

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.13326 of 2015

Om Parkash ... Petitioner

Versus

State of Haryana and others ... Respondents

2. CWP No.13341 of 2015

Surender Singh ... Petitioner

Versus

State of Haryana and others ... Respondents

Reserved on:- 18.08.2018

Pronounced on: 11.09.2018

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Namit Kumar, Advocate,
for the petitioner(s).

Mr. Harish Rathee, Sr. DAG, Haryana.

RAJIV NARAIN RAINA, J.

1. This order will dispose of CWP No.13326 of 2015, *Om Parkash v. State of Haryana and others* & CWP No.13341 of 2015, *Surender Singh v. State of Haryana and others*. Mr. Namit Kumar says that the two cases are identical and can be decided by a common order. Facts have been culled from the first writ petition.

2. There is a striking distinction between the minor penalty of Censure for reasons other than doubting integrity of an employee and one which is not based on integrity doubted. If the basis of award of minor punishment of Censure relates to a charge of corruption and the integrity of

the official is found under cloud, then the Haryana Government instructions dated May 21, 1973 would come into play. The instructions warrant that when doubt has been expressed by the reporting officer regarding honesty, and the remarks and assessment of the work and conduct of an employee, he should not be promoted. As per these instructions it will be open to the appointing authority to ignore adverse remarks relating to doubtful integrity in reports which are more than ten years old. The effect of punishment based on misconduct involving integrity and character when comes forth then a delinquent employee cannot claim promotion or ACP pay scales as a matter of right until the expiration of the period of ten years.

3. On facts, it may be stated that a show cause notice was issued to the petitioner on the allegation that while posted at Police Post, Court Complex, Rewari on December 14, 2006, one Bhim Singh s/o Hukam Singh r/o Village Sulkha approached the petitioner for lodging a complaint of his missing mobile phone for which the petitioner demanded bribe of ₹100/-to register the complaint and on complainant's refusal to pay the amount the petitioner scored out the report made on the affidavit with his pen. The original was produced by Mr. Rathee for perusal of the Court. On examining it I find several words crossed out in the complaint on its reverse page. As a result of the complaint, the petitioner was proceeded against departmentally and the punishment of Censure was awarded to him by order dated January 11, 2007. The punishment has attained finality. The petitioner says that when his case for grant of 2nd ACP came up of for consideration he came to know of the order and appealed against it. The appeal has been rejected on November 12, 2013 by order Annex P-5.

4. Due to award of punishment of Censure, the petitioner has not been granted the benefit of 2nd ACP on completion of 16 years of service as per notification dated March 04, 2014 and he has also not been made an Exemptee ASI on completion of 22 years of service as per letter dated September 22, 2008.

5. Mr. Namit Kumar, learned counsel for the petitioner contends that the effect of minor punishment of Censure only remains for six months and, therefore, it was liable to be ignored and a direction deserves to be issued to the respondents to release the monetary benefit of ACP pay scale and also to consider his case for promotion.

6. Against the punishment order dated January 11, 2007 the petitioner filed CWP No.10410 of 2014 it was disposed of on May 26, 2014 with liberty to the petitioner to file a detailed representation to the Inspector General of Police and the same when submitted shall be considered and decided within a period of three months. The representation was submitted on June 01, 2014.

7. On August 26, 2014 the Inspector General of Police, South Range, Rewari has passed an order that in spite of punishment of Censure on grounds of corruption, his ACR for the year 2006-07 (the relevant period) he has found therein an assessment of the petitioner recorded as 'Good'. Accordingly, a direction has been issued to the Superintendent of Police, Rewari to downgrade the petitioner's ACR suitably for the period of misconduct citing Government instructions dated October 22, 2001.

8. Mr. Namit Kumar, learned counsel submits that no such direction could be issued to the Superintendent of Police, Rewari to downgrade the

ACR of 2006-07 after seven years of the punishment. The Superintendent of Police, Rewari by order dated September 29, 2014 has ordered that with the punishment of Censure the petitioner had been let off lightly but the punishment reflects directly upon his integrity for demanding illegal gratification. The petitioner's ACR has been downgraded from 'Good' to 'Below Average Police Official' in the column of general remarks. In other columns such as discipline, integrity, reliability and moral character the petitioner has been regarded as undisciplined, of doubtful integrity, unreliable official and one who does not bear a good moral character. These orders have been challenged in this petition apart from claiming ACP scales and promotion.

9. It is argued that the Superintendent of Police who had earlier recorded the adverse ACRs of the petitioner for the year 2006-07 has retired from service and the Superintendent of Police who has downgraded the ACR of the petitioner has never seen his work and conduct and, therefore, the downgrading is totally illegal. This may well be true to an extent but if the foundation of the penalty of Censure was easily discernible on the charge of corruption and demand of bribe from the complainant, then still had the conscience of the petitioner been clear, he would not have scored out what he did on the reverse side of the complaint by his own hand in a case of loss of a mobile phone. This means surely that he failed to register a case and investigate the matter when the complainant refused to pay bribe money. This conduct was reprehensible coming from a policeman in uniform.

10. The contention of Mr. Namit Kumar that punishment has been

enhanced, and that too, after an inordinate delay, is not a correct view of the facts from both the angles. The punishment has not been enhanced. The imprint of Censure remains. It is only the ACRs for the relevant period that have been suitably downgraded commensurate with the demand of illegal gratification for registering the complaint. Moreover, the petitioner never agitated the award of Censure before the authorities or in a court of law till after many years when an appeal dated Nil (P-4) was submitted by him to claim the benefit of the 2nd ACP pay scale. In all likelihood, the appeal must have been filed sometime in 2013. This is in view of the averments made by the petitioner himself in para.6 of the petition where he avers that the Censure order dated January 11, 2007 was never supplied to him and he only came to know of it when he sought the benefit of 2nd ACP pay scales in the year 2013. The appeal was rejected on November 12, 2013. The appeal part (Annex P-4) mentioned in para.6 and the averments surrounding the statement have been replied to in para.2 of the preliminary submissions read with the contents of the corresponding paragraph 6 on merits which read as follows:-

“2. That due to the aforesaid punishment, the petitioner was also barred from crossing 'Efficiency Bar' and had not been given annual increment due in the year 2008, however, after implementation of 6th pay scale in the year 2009, provisions regarding 'Efficiency Bar' was deleted in the 6th pay commission report. After fixation of the pay of petitioner from 01.01.2006 with the implementation of 6th Pay Commission in the year-2009, his loss of increment was covered-up. But the punishment of 'Censure' was well within the knowledge of petitioner which is also admitted by him in the para No.2 of his

representation enclosed with the petition as 'Annexure-P4'. Therefore, the petitioner had not submitted any representation against this punishment of 'Censure'.

11. The State asserts in the written statement that the punishment of Censure was well within the knowledge of the petitioner, and I have no reason to doubt its veracity because the petitioner has not filed replication to controvert the assertion. It is, therefore, deemed to be admitted fact.

12. The 2nd ACP would normally have been due to the petitioner on August 31, 2008, i.e., after completion of 20 years of service. He should ordinarily have submitted his representation for ACP scale in the year 2008 or anytime soon thereafter, if he felt seriously aggrieved or wronged. If the punishment of Censure came to his knowledge on January 03, 2011 then he also failed to submit any representation against the punishment at any reasonable time thereafter, as he would know the punishment awarded to him was for a genuine reason which by conduct stands duly proved. The petitioner has never denied his writing on the reverse of the complainant Bhim Singh's affidavit, which act confirms gross misconduct and a guilty mind. Even in the present petition, the petitioner has not denied the aforesaid allegation. Even if the instructions dated October 22, 2001 cited in the impugned orders were not applicable to the case or if the correct view was not taken, the punishment of Censure on the allegations of demanding bribe appears to me to be sufficient to deny the benefit of further upgradation till the expiry of ten years from the date of punishment as per Government instructions dated July 19, 1973 referred in paragraph 2 above. The most crucial and striking aspect is that the scoring out of his own writing on the reverse of the affidavit goes a long way in confirming the

version of the complainant. Still further, the petitioner has obtained in writing from some residents of Village Sulkha that the complainant Bhim Singh was not a resident of Village Sulkha, whereas the petitioner has not denied Bhim Singh's visit to the Police Post, Court Complex, Rewari for a report on his lost mobile. By this act, the petitioner has tried to create evidence in his favour which by itself is misconduct. What did it matter where Bhim Singh lived. Thus, no sympathy can be shown to the petitioner. After all, he succumbed to the punishment without challenging the same within a reasonable time. This means that the petitioner was waiting for fair weather to rake up the matter to secure service benefits.

13. No substantial injustice has been done to the petitioner with the downgrading of his ACRs for the year 2006-07 in the year 2014 by bringing them in tune with the gravity of misconduct. The Superintendent of Police who passed the penalty order should have kept in mind the substance of the misconduct. The one who downgraded the ACR was not required to have firsthand knowledge of the work and conduct of the petitioner in the year 2006-07 because it was self-evident to the Inspector General of Police, South Range, Rewari that the minor penalty of Censure was too light to inflict when based on tacit admission of events surrounding the complaint of Bhim Singh touching on a charge of corruption. Long silence may be indicative of guilt. The petitioner did not agitate the matter till after the SP who wrote the report of 2006-07 retired from service.

14. One other argument of Mr. Namit Kumar needs to be noticed since it has been pressed with vehemence. The contention is that the order of the Inspector General of Police, South Range, Rewari dated August 26,

2014 addressed to the SP Rewari for downgrading the ACR suitably for the period of misconduct was made by citing Government instructions dated October 22, 2001. He says these instructions were violated. These instructions provide a clarification to the effect that no fresh/separate show cause notice is required to be issued for downgrading of ACR and the orders of downgrading of ACR may be passed “simultaneously” while issuing orders of punishment. However, in cases where punishment orders have already been issued in which no mention of about downgrading of ACR has been made then in such cases, for downgrading of ACR, another show cause notice may be issued in view of the punishment already awarded. The State Government observed in these instructions that the previous instructions dated May 17, 1989 provide that if an employee had been awarded a punishment for act of omission or commission during a particular period, his ACR of that year (i.e. the year in which act of omission or commission took place) may be suitably downgraded. The 1989 instructions clarify that the extent of downgrading will be decided by the authority passing final orders in promotion cases etc. and will depend on the nature of the charges proved against an individual and not merely on the amount of punishment awarded. In the circular dated October 22, 2001 the Government after noticing its earlier instructions dated May 17, 1989 and May 15, 1990 observed in conclusion the position by reiterating those instructions for being adhered to meticulously. Accordingly, Government requested that orders of downgrading of ACR(s) should be passed simultaneously while issuing orders of punishment and a copy thereof should be placed in the ACR file of the employee concerned, besides mentioning about the

downgrading in the ACR of that particular year. However, in cases, where punishment orders have already been issued in which no mention about the downgrading has been made, another show cause notice may be issued for downgrading the ACRs.

15. Mr. Namit Kumar lays stress on the word "simultaneously" used in the circular dated October 22, 2001. He submits that penalty order should be accompanied by downgrading of ACR i.e., it should be one transaction and, therefore, downgrading after seven years was legally impermissible and accordingly the downgrading should be quashed. The word "simultaneously" used in the circular cannot be torn out of the text and context. The power to correct an error on Government record is not bound by time. If the penalty and downgrading are not contemporaneous and made together it would not make downgrading illegal and to be read as denuding the authority to downgrade ACR and bring it in line with the substance of the penalty. The instructions appear to be directory and not mandatory since the consequences of breach are not provided.

16. Maybe, penalty of Censure is minor but when it is read coupled with an underlying charge of corruption, the case is magnified and, therefore, strict and literal construction cannot be placed on the word "simultaneously" used in the instructions. It has to be read harmoniously with the object sought to be achieved and there may well be a case, like the present one, where the action of the authorities should be upheld to bring purity in administration and discharge of aboveboard policing duties by the State police. The same instructions, refer to the circular of May 15, 1990 wherein provision is made in cases where punishment orders have already

been issued in which no mention about downgrading of ACR has been made, then in such cases, for downgrading of ACR, another show cause notice may be issued in view of the punishment already awarded. This is what the Inspector General of Police, South Range, Rewari and the Superintendent of Police, Rewari have done in passing the impugned orders. The clarificatory instructions dated May 15, 1990 and the circular dated May 21, 1973 would prevail and the instructions dated October 22, 2001 can be ignored. Also there is no limitation for Government to correct an error.

17. In view of the factual position which appears to admit of hardly any doubt, that is, of the petitioner's involvement in the complaint of Bhim Singh, the judgments relied upon by learned counsel, including one by the undersigned (Nirotam Parshad v. State of Haryana and others, 2014 (4) S.C.T. 86) are of no assistance to him. The other judgments relied upon by the petitioner are Davinder Singh ASI v. State of Haryana and others, 2011 (1) SCT 447 and Khurshid Ahmed, ASI v. State of Haryana and others, 2013 (3) SCT 589. In Mehtab Singh v. State of Haryana and others, 2007 (1) SCT 709 the Division Bench dealt with a case under Rule 16.28 of Punjab Police Rules, 1934 as applicable to Haryana holding that the provision could not be construed to mean that the DGP is entitled to review its own orders. The rule only connotes the supervisory power of superior officer. The principle of reasonableness would require that the order passed 10 years ago is not re-opened because it would violate all limits of reasonableness. This case is distinguishable as grading, assessment of work and conduct and remarks entered in Annual Confidential Reports are not

orders but the quintessence of work and conduct for the relevant period observed by the reporting officer in his subjective satisfaction. The Court did not consider the situation of the present kind in this case where ACRs were aligned to the substratum of the charge of misconduct in performance of public duties. I have also been through the Single Bench decision in Mohd. Najibul Hassan v. The Board of Governors, Government of Polytechnic Education and others, 2015 (2) SCT 204 and CWP No.23833 of 2012, *Tejbir Singh v. The State of Haryana and others* decided on September 26, 2014. Tejbir Singh was a case of an anonymous complaint which led to departmental proceedings and imposition of punishment. The Enquiry Officer had exonerated the petitioner and one other official of the charge but the punishing authority did not agree with the findings in the report and that is what led to the orders of punishment. The show cause notice for enhancement of punishment was issued nearly eight years after the appellate order. The Court found this action highly belated and, therefore, interfered and held that this period was not reasonable time permissible for initiating action *suo motu* under Rule 16.28 (1) of the Rules. In similar strain is the decision of the Delhi High Court in Naresh Kumar Yadav v. Union of India and others, 2015 (4) SCT 42.

18. in my view the complexion of penalty of Censure changes with the nature of acts of omission and commission attributed to an employee. And if they touch upon the integrity and character of an official, this minor penalty of Censure cannot be taken at face value alone or a flea bite punishment due to the underlying aberration of an official and its gravity and may well work in appropriate cases, like the present one, in the nature

and character of a de jure major punishment based on intergity doubtful. It is the substance and not the form which has to be seen, as is often said. It is not a mere cliché.

19. Mr. Rathee submits and is not disputed that the petitioner has been given his due benefits in 2017 on expiry of the period of 10 years from the period of adverse ACRs (2006-2007). This fact is not disputed.

20. Therefore, for the reasons discussed above, I find no merit in this petition and the same is hereby ordered to be dismissed.

11.09.2018
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(RAJIV NARAIN RAINA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>