

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 20370 of 2013

Date of Decision: 24.09.2018

ASI Roshan Lal

...Petitioner

Vs.

State of Haryana and others

...Respondents

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

Present: Mr.Jagjit Gill, Advocate
for the petitioner.

Ms. Shruti Jain Goyal, DAG, Haryana.

RAJIV NARAIN RAINA, J. (Oral)

1. The petitioner was enrolled as a Constable in Haryana Police long ago. He earned promotions as Head Constable and Assistant Sub Inspector in the course of time. The petitioner was communicated certain adverse remarks for the period 01.04.2000 to 03.11.2000 recorded by the then Superintendent of Police, Sirsa. In these adverse remarks, the integrity of the petitioner was reported doubtful. The remarks were conveyed to him on 18.05.2002. Representation filed by the petitioner against the adverse entries came to be rejected by the Inspector General of Police, Hisar Range, Hisar vide memo dated 30.09.2002. Not being satisfied with the rejection of his representation and feeling aggrieved, the petitioner filed a revision petition before the Director General of Police, Haryana who accepted the petition and ordered expunction of adverse remarks for the period in question vide his memo dated 16.04.2003.

2. Subsequently, the matter was reviewed by the Government and vide order dated 26.10.2006 (P-5), the Director General of Police, Haryana

reconstructed the above adverse remarks, which means simply, they were restored on the service book as red entry.

3. There are two aspects projected in this case during the hearing. The first relates to the adverse remarks for the period in question which have been reconstructed by the Director General of Police while the other relates to wrong fixation of salary at the pay revision stage leading to the complaint of wrong fixation of pension and consequential recovery order issued.

4. Heard learned counsel for the parties.

5. As far as reconstruction of ACRs is concerned, the second representation would not be maintainable in view of the Haryana Government instructions dated 22.03.1971(P-1). Moreover, before passing the impugned order, a show cause notice was issued to the petitioner. The Director General of Police, Haryana after considering the reply of the petitioner to the show cause notice and upon examining the relevant record passed the order of reconstruction of the adverse remarks for the period in question. When no second representation lies, this petition in assailing the adverse entries is not competent and consequently, the petition deserves to be dismissed.

6. Besides this, the petition has been filed in the year 2013 against the impugned order dated October 26, 2006. For this inordinate delay without explanation by sufficient cause shown, the petition also deserves to be dismissed on ground of delay and unexplained laches without a case for condoning the delay made out.

7. As far as re-fixation of pension of the petitioner is concerned, learned State counsel has argued that the petitioner was compulsorily retired from service on 31.05.2007. The pension case of the petitioner was prepared and was sent to the

office of the Accountant General, Haryana for sanction. The same was sanctioned accordingly. However, on revision of pension after grant of 6th Pay Commission benefits, the pension of the petitioner was inadvertently fixed at Rs.8465/- instead of Rs.8310/- per month. Learned counsel further argued that where the pension has wrongly been fixed it is liable to be re-fixed in view of the Government instructions dated 16.04.2012. However, she submits that recovery order dated September 05, 2012 (P-7) has not been implemented so far.

8. There is nothing palpably wrong or erroneous in the re-fixation of pension done from the date of compulsory retirement. There is no illegality committed by the respondents if the pension was reduced which was wrongly fixed at the time of revision of pension, as is borne in the facts and circumstances of this case. However, the recovery from pension is not to be effected in view of the exceptions carved out by the Supreme Court in *State of Punjab v. Rafiq Masih (White Washer)*, (2015) 4 SCC 334.

9. In view of the above, this petition is partly allowed so far as recovery orders are concerned but it is dismissed qua re-fixation of pension and on the point of reconstruction of adverse entries in the ACRs. The impugned orders are therefore maintained on reduction of pension from the date of compulsory retirement of the petitioner.

(RAJIV NARAIN RAINA)
JUDGE

24.09.2018
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Whether speaking/reasoned *Yes*

Whether reportable *No*