

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

CWP No.24240 of 2015

Date of Decision:20.02.2017

Subhash Chand

... Petitioner

Vs.

State of Haryana and others

... Respondents

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

Present : Mr. Chanderhas Yadav, Advocate for the petitioner.

Mr. Apoorv Garg, D.A.G. Haryana.

P.B. BAJANTHRI J. (Oral)

In the instant petition, the petitioner has questioned the validity of the orders dated 3.9.2014 and 23.5.2015 (Annexures P-7 and P-9 respectively).

The petitioner while working as Assistant Sub Inspector, he was subjected to disciplinary proceedings on the allegations that the petitioner was in collusion with notorious persons. He was placed under suspension. The above allegations were subject matter in the inquiry proceedings. He was exonerated as the charges levelled against the petitioner was not proved. Consequently, he was re-instated from the date of his suspension period has been treated as duty period for all services purposes vide order dated 10.5.2014. In view of the above exoneration in the disciplinary proceedings and the fact that suspension period has been treated as duty period, the respondents should not have written annual confidential report without looking into the alleged allegation that the petitioner was hand in glove with notorious persons like Krishna and his companions in the Police Station Patudi. Whereas perusal of Annexure P-7

by which Annual Confidential Report has been conveyed to the petitioner for the period from 6.5.2013 to 10.1.2014 reflects insofar as column No.1-Honesty-Doubtful; column No.10-Defects, if any, and whether the same have been brought to the notice of the concerned officer through any communication-He was placed under suspension and DE initiated against him for mixing with notorious criminal Krishan and his companions in PS Pataudi. This was conveyed to the petitioner. Feeling aggrieved by the adverse remarks for the period from 6.5.2013 to 10.1.2014, the petitioner preferred a representation before the competent authority. The competent authority rejected the petitioner's representation while confirming the adverse remarks for the period from 6.5.2013 to 10.1.2014. Thus, the present petition has been filed questioning the annual confidential report as well as rejection of representation.

Learned counsel for the petitioner submitted that once the petitioner is exonerated in disciplinary proceedings on certain allegations and the suspension period has been treated as duty period for all services purposes. Same allegations as stated above cannot be taken into consideration for the purpose of writing adverse remarks. Perusal of Annexure P-7, it is evident that remarks in respect of Honesty were given as doubtful and remarks in respect of column No.10, suspension and initiation of departmental proceedings have been taken note of. Further while considering the revision of the petitioner, the competent authority has not appreciated the representation. Hence, Annexures P-7 and P-9 are liable to be set aside.

On the other hand, learned counsel for the respondents-State submitted that the respondents have taken into consideration the petitioner's

over all performance during the period from 6.5.2013 to 10.1.2014. Thus, the competent authority has written adverse remarks while stating that average and not reliable. Insofar Honesty is doubtful, it is stated that over all performance has been taken note of. Therefore, there is no infirmity in the Annual Confidential Report so also rejection of petitioner's representation.

Heard learned counsel for the parties.

Admittedly, the petitioner was subjected to disciplinary proceedings on the allegations that the petitioner was hand in glove with notorious persons like Krishna and companions due to which he was placed under suspension. He was subjected to disciplinary proceedings. In the disciplinary proceedings, the petitioner has been exonerated and the suspension period has been treated as period spent on duty. Having regard to these facts and circumstances, writing of annual confidential report while taking into consideration that he was placed under suspension and disciplinary proceedings were initiated may not be correct insofar as writing of doubtful against Honesty column is concerned which is not supported by any material. Doubtful means it is only a suspicion. To come to the conclusion that there is a suspicion about his performance or his individual character, it must be supported by some material. Doubtful remark is a very serious remark/comment while writing in annual confidential report for the reasons that it is not supported by any reason.

Supreme Court time and again held that even administrative decision must be supported by reason/s. In the case of in the case of **Orxy Fisheries Pvt. Limited** v. **Union of India and others**; (2010) 13 SCC 427; in para 40, it is stated as under:

“In M/s Kranti Associates (supra), this Court after considering various judgments formulated certain principles in para 51 of the judgment which are set out below 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.

ii.

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".

This Court in the case of **Jatinder Pal Singh v. High Court of Punjab and Haryana**; 2015 (4) SCT 1 elaborately considered about doubtful integrity. Para 27 of the said judgment reads as under:

“27. The core issue, however, pertains to the adverse remarks on the integrity of the petitioner. These remarks are based on the large number of complaints received by the Hon'ble Administrative Judge during his inspection period which were statedly apprised to the petitioner who still failed to show any improvement due to which petitioner's power of entrustment of civil suit was also withdrawn. Consequently, integrity doubtful has been recorded. In so far as the receipt of the complaint (s) by the Hon'ble Administrative Judge during his inspection period is concerned, the record does not substantiate the receipt of any such complaint as is evident from the information furnished by the then District & Sessions Judge according to which no complaints were received by his office. Even, Registrar General of the High Court has not furnished copy of the complaints if any, received against the petitioner. In view of these factual aspects it becomes difficult to sustain serious remarks of “integrity doubtful” for want of any direct or indirect supportive material on record.”

In view of the above legal position, insofar as writing of doubtful against Honesty column is concerned is to be set aside. Further column No.9 reliability, it has recorded as not reliable. Even the said issue is not supported by any material. Further item No.10 placing on record reliance on suspension and the fact relating that the petitioner is alleged to have hand in glove with some notorious persons like Krishna and his companions in Police Station, Patudi. It was subject matter of disciplinary proceedings in which petitioner has been exonerated. Therefore, the said recording in ACR is liable to be set aside.

In view of these facts and circumstances, Annexures P-7 and P-9 are set aside. Respondents are directed to write annual confidential report of the petitioner for the period from 6.5.2013 to 10.1.2014 without influencing to the fact that the petitioner was placed under suspension and

disciplinary proceedings were initiated on the allegations that the petitioner was hand in glove with some notorious persons like Krishna and his companions in Police Station, Patudi. Concerned authority is directed to write fresh adverse remarks for the period from 6.5.2013 to 10.1.2014 and communicate the same to the petitioner if such officer is still in service. The above exercise shall be completed within a period of three months from today.

Petition stands allowed in the above terms.

20.02.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No