

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

**CWP No.6739 of 2016 (O&M)
Date of decision : January 23, 2017**

Mahiya Singh

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. D.K. Tuteja, Advocate for the petitioner.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

The petitioner, who retired as Junior Engineer from the Department of PWD (B&R), Haryana on 30.09.1998, while working as Section Officer in the year 1975-76 was given adverse remarks in his ACR for the year 1975-76 (Annexure P-21). The challenged remarks are in column No.29, which are reproduced as under:

“ 29. General Reliability : Not dependable, does not
and work enthusiastic have good reputation.”

It comes out that the petitioner made representation dated 03.12.1976 against the said adverse remarks, which was disposed of on 17.01.1977 by passing the following order:

1. The reference communicated to you vide this office letter No.14729 dated 28.10.76 shows that you is not takes interest in your work and the adverse remarks recorded in your R.R. for the year 1975-76 based on facts and cannot be expunged.

2. As far as adverse remarks regarding reliability are concerned two Nos cases of mis-appropriation of Govt. stores are going on against you. The enquiry officer in both the cases have given their findings in you disfavor. However, in case they are decided in your favour on their finalization your representation in this regard will be reconsidered at that time.”

It goes to show that representation of the petitioner was rejected and that regarding the 'reliability' only, it was decided that after the finalization of the case, the representation would be reconsidered.

It also comes out that after about 22 years the petitioner challenged the ACR by way of filing Civil Suit No.31 of 1999/2000, which was decided by the learned Civil Judge (Jr. Divn.), Rohtak on 11.11.2002. In the said case, the respondents maintained that in the ACR for the year 1975-76, remarks have been recorded that he is not dependable and is not having good reputation. The learned Civil Judge (Jr. Divn.), Rohtak after considering the fact that some of the remarks would be reconsidered, decreed the suit directing the defendants-respondents to reconsider the representation of the plaintiff-petitioner regarding the adverse remark of the plaintiff-petitioner recorded in the ACR pertaining to year 1975-76 and once the representation is decided; to follow up with the other benefits, if the plaintiff-petitioner is found entitled for the same.

An appeal filed by the State of Haryana against the said judgment and decree was dismissed by the learned District Judge, Rohtak on 31.07.2003. It also comes out that the representations made by the petitioner were rejected and he was communicated vide letter dated

13.02.2004 (Annexure P-5), stating that the second representation against the adverse remarks cannot be entertained as per the Government instructions dated 21.05.1971.

It also comes out that in pursuant to the order passed by this Court on 13.07.2015 (Annexure P-17) in CWP No.13733 of 2015, a speaking order No.1170/CR dated 14.10.2015 (Annexure P-18) was passed stating that the decision of the representation of the petitioner dated 03.12.1976 was conveyed to him vide letter No.499, dated 17.01.1977 and rejected vide office memo No.74-CR-77/1050/CR dated 28.03.1978. The second representation was also rejected vide office memo No.74-CR-77/2738/CR, dated 07.11.1989 by the competent authority on the ground that the second representation was not maintainable, in view of the government instructions dated 21.05.1971.

I have heard learned counsel for the petitioner and have also carefully gone through the case file.

The remarks reproduced above clearly show that there were two parts of remarks. One is 'not dependable' and second is 'not having good reputation'. While deciding the representation of the petitioner dated 03.12.1976 against the said remarks vide letter dated 17.01.1977 (Annexure P-19), the same was rejected, stating that the petitioner does not take interest in the work. Therefore, the adverse remarks recorded in his ACR cannot be expunged. So far as the remark regarding reliability is concerned, two cases of mis-appropriation of Govt. stores are going on against him and the Inquiry Officer in both the cases have given their findings against him. However, if the matter is finalized in favour of the petitioner, the

representation will be reconsidered at that time.

Learned counsel for the petitioner contends that the two remarks were decided in his favour and the Civil Court had also directed the authority to reconsider his representation.

After going through the judgment of two courts below, I am of the view that only remarks of 'reliability' were to be reconsidered after the result of the two inquiries pending against the petitioner. The other remarks were not be reconsidered, in view of the letter dated 17.10.1977 (Annexure P-19). Once, it is found that the petitioner does not enjoy good reputation, the consequences would follow that such an employee cannot be dependable also. Therefore, the remark 'dependable' or 'reliability' depends upon his reputation.

As such, even if the matter is reconsidered after the conclusion of two inquiries, since remark 'not good reputation' has become final. Therefore, there is no ground to interfere in the same.

In the civil suit, it was never held that the remarks were wrongly recorded. It was apparently in view of the letter dated 17.01.1977 (Annexure P-19). The department was directed to reconsider the representation of the petitioner.

The petitioner has now retired from service. The petitioner has already availed the remedy before the Civil Court, in which it was never held that remarks are wrongly recorded and are liable to be expunged. Only the Department was directed to reconsider the representation of the petitioner. There is no mention in the ACR that these remarks were recorded because of the pendency of the departmental proceedings or criminal case.

It being so, i do not find any ground to expunge the adverse remarks recorded in the ACR of the petitioner for the year 1975-76. As such, the present petition is dismissed.

(KULDIP SINGH)
JUDGE

January 23, 2017
sarita

Whether speaking / reasoned	Yes
Whether Reportable:	No