

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

CWP No.22012 of 2018 (O&M)

Date of Decision.25.09.2019

SI Anil Kumar

...Petitioner

Vs

State of Haryana and others

...Respondents

Present: Mr. G.S. Gopera, Advocate
for the petitioner.

Mr. Gaurav Jindal, Addl. A.G., Haryana.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

Prayer in the writ petition is for quashing of the adverse remarks 'Below Average' recorded by the reviewing authority-respondent No.3 for the period from 01.04.2013 to 31.03.2014 (for less than 90 days) in the Annual Confidential Report (ACR) (Annexure P-1) and the impugned orders dated 13.01.2016 (Annexure P-3) and 26.06.2018 (Annexure P-7).

Facts culminating into filing of the present writ petition are that the petitioner in the year 2010 joined services as Prob. SI and thereafter was deputed for a finger print course at Kolkata from 5.7.2013 to 7.1.2014. His ACRs had been graded as 'Good' and 'Very Good'.

Mr. G.S. Gopera, learned counsel appearing on behalf of the petitioner submitted that FIR bearing No.324 dated 4.12.2013 under Sections 302/323/341/506/147/148/149 IPC at Police Station Sadar Sirsa was registered and the investigating officer was HC Azad Singh, Sub Inspectors Dhan Singh and Kunwar Singh and Inspectors Jagdish Joshi and Jitender Kumar, as petitioner had already been transferred as SHO to the Police Station Sadar Sirsa. In other words, petitioner had a very short

duration at aforesaid police station i.e. from 16.01.2014 to 10.08.2014. It is a matter of record that accused in the aforementioned criminal case bearing No.73/2014 were acquitted by the trial Court on 24.04.2014. Petitioner was astonished to receive impugned ACR under RTI vide Annexure P-1 whereby his ACR has been downgraded by the reviewing authority from 'Good' to 'Below Average'. In fact, aforementioned downgrading was on the basis of an ex parte enquiry conducted by one Sh. Ashwin Shenvi, Superintendent of Police, Sirsa dated 13.05.2015 attributing inaction to petitioner as under:-

“....The role of P/SI Anil Kumar who initiated the re-verification process and finally discharged 2 arrested persons on the basis of Sh. Meena's directions also comes under scanner as an application for discharge was moved 10 days after verification vide case diary #23 dated 6.2.2014.”

He submitted that petitioner acted under the direction of ASP Mr. Rajender Kumar Meena. The aforementioned two accused were discharged only on account of direction dated 17.01.2014 of the aforementioned officer. No opportunity of hearing has been given when petitioner represented to punishing authority and the same was rejected without passing any reasoned order or compliance of principles of natural justice. Though there is no provision for second representation, petitioner made representation to C.M. window, which was marked to Additional Chief Secretary to Government of Haryana, which has also erroneously been dismissed vide order dated 26.06.2018 (Annexure P-7). In support of contention, relies upon judgment passed by Division Bench of this Court in

Sube Singh Vs. State of Haryana 2001(3) SCT 370.

Per contra, Mr. Gaurav Jindal, Addl. A.G., Haryana justified the alleged impugned action on the premise that it was on the basis of enquiry report dated 13.05.2015 wherein role of the petitioner as extracted above was highlighted. Recording of adverse remarks on 09.05.2015 had been conveyed to the petitioner on 24.06.2015, thus, it does not lie in the mouth of the petitioner that he had impeccable record. It is only on receipt of enquiry report, the Inspector General of Police, Hisar Range downgraded the ACR for the period from 01.04.2013 to 31.03.2014, thus, urges this Court for dismissal of the writ petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that it is a fit case where the adverse remarks are liable to be expunged. It would be in the fitness of things to extract direction dated 17.01.2014 of ASP Rajender Meena, extracted on page 28 of the paper book:-

“(i) Arrested accused Vijay Kumar and Vinod Kumar be got discharged from the court.

(ii) Sections 147/148/149 IPC be removed and Section 34 be added.

(iii) Scaly site plan be prepared.

(iv) The remaining investigation be completed as early as possible and final report be submitted to the court.”

On juxtaposition of direction as well as observation of the enquiry officer, I am of the view that there is no rationale indicting petitioner, for, it was not unilateral decision of the petitioner but under the direction of the senior officer. Be that as it may, impugned decision dated

09.05.2015 (Annexure P-1) of the Inspector General of Police while exercising the power of reviewing authority downgrading the ACR has not been in consonance with principle of *audi alteram partem*. The aforementioned view of mine has been derived from para 8 of the judgment cited supra, which reads as under:-

“8. However, it is not shown if before down grading the annual assessment of the petitioner, he was informed and as such the down grading of the annual assessment reports without any notice or show cause notice to the petitioner being violative of principles of natural justice cannot be accepted as legally correct and cannot be used as material against the petitioner for refusing to allow his crossing of efficiency bar. The down grading chart, otherwise also, does not support the action of the respondents. Admittedly, the ACRs of the petitioner for the years 1985-86, 1988-89 and 1992-93 were not available as shown in the earlier chart and these could not have been down graded even in the absence of availability. These have been shown to be 'C-below average' without any reason and is not justifiable. These reports being not available cannot be used against the petitioner. Leaving aside these three ACRs, the rest of the ACRs would indicate that more than 70% of the reports are in favour of the petitioner being 'good', 'very good' and 'average'. Taking from any angle i.e. both the charts that the actual grading

shown earlier and the ACR with down grading on presumption of certain instructions, on the basis of service record of the petitioner, he could not have been denied his crossing of efficiency bar.”

It is principle of common prudence that before taking away right of person, a person is required to be confronted with charges levelled against him. Even enquiry was conducted at the back of petitioner but was never handed over any charge sheet.

As regards argument of Mr. Jindal with regard to communication of ACR in 2015, Mr. Gopera relies upon information received under RTI reflecting non-communication of same. If at all, there was some truthfulness in the assertion, nothing prevented the State from enclosing communication or memo sent vide registered post vide which petitioner was communicated adverse remarks, thus, adverse inference is liable to be drawn.

As an upshot of my finding, adverse remarks entered in ACR of petitioner for the period from 1.4.2013 to 31.03.2014 are expunged. Writ petition is allowed. It is further directed that in case petitioner is entitled to any benefit due or has already been deriving, same may be taken care of by taking appropriate action as early as possible and preferably within a period of three months with caveat that this direction would not effect in case petitioner is facing or charged with any other enquiry/allegation.

(AMIT RAWAL)
JUDGE

September 25, 2019
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No