

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

**CWP NO. 20471 OF 2016
DECIDED ON : 22.04.2019**

Dr. Karnail Singh

...Petitioner

versus

Union of India and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Ritesh Pandey, Advocate,
for the petitioner.

Mr. O. P. Dabla, Advocate,
for respondent-Union of India.

ARUN MONGA, J. (ORAL)

1. The conceded stand of the respondents, as stated in the written statement, is that ACR for the year 2008-09 containing below benchmark 'Good' grading was communicated to the petitioner after a delay of 3-½ years, vide letter dated 23.10.2013 (Annexure P-2).

2. Further more, it is an admitted stand of the respondents that representation dated 11.12.2013 of the petitioner for mitigation of his grievance against the below benchmark grading in his ACR for the year 2008-09, could not be verified from the officer who had graded him below benchmark, as he had already retired on superannuation from service.

However, the representation of petitioner was considered by the

respondents and they did not find any cogent reason to change the grading of petitioner.

2. The justification rendered by the respondents does not stand judicial scrutiny and is not tenable. Admittedly, the petitioner did not serve under the supervision of the officer who considered his representation and declined the same. The said officer, at no point of time, had any occasion to adjudge the working of the petitioner, at the relevant time. It was required to obtain comments from the reporting officer on the representation.

3. I am in agreement with the argument of learned counsel for the petitioner that delay in conveying the ACR to the petitioner cannot be to the detriment of petitioner and the respondents must suffer for such delay. In this context, the Apex Court enunciated the position in law as reported in "Dev Dutt v. Union of India and others" 2008 AIR (SC) 2513 in the following terms :-

"45. In our opinion, non-communication of entries in the Annual Confidential Report of a public servant whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence, such non-communication would be arbitrary and as such violative of Article 14 of the Constitution."

4. The above position has been duly amplified vide judgment rendered by a Co-ordinate Bench of this Court in CWP No. 17043 of 2011 decided on 05.08.2013 titled as "Kulwant Singh v. State of Punjab and others". The relevant whereof is extracted herein below :

"14. In Dev Dutt's case (supra), the Hon'ble Supreme Court has held to the extent that any such Rules/ Government orders/office memoranda in respect of services under the State, whether civil, judicial, police or other services, (except the Military) which if interpreted to mean that only adverse entries are to be communicated to the concerned employee and not the other entries would be liable to be ignored."

5. In *Kulwant Singh's case (supra)*, the delay in conveying the ACR was 04 years and in the present case, it is 3-½ years. I see no ground as to why the benefit of delay should not be given to the petitioner. In any case, benefit of the fact that the reporting officer has since superannuated and hence, is not available, should also be given to the employee and not to the employer.

6. In view of my above discussion and the reasons contained therein, the writ petition is allowed. The respondents are directed to consider the case of petitioner, in respect of grant of financial step-up in the pay of petitioner for the year 2013, as per its own order dated 21.07.2015 (Annexure P-5), without being influenced by his ACR for the year 2008-09.

7. Let the needful be done within a period of three months from the date of receipt of certified copy of this order.

(ARUN MONGA)
JUDGE

APRIL 22, 2019
shalini

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