

**212 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP No.21929 of 2013.
Date of Decision: 30.05.2019**

Dr. Babar Singh Bhogal

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present:- Mr. D.S. Patwalia, Sr. Advocate with
Mr. A.S. Chadha, Advocate,
for the petitioner.

Ms. Samina Dhir, DAG Punjab.

JITENDRA CHAUHAN J.

Through the instant civil writ petition, the petitioner has sought quashing of the order dated 19.09.2011 (Annexure P-8) vide which request of the petitioner for setting aside the grading in the ACRs was declined and; the order dated 14.05.2008 (Annexure P-4) vide which the benefit of first placement in the higher scale with effect from 01.01.1995 was declined.

The petitioner, a MBBS doctor, had joined as PCMS Medical Officer on regular basis on 01.01.1991 in subsidiary Health Centre, Ranghial under the Primary Health Centre, Budhalda, District Bathinda and was transferred in January 1992 as Medical Officer to

SHC Bhuccho Mandi PHC Nathana and joined there on 22.01.1992. During the period 1990-91 and 1991-92, the work and conduct of the petitioner was adjudged as “Good” by the Senior Medical Officers, Budhalada and Nathana. In the ACRs for the year 1993-94 and 1994-95, some adverse remarks were recorded by Dr. Avtar Singh Sidhu, the then SMO. The petitioner made representations to the Department and vide order dated 27.04.2006 (Annexure P-1), all the adverse remarks were expunged. Thereafter, the petitioner was transferred from Bhuccho Mandi and he worked with various officers and earned good reports from 1996-97 to 2008-09. Consequent upon the acceptance of recommendations of 4th Pay Commission, State of Punjab sanctioned the scales of Medical Officers in the four tier pay scales. The scales were applicable with effect from 01.01.1996 and the whole service of the officers was to be counted for the grant of the scales. The petitioner had completed four years' service on 01.01.1995 and when the revised pay scales in 4 tier system were introduced, the petitioner was not granted the pay scale of Rs.10025-15,100 with effect from 01.01.1996. The petitioner had to file CWP No. 1985 of 2005 for grant of benefit of placement in the higher scales on completion of 4 years, 9 years and 14 years' of service. Vide order dated 04.02.2005 (Annexure P-3), the writ petition was disposed of with a direction to the respondents to take a decision on the legal notice served by the petitioner. However, vide order dated 26.04.2008 (Annexure P-4), the petitioner was illegally placed in the scale of Rs.10025-15,100 with effect from

01.01.1999 instead of 01.01.1996 and in the scale of Rs.12,000-15,500 with effect from 01.01.2004 with a direction that his case for the grant of next higher scale would be considered on completion of 14 years of service in 2009 and it was also observed that in the ACR for the year 1993-94 and 1994-95, adverse remarks remained for 8 years.

It is contended by the learned Senior counsel that if some adverse remarks recorded in the ACR of an officer are expunged, no adverse effect of the same can be taken into consideration at the time of assessing his work and conduct. The adverse remarks were expunged by the competent authority vide order dated 27.04.2006 (Annexure P-1). Thereafter, the petitioner had represented to the department various times but vide impugned order dated 19.09.2011 (Annexure P-8) the claim of the petitioner was rejected without considering the effect of order of expunction.

On the other hand, on behalf of the respondents, it is contended that the petitioner had opted to take the benefit of proficiency step up under 4/9/14 ACP Scheme. As per the government instructions dated 17.04.2000, at the time of granting four years' service benefit, two years ACRs must be good out of four years and while granting the benefit of 9/14 years' service, two ACRs must be good out of last three ACRs and more than 50% ACRs must be good. The petitioner had joined service on regular basis on 01.01.1991 and the ACRs of the petitioner were recorded average for the year 1992-93, 1993-94 and 1994-95, therefore, these years cannot be counted for

granting the benefit of four years' service. Hence, the petitioner was granted four years' service benefit with effect from 01.01.1998 and the benefit of nine years' service was granted with effect from 01.01.2003 and benefit of 14 years' service was granted with effect from 01.01.2008. The adverse remarks were recorded in the ACRs for the period 1993-94 and 1994-94 which were later on expunged by the Government but adverse remarks for the year 1992-93 were not expunged. The effect of these adverse ACRs remained for 8 years and even after the expunction of adverse remarks, the grading cannot be changed. It is also contended that even if the reviewing authority had expunged the adverse remarks from the ACR but had not upgraded the grading, therefore, no benefit would be given to such employee.

Heard.

As per the record, the petitioner had joined the government service on 01.01.1991. The petitioner had opted to take the benefit of proficiency step up under 4/9/14 ACP Scheme. As per the government instructions dated 17.04.2000 (Annexure R-1), two years ACRs must be good out of four years and while granting the benefit of 9/14 years' service, two ACRs must be good out of the last three ACRs and more than 50% ACRs must be good. The adverse remarks were recorded in the ACRs of the petitioner for the period 1993-94 and 1994-95 which were later on expunged by the government. It is apparent from the record that the appropriate authority on representation by the petitioner, expunged the adverse remarks for the years 1993-94, 1994-95

recorded in the confidential reports of the petitioner. Despite the fact that vide order dated 27.04.2006 (Annexure P-1), adverse remarks had been expunged, the respondents neither reviewed the confidential reports nor upgraded the reports accordingly. As per the written statement of respondent Nos. 1 & 2, the petitioner also submitted a representation for upgradation of his ACRs, however, the respondents took no positive action on the same for a period of more than a decade unduly harassing the petitioner.

This Court had passed the following order on 11.01.2019:-

“In the representation (Annexure P-7), the petitioner has made specific assertion that in the year 1994, despite the threat from terrorists not to organize family planning camps, the petitioner to execute and implement the government policy organized various camps and performed maximum number of family planning operations. Despite the same, the petitioner was assessed as 'Average', which remarks were subsequently expunged vide order dated 27.04.2006 (Annexure P-1). It is not clear as to why the petitioner was assessed at 'Average' despite the achievements to his credit. Learned State counsel will also explain as to what will be the import of the order dated 27.04.2006 (Annexure P-1) whereby the adverse remarks were expunged and whether on expunction of the adverse remarks, upgradation of the ACRs could be denied to the petitioner and further, whether expunction of the adverse remarks would warrant reappraisal and upgradation of the ACRs. In the circumstances, the State is directed to file a specific affidavit in this regard.

Further, the antecedents and the service record of Dr. Avtar Singh Sidhu, the officer who recorded the ACRs in question be also made available to the Court as the status of the ACRs of

the petitioner (Annexure P-2) prima facie indicates that the ACRs were recorded with mala fide intention by Dr. Avtar Singh Sidhu.”

In pursuance of aforesaid order dated 11.01.2019, an affidavit dated 26.04.2019 of Director, Health and Family Welfare, Punjab was filed on behalf of the respondents. As per the affidavit dated 26.04.2019, the expunction of adverse remarks does not *ipso facto* entitle the petitioner to upgrade the grading. The State has tried to draw support from letter dated 24.04.2002 (Annexure R-3) of Government of Punjab, Department of Personnel, the relevant paragraph No.2 of which reads thus:-

“The matter has been considered and it has been decided that where adverse remarks recorded in a confidential report of an officer/official have been expunged by the competent authority without affecting the grading of an officer/official in such cases, grading recorded in the CR shall stand. However, if while expunging the adverse remarks the competent authority has also expunged the grading of an officer/official for a particular year such a CR should be ignored and the CR for the previous year should be taken into account and if even such a CR is not available the competent authority should take into account the CR(s) of the lower grade/post to complete the number of the CRs required to be considered. If this is also not possible, all the available CRs should be taken into account i.e procedure as applicable in the case of a 'No Report Certificate' for promotion to next higher post for Career Progression etc. should be adopted.”

A perusal of the aforesaid letter dated 24.04.2002

(Annexure R-3) shows that the stand taken by the respondents on the strength of letter (Annexure R-3) is fallacious as the foundation of that grading is the adverse remarks recorded by the reporting officer in the ACR in question. Once the foundation of the grading is no more, the grading done on the basis of adverse remarks cannot be allowed to survive. Hon'ble the Supreme Court in **R.K. Singh versus State of U.P. and others 1991(Supp2) SCC 126**, in para No.2 has held as under:-

“2....Once the adverse entries awarded to the appellant were expunged, the appellant is entitled to Selection grade with effect from January 1, 1986 the date on which he was eligible for grant of Selection Grade.”

Further, in pursuance of the order dated 11.01.2019 qua the antecedents and service record of Dr. Avtar Singh Sidhu, the officer who recorded the ACRs of the petitioner, the affidavit dated 26.04.2019 does not deal with the specific query of the Court. Only the extracts/grading of ACRs of Dr. Avtar Singh Sidhu for the years 1992-93, 1993-94, 1994-95 have been adumbrated in a casual manner, as under:-

<i>Year</i>	<i>Remark</i>
1992-93	Very Good
1993-94	Very Good
1994-95	Very Good

The assertion of the petitioner that he organized highest number of camps and performed maximum number of family planning operations, remains unrebutted nor the antecedents of the officer who

recorded the ACRs of the petitioner were made available to the Court. In the circumstances, the assertion of the petitioner gets legitimacy that the ACRs of the petitioner were recorded by the officer, Dr. Avtar Singh Sidhu with *mala fide* intention, which were subsequently expunged by the competent authority. After the adverse remarks were no more in existence, the effect thereof cannot be permitted to remain there to deny the benefit of ACP to the petitioner. Accordingly, the ACRs of the petitioner for the period 1993-94 and 1994-95 deserved to be treated as good and are hereby declared as good.

In view of the above, the present civil writ petition is allowed. The impugned order dated 19.09.2011 (Annexure P-8) and order dated 14.05.2008 (Annexure P-4) are hereby quashed. The respondents are directed to grant the benefit of first placement to the petitioner in the higher scale with effect from 01.01.1995 instead of 01.01.1999. The consequential benefits be released to the petitioner within a period of eight weeks from the date of receipt of certified copy of the judgment.

The State is free to initiate appropriate proceedings against said Dr. Avtar Singh Sidhu.

30.05.2019.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No