

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

CWP No.25762 of 2016 (O&M)

Date of Decision:05.12.2017

Shyam Babu Sagar

... Petitioner

Vs.

Union of India and others

... Respondents

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

Present : Mr. Navdeep Singh, Advocate for the petitioner.

Mr. Vivek Singla, Advocate for the respondents.

P.B. BAJANTHRI J. (Oral)

In the instant writ petition, petitioner has prayed for the following relief:

“i. Issue a Writ in the nature of Certiorari praying for quashing/setting-aside the adverse comments and downgradation of gradings initiated by respondent No.5 and accepted by Accepting Authority, in the impugned Annual Performance Appraisal Report (APAR)/ Annual Confidential Report (ACR) (Annexure P-2) dated 14.05.2014, wherein the petitioner has been wrongly declared as 'blameworthy', the same being false, unethical and factually incorrect as becomes evident from Annexure P-1 dated 13.12.2014 and Annexure P-3 dated 25.04.2015.

ii. Issue a writ in the nature of the Certiorari praying for quashing/setting-aside the rejection letter (Annexure P-5) dated 28.10.2015 and tacit rejection letter (Annexure P-8) dated 13.05.2016 with full consequential benefits.”

Petitioner while working as Assistant Commandant in the BSF (State of Punjab) during the period from 2012 to 2016, there were four annual confidential reports were written for the year 2012, 2013, 2015 and 2016. He had grouse against Annual Confidential Report for the year 2014-

15 wherein reviewing authority has passed following remarks:

“Sh. Shyam Babu Sagar's conduct with the Tps and border population was bad. As a result there were number of reports by public, G Br and vigilance. He was also found blame worthy for recording half presence for messing charges in the Coy. He was continuously advised to improve directly as well as through his Comdt.”

Thus, petitioner being aggrieved by the adverse comments made by the reviewing authority preferred revision/appeal before the next higher authority and it was decided against the petitioner vide orders dated 28.10.2015 and 13.05.2016 respectively. Petitioner has challenged orders dated 14.5.2015, 28.10.2015 and 13.5.2016.

Learned counsel for the petitioner submitted that petitioner had good reports during his entire service as is evident from the report for the year 2012-13, 2013-14 and 2015-2016. Only adverse report is written by the reviewing authority for the year 2014-15 as stated above. It was submitted that insofar as remark “he was also found blame worthy for recording half presence for messing charges in the Coy”, inquiry was held and he had been exonerated on 31.12.2014 (Annexure P-1). Therefore, what remains is in respect of 1st remarks that is “conduct with the Tps and border population was bad. As a result there were number of reports by public, G Br and vigilance”. In this regard, petitioner has not been given opportunity to counter the aforesaid allegations. Therefore, in the absence of giving an opportunity writing of such adverse report by the reviewing authority is arbitrary and illegal. Learned counsel for the petitioner in support his case relied upon the following decisions of the Supreme Court wherein it is held that writing of adverse report is not fair. He relied upon the following decisions: (i) **S. Ramachandra Raju** v. **State of Orissa**; 1994 Supp (3) SCC

424 (see: para-11); (ii) *U.P. Jal Nigam and others v. Prabhat Chanddra Jain and others*; (1996) 2 SCC 363 (see: Para-3); (iii) *State of U.P. v. Yamuna Shanker Misra and another*; (1997) 4 SCC 7 (see: Para 7) and *Insp./GD Krishna Rajak v. Union of India and others*; WP (C) 5288/2012; decided on 28.8.2012 (see: Para-6).

Per contra, learned counsel for the respondents relied on Annexure R-1 which is a communication by the Deputy Commandant (Vigilance) Frontier Headquarter BSF Jalandhar to Deputy Inspector General Sector Headquarter BSF Abohar (Punjab) dated 4.9.2014. It was pointed out that there were complaints from the villagers that petitioner was abusing villagers as well as farmers. Further in the month of August 2014, petitioner is stated to have misbehaved with a lady so also with Head Constable Operator deployed in the company which created a tense situation etc. Therefore, reporting authority while writing annual confidential report for the year 2014-15 has taken into consideration the contents of the communication of the vigilance. Thus, there is no illegality or arbitrariness in writing adverse report against the petitioner by the reviewing authority. It was further contended that insofar as writing of blame worthy for recording half presence for messing charges in the Coy, Deputy Inspector General, BSF has considered Annexure P-1 on 6.1.2015 and ordered for recovery and directed the petitioner to deposit in Government Treasury. Therefore, second remark is supported by the Court of inquiry and further proceedings drawn by the Deputy Inspector General, BSF, Abohar. Hence, there is no infirmity in the ACR for the year 2014-15.

Heard learned counsel for the parties.

No doubt the reporting authority has passed adverse report

against the petitioner on two issues namely “conduct with the Tps and border population was bad. As a result there were number of reports by public, G Br and Vigilance. Secondly, he was also found blame worthy for recording half presence for messing charges in the Coy. He was continuously advised to improve directly as well as through his Commandant. Insofar as remark of found blame worthy is concerned, as is evident from the record, Court of inquiry was held, even though, opinion of the Court is to the extent that officer cannot be held blame worthy. Further the same was examined by the Deputy Inspector General on 6.1.2015. he has order for recovery and asked the petitioner to deposit the same in the Government Treasury and it has attained finality. Therefore, writing of adverse remarks to the extent of found blame worthy for recording half presence for messing charges in the coy is also proved in the court of inquiry and the petitioner has been punished. Therefore, the same cannot be taken into consideration for writing ACR. Insofar as other adverse report relating to conduct with the Tps and border population was bad etc it is evident from Annexure R-1 dated 4.9.2014 wherein Deputy Commandant (Vigilance) has reported to the Deputy Inspector General Sector Headquarter BSF, there were allegations against the petitioner relating to his behaviour with the villagers and farmers so also misbehaved with a lady and Head Constable. These are serious allegations made against the petitioner by the Deputy Commandant (Vigilance) which are required to be dealt in a disciplinary proceedings since allegations are serious in nature. That apart petitioner has not been heard in respect of allegations stated in Annexure R-1 and his explanation was obtained before levelling the allegations made in Annexure R-1 dated 4.9.2014 for the purpose of writing

annual confidential report for the year 2014-15 as conduct with the Tps and border population was bad etc cannot be accepted.

This Court in the case of Jatinder Pal Singh v. High Court of Punjab and Haryana; 2015 (4) SCT 1 in para-35 held as under:

“35. There is no doubt that the scope of interference with the remarks in a ACR is quite limited. However, having regard to the factual aspects of the present case, in our considered view, the decision of the then Hon'ble Administrative Judge and its approval by the High Court was clearly erroneous for the reason that if there were some serious allegations made against petitioner in that case it was necessary to hold an enquiry. However, if it was a case of gathering overall report on the general reputation of officer, the most damaging remarks ought to have been supported by any material evidence/any reason. Or in the alternative the petitioner should have been given opportunity to meet those allegations by way of furnishing copy of the complaints and to seek his explanation or against those allegations. It is relevant to note that writing of ACR against an officer/employee is akin to quasi judicial function. The Apex Court has held that if there are civil consequences, necessary and reasonable opportunity should be given to the concerned person. In the present case against ACR, the petitioner submitted a detailed representation but no reasons are discernible while rejecting the same. It is to be noted that even the administrative decisions must be supported by reasons when it is appealable or for judicial review, since effective appeal would be deprived.”

Therefore, writing of annual confidential report for the year 2014-2015 vide Annexure P-2 dated 14.5.2015 and consequential order dated 28.10.2015 (Annexure P-5) and Annexure P-8 are set aside. Reserving liberty to the respondents to initiate necessary inquiry in accordance with law with reference to allegations made in Annexure R-1, if it is warranted.

With the above observation, petition stands disposed of.

05.12.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No