

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

Review Application No. 73 of 2017

In CWP No. 10408 of 2015

Date of Decision : 15.12.2017

Dharam Pal Sharda

..... Applicant/petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Pawan Kumar, Sr. Advocate, with
Mr. Vipin Kumar, Advocate,
for the applicant-petitioner.

Mr. A.S. Dhaliwal, DAG, Punjab.

Mr. D.S. Patwalia, Sr. Advocate, with
Mr. Kannan Malik, Advocate,
for respondent No.3.

Jaishree Thakur J.

1. This is a Review Application filed under Order 47 Rule 1 Read with Section 151 of the Code of Civil Procedure, seeking review of order dated 03.02.2017 passed in CWP No. 10408 of 2015 titled as 'Dharam Pal Sharda Versus State of Punjab and Others'.

2. The applicant petitioner herein is seeking a review of the order dated 03.02.2017 passed by this court whereby his writ petition was dismissed. The factual matrix of the matter is that the petitioner had approached this court in earlier rounds of litigation seeking in the one instance to challenge remarks recorded in his ACR and in the order of his conviction under proceedings initiated under Section 7 of the Prevention of Corruption Act, as well as to challenge the order by which he was

dismissed from service. The Civil Writ Petition No. 7900 of 1999 was allowed, which was filed expunging the adverse remarks in ACR for the period 01.04.1993 to 31.03.1994. While disposing of the aforesaid writ petition, the matter was remanded back to the Secretary Co-operation giving a direction that the average ACRs of the petitioner have to be considered and he should be graded accordingly. In compliance of the said order passed in CWP No. 7900 of 1999, the petitioner herein was awarded 2.5 marks. Not having the benchmark, he was not considered for promotion. The order of the Secretary Co-operation was challenged in the instant writ petition i.e Civil Writ Petition No. 10408 of 2015 which was dismissed holding that there was no infirmity in the orders so passed.

3. Mr. Pawan Kumar, learned Senior Advocate assisted by Mr. Vipin Kumar, Advocate urges that this court has erred on the face of the record, as instructions dated 06.09.2001 are not applicable for recording of ACRs and ACRs are to be recorded on the basis of circular issued on 29.07.2011. It is also contended that there was non-compliance of the judgement rendered in **Dev Dutt's** case as the ACR were not communicated to him. Apart from this, it is prayed that the petitioner herein would be entitled to promotion from the date his Juniors were promoted, the date when Chaman Lal retired on 30th of April 2001.

4. Per contra, Mr. Deepinder Patwalia, learned Senior Advocate assisted by Mr. Kannan Malik Advocate, appearing on behalf of the private respondents and Mr. A. S. Dhaliwal, learned DAG Punjab, submit that there is no infirmity in the orders so passed and, therefore, review itself is not maintainable.

5. I have heard the counsel for the parties and have also perused the pleadings.

6. By way of this instant Review Application, the applicant is seeking to re-agitate the writ petition itself which is not sustainable. The scope of interference in a review petition is limited. The error should be something more than mere error and it must be one which must be manifest on the face of the record. Rehearing on merits is not permissible. Mistake apparent on record, means that the mistake is self-evident and stares one the face of it. The law regarding review is well-settled in judgements rendered in *N. Anantha Reddy vs. Anshu Kathuria and others (2013) 15 SCC 534*, *S Bagirathi Ammal vs. Palani Roman Catholic Mission (2009) 10 Supreme Court Cases 464*, *Sasi (Dead) through Legal Representatives Versus Aravindakshan Nair and Others, (2017) 4 SCC 692*.

7. Initially, a writ petition was filed by the petitioner herein and controversy in CWP No 7900 of 1999 was regarding the ACR for the period 1.3.1993 to 31.3.1994. It was the contention of the petitioner that the ACR for this period had been marked by the reporting Authority 'Good'. However, the reviewing authority gave an adverse report by doubting the integrity of the petitioner. He filed an appeal before the Financial Commissioner Cooperation for expunging the remarks. By the time, the appeal matured for hearing, it came before Mr. C.L. Bains IAS officer, the same officer who had given an adverse report doubting the integrity of the petitioner. He decided the said appeal despite the fact that appeal had been filed against his own order. It was in this situation that the writ petition was allowed with an order to the Secretary Co-operation Punjab to record ACR

of the petitioner for the period 01.04.1993 to 31.03.1994. While disposing of the writ petition it was directed as under:

“In re-examining the adverse remarks in the ACR for the period 1st April, 1993 to 31st of March, 1994, the Secretary, Co-operation, Punjab, Chandigarh shall remain guided by the ACRs of the petitioner recorded prior to 1st April, 1993 and after 31st March, 1994 and may take the average of those remarks as guidance while passing an appropriate order exercising the power of review as no better solution can be found in the peculiar circumstances, and the predicament Mr. C.L Bains has placed this Court for his improper actions which law forbade.”

8. The ACR of the petitioner was to be re-recorded for the year 01.04.1993 to 31.03.1994. Since none of the reviewing authority would have had the opportunity of assessing the work of the petitioner for that period, a formula was worked out as to how to assess the work of the petitioner. As per the formula, directions were given to take an average of remarks prior to the period 01.04.1993 and after 31.03.1994. In consonance with the directions, 5 reports prior to and 7 reports after 1993 – 1994 were taken into consideration, which gave him 30 marks in total. Taking an average of all the 12 ACRs, he was awarded 2.5 marks for the year in question. Judgment rendered in **CWP No. 7900 of 1999** had become final between the parties, which judgment had devised a formula for recording the ACR for the period 01.04.1993 to 31.03.1994. Looking at the pleadings, **CWP No. 10480 of 2015** was decided holding that there is no infirmity in the order of the Financial Commissioner Cooperation, Punjab in awarding 2.5 marks for the period 1st of April 1993 to 31st of March 1994.

9. Any reliance on Annexure P-9 and P-10 would not be applicable in the present case since ACR for the year 01.04.1993 to 31.03.1994 is to be graded as per the directions issued in **CWP No. 7900 of 1999**.

10. The question of getting promotion from the date when a vacancy arose i.e.30.04.2001 is also not sustainable since he did not fulfill the eligibility criteria of 15 marks.

11. Finding that there is no error on the face of the record to warrant interference in the order dated 03.02.2017 passed in **CWP No. 10408 of 2015**, this review application is dismissed.

15.12.2017
Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No.