

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

CWP No. 17922 of 2012 (O&M)

Date of decision: 14.03.2018

Pardeep Balu

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Hitesh Pandit, Advocate for the petitioner.

Mr. Amit Mehta, Sr. DAG, Punjab.

Mr. Ashish Verma, Advocate
for respondent Nos. 2 and 3.

Mr. Vikas Kuthiala, Advocate for respondent No.4.

Jitendra Chauhan, J. (Oral)

By way of the instant writ petition, under Articles 226/227 of the Constitution of India, the petitioner seeks issuance of a writ in the nature of certiorari for quashing the adverse remarks recorded in the Annual Confidential Report (for short 'ACR') of the petitioner for the period from 05.09.2007 to 25.02.2008 (Annexure P-5 and P-7) respectively.

It is contended that the petitioner was appointed as Junior Environment Engineer against scheduled caste category i.e. Balmiki and joined the service on 21.09.1988 and subsequently was promoted as Assistant Environmental Engineer and placed at Sr. No.40, vide order dated 15.12.1995. Thereafter, the tentative

seniority list was prepared by the Board which is contrary to record in the light of resolution passed by the Punjab State Assembly, vide notification dated 05.10.2006 whereby 50% reservation of Majhbi Sikh as well as Balmiki in the reserved category by giving first preference over other reserved communities by passing the Act namely the Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006. Aggrieved against the same, the petitioner agitated the matter before the higher authorities by giving representations but in vain. Learned counsel further states that the petitioner was transferred on 05.09.2007 in Zonal Office, Patiala under respondent No.4 who was inimical towards the petitioner. The petitioner worked with respondent No.4 from 05.09.2007 to 25.02.2008 and during this period, he humiliated the petitioner and with a motive to harass, the explanation of the petitioner was called by respondent No.4, vide letters dated 22.11.2007 and 26.11.2007 in which it was averred that the petitioner remained absent from duty on 07.11.2007, 08.11.2007, 21.11.2007 and 22.11.2007 on account of misbehaviour with the seniors and wilful absence of the petitioner during office hours, whereas, the petitioner was very much present on the alleged dates. Even respondent No.4 gave adverse remarks in the ACR of the petitioner when he worked with respondent No.4 for the period from 05.09.2007 to 25.02.2008 due to which the petitioner was not considered for promotion by the Departmental Promotion

Committee. Learned counsel has further argued that the other ACRs of the petitioner were good or very good and it was only during the period 2007-08, that adverse remarks were given in the ACR of the petitioner when he worked with respondent No.4, therefore, from this fact alone, it is crystal clear that the petitioner was intentionally given the adverse remarks. The petitioner served the department with honesty and integrity but when he resisted to the wrong acts of respondent No.4 regarding issuance of 'No Objection Certificate' to rice mills situated in the zone, he downgraded the ACR of the petitioner.

On the other hand, learned counsel for the respective respondents state that since the work and conduct of the petitioner was not found satisfactory, therefore, the competent authority has rightly given adverse remarks in the ACR during the period 2007-2008. Earlier, the petitioner had filed CWP-3975-2010 whereby challenge was laid to the adverse remarks which was disposed of with a direction to the competent authority to pronounce the order in appeal preferred by the petitioner. In compliance of the order, the competent authority had dismissed the appeal of the petitioner. Learned counsel further states that as regard the promotion of petitioner to the post of Environmental Engineer is concerned, the same taken up by the DPC in its meeting held on 19.12.2012 wherein after considering all the essential educational qualification and the

service record, the name of the petitioner was not recommended. The competent authority has rightly recorded the adverse remarks in the ACR for the period 2007-08 as the petitioner had misbehaved with respondent No.4 and also tendered unconditional apology for the same. In fact, the petitioner is habitual of remaining absent from duty without informing his senior officers, thus, the competent authority has rightly rejected the claim of the petitioner.

Heard, learned counsel for the parties and perused the record minutely.

The precise grievance of the petitioner is that he has been held ineligible for promotion to the post of Environmental Engineer on account of adverse remarks recorded by respondent No.4 in the ACR for the period 2007-08 and the persons junior to the petitioner had been given the benefit of promotion. As per record, the explanation was called from the petitioner on account of absence from duty on 07.11.2007, 08.11.2007, 21.11.2007 and 22.11.2007 without informing his senior officer i.e. respondent No.4, whereas, as per Annexure P-3, the attendance register for the month of November, 2007, the petitioner had been marked present. Perusal of the record would further reveal that from 2000-01 to 2006-07, the ACRs of the petitioner were 'Good' or 'Very Good'; it is only in the year 2007-08, when the adverse remarks were recorded against the petitioner by respondent No.4 against whom the petitioner has

alleged *mala fide* being inimical towards the petitioner. Further, during the period 2008-09, 2009-10 and 2010-11, the ACRs were 'Good' or 'Very Good'. The petitioner has been denied promotion on account of adverse remarks recorded in the ACRs for the year 2007-08, the period when he worked under respondent No.4. There is no documentary proof on record that the petitioner remained absent from duty without informing his seniors. Except the bald allegations of absence from duty and misbehaving with seniors, there is no other document on record to justify that the petitioner was ever charge-sheeted or any inquiry was pending against him. The entire service record of the petitioner is overall good except the period when he worked with respondent No.4.

In view of facts and circumstances of the case, this Court feels that the present petition deserves to be allowed. Accordingly, the adverse remarks recorded in the ACR of the petitioner for the period 2007-08 are ordered to be expunged. The petitioner be accorded the benefit of promotion of Environmental Engineer from the date when his juniors were promoted and release the necessary benefit in favour of the petitioner within four months from the date of receipt of certified copy of this order.

14.03.2018

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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :
Whether Reportable :

Yes	No
Yes	No