

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

**CWP NO. 9911 OF 2015
DATE OF DECISION : 29.04.2019**

BALBIR SINGH

...PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Balram Prashar, Advocate for
Mr. Himanshu Puri, Advocate,
for the petitioner.

Ms. Ambika Sood, DAG, Punjab.

Mr. Bhupesh Dogra, Advocate for
Mr. Amit Aggarwal, Advocate,
for respondent No.2.

ARUN MONGA, J. (ORAL)

1. The petitioner, *inter-alia*, seeks quashing of two impugned communication/orders dated 28.08.2012 and dated 31.08.2012, passed by respondent No.2, whereby representation made by the petitioner seeking expunging of adverse remarks from his Annual Confidential Reports (hereinafter referred to as "the ACRs") was rejected. Quashing of review order dated 12.04.2013, upholding the said two orders, has also been prayed. Further a writ in the nature of mandamus is sought directing the official respondents to grant the petitioner all

financial and service related benefits which would have accrued to him but for the existence of un-communicated adverse/average ACR entries for the period 2008-09 and 2009-10.

2. Learned counsel for the petitioner has drawn my attention to the policy letter dated 18.07.1972 issued by the Department of Personnel, Government of Punjab, wherein it was made mandatory to pass speaking orders in the matters effecting the rights of the parties concerned or the government servants.

The relevant of same is extracted herein below :

" The Committee has expressed to strong view that tribunal and Heads of Departments exercising quasi judicial functions should made "Speaking Orders" i.e that should indicate in their orders the grounds on which the orders are made.....The need for making speaking orders in matters affecting rights of parties has been repeatedly pointed out by the Supreme Court and High Courts in a number of cases. In fact it is now being regarded as a principle of Natural Justice that such orders should contain reasons. The Government are requested to take note of these observations."

3. In any case, it is a settled position of law that failure to assign any reasons makes an order non-speaking and is, therefore, rightly to be quashed. The impugned order dated 28.08.2012 is as cryptic as it can be.

4. The only reasoning assigned in order dated 28.08.2012 is "*Heard. No benefit of ACP is to given.*" The review application filed by the petitioner has also been dismissed,

without assigning any reason and the only ground of rejection stated therein is that the representation of the petitioner was re-considered and the same is consigned, as per the directions of higher authorities.

5. It is the conceded case of respondent No.3-Punjab School Education Board (hereinafter referred to as "the Education Board"), that the adverse ACRs of the petitioner pertaining to the years 2008-09 and 2009-10 were not communicated to him.

6. Learned counsel for respondent No.3-Education Board submits that the reason for non-communication of entry in ACR for the years 2008-09 and 2009-10 to the petitioner was that the same were not "adverse" and therefore, there was no necessity for communicating the same to the petitioner.

7. In the premise, the petitioner had no occasion to represent qua the said ACRs or defend himself or challenge the same before the disciplinary authority at the relevant time. Subsequently, owing to the said ACRs, the petitioner was denied the benefit of ACP, as also, promotion to the post of Superintendent, while persons junior to him were granted promotion and also the benefit of ACP.

8. Learned counsel for the petitioner has rightly argued that merely because the ACRs are not nomenclatured as adverse, it would not make them non-adverse. Particularly, when the same entries were relied upon at the time of negating the claim of petitioner for grant of ACP, as also for promotion. He places

reliance on a judgment rendered by Supreme Court of India in the case of "Dev Dutt v. Union of India and others" reported as 2008 AIR (SC) 2513, wherein it has been held that what is to be seen is the affect of an adverse entry in the ACR and not the nomenclature used. Relevant of the same is extracted herein below :

"10. in the present case the bench mark (i.e the essential requirement) laid down by the authorities for promotion to the post of Superintending Engineer was that the candidate should have 'very good' entry for the last five years. Thus in this situation the 'good' entry in fact is an adverse entry because it eliminates the candidate from being considered for promotion. Thus, nomenclature is not relevant, it is the effect which the entry is having which determines whether it is an adverse entry or not. It is thus the rigours of the entry which is important, not the phraseology. The grant of a 'good' entry is of no satisfaction to the incumbent if it in fact makes him ineligible for promotion or has an adverse effect on his chances."

8. I am in agreement with the argument of learned counsel for the petitioner that case of the petitioner is squarely covered by the judgment, *ibid*, qua the entry in the ACR of the petitioner. Merely because it was worded as "average", it would not mean that the same was not to be communicated, particularly when the effect of same is adverse to the interest of petitioner as in the present case.

8. In view of my above discussion and the reasons

contained therein, the present writ petition is allowed. The impugned orders dated 28.08.2012, 31.08.2012 and 12.04.2013, are set-aside. The respondents are directed to consider the case of petitioner afresh for grant of ACP, without taking into consideration the ACRs for the years 2008-09 and 2009-10. If he is found entitled for grant of ACP, in that case, to also grant him all consequential benefits along with interest @ 8% per annum with effect from the date the petitioner is found entitled till the date of actual payment.

9. 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 29, 2019
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Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No.