.03.1990 for adverse remarks in the confidential report for the year 1988-89 and similarly vide No.1678/SK dated 1.6.1992 for adverse remarks in the confidential report for the year 1990-91 and vide No.354 dated 9.3.1998 for adverse remarks in the confidential report for the year 1996-97 have been communicated to the petitioner. Therefore, for the above confidential reports is taken into consideration, the petitioner is not entitled for 1st ACP.

Heard learned counsel for the parties.

Rejection of the petitioner's claim for 1st ACP on the ground that the petitioner do not fulfill the 70% of satisfactory confidential reports which are required to be taken for 10 years. However, un-communicated annual confidential reports cannot be taken into consideration. Therefore, un-communicated remarks is for a period of four years and for one year report is not available. Consequently, five years average of 70% is required to be taken into consideration and not for 10 years.

Learned counsel for the respondents pointed out from the written statement that remarks for the years 1988-89, 1990-91 and 1996-97 have been communicated. Whereas un-communicated remarks is for the years 1987-88, 1988-89, 1989-1990 and 1992-1993 and not available for the year 1995-96. Further there is no question of considering the annual confidential report for the year 1996-97 for the reasons that the petitioner's

1st ACP was due only in the year 1996 itself. Therefore, order dated 29.8.2013 (Annexure P-6) passed by the respondents while calculating 70% of satisfactory reports cannot be accepted.

Consequently, order dated 29.8.2013 (Annexure P-6) is hereby set aside. Thus, the respondents are directed to re-examine 70% of confidential reports as satisfactory while excluding un-communicated remarks for the years 1987-88, 1988-89, 1989-90 and 1992 and 1993 read with not available confidential report for the year 1995-96. In other words, 70% is required to be calculated only for the communicated annual confidential reports for the years 1986-87, 1990-91, 1991-92, 1993-94, 1994-95. If the average of the above annual confidential reports are satisfactory to the extent of 70%, the petitioner be extended the benefit of 1st ACP as and when it is due in the year 1996. The respondents are directed to pass a speaking order in this regard. The above exercise shall be completed within a period of three months from today.

Petition stands disposed of accordingly.

20.04.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**