

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 17.05.2019****CWP No.23824 of 2018**

Jagjit Singh

...Petitioner

Vs.

Punjab & Haryana High Court, Chandigarh & others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Satya Vir Singh Yadav, Advocate, for the petitioner.

Mr. Munish Kapila, Advocate, for respondents No.1 & 2.

RAJIV NARAIN RAINA, J. (ORAL)

1. The petitioner is due to retire on 31.08.2019. He has been superseded at the stage of promotions to the post of Assistant/Reader Grade III by many Clerks junior to him in the seniority list finalized on 18.02.2014. The reason behind this was an adverse remark in the ACR for the year 2011 doubting his integrity. He made a representation on 05.07.2012, which was treated as a service appeal and remitted to the Administrative Judge of Karnal Sessions Division. The appeal was dismissed on 18.03.2015 in the following terms:

“Aggrieved by the remarks made in the Annual Confidential Report of the appellant for the year 2011, i.e., integrity doubtful, the appellant has come out with the present service appeal.

Heard the submissions made on either side.

The remarks in the Annual Confidential Report can never be a punishment. Only the consequential orders passed by the Appointing Authority affecting the service of the appellant is appealable. Appraisal of the performance of the

employee is done periodically, of course, on an annual basis only to improve the performance of the official concerned.

In view of the above, I find that there is no merit in the appeal. Therefore, the appeal stands dismissed.”

2. The Hon’ble Administrative Judge in a gist held that remarks in the annual confidential report can never be treated as a punishment and it is only the consequential order/s affecting the service adversely which is appealable. If remarks are not punishable, then the consequential orders have to be looked into and in this case, those remarks have led to the petitioner being passed over for promotion to the higher post.

3. It will be necessary for adjudication to go into the relevant facts which led to the recording of remarks assessing the conduct of the petitioner’s integrity as doubtful.

4. The case relates to a complaint case titled ‘Om Lata Vs. Renuka’, which is said to have been a sensitive case involving the charge of murder. The petitioner was posted in the Court of one of the Civil Judges (Junior Division)-cum-Judicial Magistrates Ist Class, Karnal at the relevant time. The Presiding Officer passed final judgment in the complaint on 11.02.2012. On 13.02.2012, Shri J.S.Jatain, Advocate, counsel in the case, applied for a certified copy of the order dated 11.02.2012, which was allowed and entered in CD-2 register at Sr.No.301. On the same day, one Shri Mohinder Dutt, Advocate, also applied for the certified copy of the order dated 11.02.2012, which was allowed and entered in CD-2 register at Sr.No.302. The Copyist forwarded the file to the petitioner, who made the following report thereon:

“Application received at 12.45 PM on 13.02.2012, file not received so far after decision at 1.00 PM”

5. Thereafter, application entered at Sr.No.301 was returned by the Copyist as demanded by the counsel concerned.

6. By his letter dated 04.06.2012, the then District & Sessions Judge, Karnal asked for explanation from the petitioner as to under what provisions did he make report without confirming the fact from the Presiding Officer or without even informing him. Three days earlier i.e. on 01.06.2012, the then learned District & Sessions Judge, Karnal communicated remarks recorded in the ACR for the year 2011. At that time, the petitioner was attached as Ahlmad in the court of Ms. Natasha Sharma, Civil Judge (Junior Division), Karnal, who made a favourable report, but that was downgraded by the then District & Sessions Judge on 29.05.2012 while disagreeing with the remarks of the reporting authority penned as follows:

“I do not agree with this ACR as while posted as Ahlmad in the Court of Sh. Gagandeep Mittal, Civil Judge Jr. Division, he acted irresponsibly, in haste while writing on the application for supply of copy that the file was not received by him. He wrote this fact on the same day, application form was put before him. He did not wait for the receipt of file for duration, he was expected to receive the file. No file is to be supplied the same day the application form is received. He even did not confirm the fact from his Presiding officer nor informed him. His writing on the application on 13.02.2012 that “Appl. Received at 12.45 PM on 13.02.2012. File not received so far after dictation”, itself goes to show that so has been done for some extraneous consideration. As such, I assess his integrity as doubtful. Official be conveyed this ACR”.

7. The line of reasoning adopted by the then District & Sessions Judge being the Appointing-cum-Disciplinary Authority, was that the petitioner did not confirm the fact of location of the case file from his Presiding Officer, when he reported that file has not been received nor did he inform the Judicial Officer about it. It was for this reason that District & Sessions Judge thought that some extraneous consideration was at play and, therefore, assumed that the petitioner's integrity was doubtful. This downgrading was communicated to the petitioner by letter dated 01.06.2012 (supra). His explanation was called by letter dated 04.06.2012 as to why action should not be taken against him in accordance with rules. Pointedly, the explanation sought was that under what provisions, he made the report and returned the application without confirming the fact from the Presiding Officer and without informing him in this regard. Two days' time was given to file reply. The explanation was furnished promptly on 08.06.2012, wherein the petitioner submitted that on 13.02.2012, Copyist presented before him two applications for supply of certified copies of judgment dated 11.02.2012 and asked him to supply the concerned record/file. One of the applications was marked in 'Most Urgent' category, which was moved by Shri J.S.Jatain, Advocate. He categorically stated in his reply that it was well in his knowledge that the said file has not been received back, but being a most urgent application, he enquired about the file immediately. After going through the record and enquiring from his colleagues, he came to know that the said file was not received back from the Court. He confirmed this fact from the Reader of the Court. He went on to say in his explanation that being custodian of the file, he had to report about the non-receipt of the file as Copyist was to prepare copy of the judgment, so he put the said report

on the application forms. More interestingly, he revealed in the explanation that the Presiding Officer was on station leave on 13.02.2012 and being a subordinate he felt rather uncomfortable to enquire about the case file directly from his Presiding Officer on telephone. On 14.02.2012, he received the file in question from the Court and thereafter, he handed over the same to the Copyist. In making the report, there was no ill will on his part. The petitioner was supposed to either supply the record to the Copyist or to make report regarding the record on the face of the application. He could not return the application vide which record/files were demanded by the Copyist for supply of the copies applied for by the counsel as 'Most Urgent' without any report. To my mind, what he actually meant was that if he did not make the report, he might expose himself to disciplinary action.

8. From the record, it appears that nothing seems to have been done from the year 2012 as far as petitioner was concerned. He moved a representation against downgrading of ACR for the year 2011, which was treated as a service appeal which ultimately dismissed vide order dated 18.03.2015, reproduced above. However, in the meantime, juniors were promoted vide order dated 21.03.2014 ignoring the petitioner. Vide order dated 27.02.2015, again his juniors were promoted. Thereafter, the petitioner made a representation on 25.05.2015 claiming promotion from the due date and also sent a reminder dated 21.09.2016. The petitioner was never charge-sheeted nor were disciplinary proceedings initiated against him regarding his report dated 13.02.2012. The Administrative Judge of the Karnal Sessions Division did not examine the basis of the explanation furnished resulting in downgrading of ACR to integrity doubtful by disagreeing with the report of the Presiding Officer. His representation/s remained pending without final

orders of the Appointing-cum-Disciplinary Authority i.e. the District & Sessions Judge, Karnal.

9. The final order on that representation was passed by the learned District & Sessions Judge, Karnal on 18.05.2018, which contains, to my mind, the finest reasons to hold that the petitioner was not at fault in making the report. The learned District & Sessions Judge, Karnal heard the official and went through the record and the entry at Sr.No.301 returning in original the application to the counsel by the Copyist. The District & Sessions Judge found that the copy of the application was not available on record except the entry in the record. Therefore, he felt that he had no option but to accept the contention of the official as genuine that it was applied for as 'Most Urgent'. The perfectly logical reasoning adopted by the Appointing cum Disciplinary Authority is worth quoting instead of making a summary of it. The same reads as follows:

“3. ...It is a matter of fact that by the time the application was presented, the file had not yet been received by the Ahlmad. Therefore, the question of his forwarding the file to the Copyist did not arise. The undersigned has now learnt from the office that it was a high profile case. Therefore, the Advocate/party must have put pressure upon the Copyist for the supply of copy urgently. Under that pressure, if the Copyist presented the application before the Ahlmad and asked him about the file, the Ahlmad had three options; firstly, to return the application without making any report; secondly, to contact the Presiding Officer, who was on leave, for his direction and; thirdly, to make factual report. Exercising first option would have been controversial given the fact that the matter was sensitive. The official has explained that he was uncomfortable enquiring about the file from the Presiding Officer, who was on leave. The undersigned has no reason to disbelieve the official. In these

circumstances, third option was rightly exercised. Needless to say that it was factual report without any exaggeration. There is no provision under which the permission of the Presiding officer was required before making such report. Similarly, there is no provision which debars the official from making such report. The report was made to deal with a particular situation. Merely because the situation could have been tackled in a different manner should be no ground to infer misconduct on the part of the official. He was custodian of the file. It was his duty to forward the file to the Copyist and if file was not available with him and he made report accordingly, no fault can be found with him. Therefore, no further proceedings are required. Notice is filed.”

10. On careful reading of the order, I would tend to agree with the learned District & Sessions Judge, Karnal that it would have been rather controversial for the petitioner to return the application without making any report on it, the matter being sensitive in nature. The second option was also worth discarding because any person in the place of the petitioner would have felt uncomfortable ringing up the Presiding Officer and enquiring about the whereabouts of the judicial file, which could only be done on the telephone since the Presiding Officer was on leave on 13.02.2012. The third option was the best one, that is, to make a factual report, which in the opinion of the learned District & Sessions Judge, Karnal was rightly exercised by the petitioner. If the petitioner spoke the truth, he cannot be punished for it and I endorse the view of the District & Sessions Judge, Karnal that it was a factual report without any exaggeration. I also find that there is no procedural provision under which the permission of the Presiding Officer was required before making such a report nor was there any provision which debars the employee from making such report. It was a decision taken in a particular situation and merely because the situation

could have been tackled differently should be no ground to infer misconduct on the part of the official. He was admittedly the custodian of the files and it was his duty to forward the file to the Copyist. The District & Sessions Judge, Karnal held that no further proceedings are required in the matter.

11. While having passed the order on 18.05.2018, taking the winds out of the sails of the basis of the downgrading of ACR and calling for explanation by show cause notice, the learned District & Sessions Judge, Karnal had still to deal with the representation for setting aside the downgrading of ACR for purposes of promotion in the face of the order dated 18.03.2015 passed by the then Hon'ble Administrative Judge of the Karnal Sessions Division by treating the representation as service appeal.

12. If the adverse remarks doubting integrity stood, then it was past muster that the promotional case had to be governed by the Haryana Government instructions dated 21.05.1973, which prescribe that if any official has earned adverse remarks against his honesty/integrity during 10 years preceding the date on which he is to be considered for promotion, he should not be promoted and for this proposition, the question as to whether adverse remarks can be considered punishment or not is not germane to the controversy in hand, as observed by the learned District & Sessions Judge, Karnal. Since the representation filed by the petitioner against the adverse remarks had already been dismissed and the period of 10 years had not expired and when the period would lapse, the petitioner would have retired from service. To which I may add that the lapse of 10 years from 2011 would see the petitioner retired on the lower post of Clerk. It is for these reasons, while referring to the instructions that the learned District &

Sessions Judge has been constrained to dismiss the representation in the light of the order dismissing the service appeal.

13. It may be noticed that the order dated 18.05.2018 exonerating the petitioner from delinquency regarding the report and the consequential order dated 20.08.2018 have been passed by the same District & Sessions Judge. One, declaring the petitioner innocent of the misconduct, the other declining the request for promotion from back date when he was passed over due to the remarks doubting integrity. The question which arises for consideration is that if the order dated 18.05.2018 is upheld, then it is a subsequent unforeseen event which was not available to the then Hon'ble Administrative Judge of the Karnal Sessions Division on 18.03.2015, when the appeal was dismissed without examining the merits of the charge. It is a supervening event which overarches all other considerations of equity, justice and good conscience that if the basis of the misconduct stands obliterated, then there is no reason to withhold the promotion of the petitioner from the date his juniors were promoted as Assistant/Reader Grade-III. This impediment has fallen on the shoulders of this Court to consider removing in proceedings under Article 226 of the Constitution, which jurisdiction the Hon'ble Administrative Judge did not exercise while dismissing the appeal. The terms on which the order dated 18.03.2015 was passed is that remarks in ACRs are not punishable. While observing this, the Hon'ble Administrative Judge held that only the consequential orders passed by the Appointing-cum-Disciplinary Authority affecting the service of the appellant is appealable. Denial of promotion when unjustified is a valuable right to appeal for removal of grievance. This means that against denial of promotion from the date when immediate juniors were promoted may still

have to go to the Administrative Judge for orders. If this course is adopted, the petitioner would have to litigate in retirement in appeal etc. which may take a long time. In these circumstances, I would not think of relegating the petitioner to exercise such a remedy leaving the matters for tomorrow, a tomorrow which may take years to come.

14. I accordingly believe that serious wrong was done to the petitioner by the learned District & Sessions Judge, Karnal on 29.5.2012, as communicated to the petitioner vide letter dated 01.06.2012, that his ACR for the year 2011 have been downgraded to read 'integrity doubtful'. The reasons assigned by the then learned District & Sessions Judge are fallacious and those reasons have been duly considered and discarded by his successor-in-interest by order dated 18.05.2018 finding no fault in the petitioner and dropping further proceedings against him. Those reasons appeal to me and I endorse the view that the third option was rightly exercised by the petitioner in the facts and circumstances. Petitioner spoke nothing but the truth on facts transpiring on 13.02.2012. No Clerk, I believe in the Sessions Division would have the gumption to ring up the Presiding Officer on leave asking what he had to do with the applications for certified copies remitted to him by the Copyist.

15. The learned District & Sessions Judge has believed the official that the application was applied as the 'Most Urgent'. I have no reason to disbelieve this aspect after it has been carefully examined. In case, the petitioner had not made any report, he could have been charge-sheeted. The learned District & Sessions Judge has recorded in his order dated 18.05.2018 that it was a high profile case and, therefore, all the Advocates/parties must

have put pressure upon the Copyist for supply of certified copy of the judgment on urgent basis. Under that pressure, if the Copyist had presented the application before the Ahlmad concerned and asked him about the file, then he could have done one of three things, as already said before. The best option was to make a factual report and speak the truth and in this I assume that the file was not in Court and could have been in the custody of the Presiding Officer himself. I have no doubt that the case was blown out of proportion by the uncaring hand and mind of the District & Sessions Judge, who made a hand-written note on the ACR of the petitioner for the year 2011 recorded by Ms. Natasha Sharma, Civil Judge (Junior Division), Karnal recording his disagreement and dumping the petitioner in a pool of doubtful integrity for untenable and irrelevant reasons. That defect has been cured by the successor-in-interest while deciding the show cause notice in 2018. The order dated 18.03.2015 passed by the then Hon'ble Administrative Judge of Karnal Sessions Division in Service Appeal No.25 of 2013, reproduced above, is therefore required to be read down to serve the ends of justice due to supervening events and especially the order dated 18.03.2018 removing the base of the downgrading from 'Good' to 'Integrity Doubtful'. The order passed by the Hon'ble Administrative Judge, which is not even an adverse order as it leaves rights open for consequential adverse orders with a fresh right to challenge claiming promotion. The basic consequential order is dated 18.05.2018 passed by the Appointing-cum-Disciplinary Authority, which changes the entire complexion of the case. Assuming that had the order dated 18.05.2018 passed by the learned District & Sessions Judge been available on 18.03.2015, when service appeal was declined, the entire case would have been liable to be closed and the matter

dropped. The petitioner reads the order dated 18.03.2015 in his favour and that is why he made a representation for promotion on 25.05.2015 and also sent a reminder on 21.09.2016, while those requests were pending, the third round of promotion orders was made on 03.11.2017 further promoting his junior colleagues.

16. Photocopies of the ACRs docket have been produced before me by the counsel for respondents No.1 & 2. The relevant one is at pp.45 of the paper-book with hand-written remarks on the face and continued on the reverse of the ACR page. The same is retained on record as Mark – ‘A’.

17. Perusal of the photocopies of the ACRs produced before me, I find that there is no other blemish of work and conduct in the services rendered by the petitioner from the date he joined as Clerk on 24.11.1995. All the ACRs from 1997 to 2017, except the one in dispute in 2011, are recorded as ‘Good’, ‘Very Good’ or ‘Outstanding’ by the respective Presiding Officers. There is nothing in them which doubts his fitness for promotion. The episode is a solitary incident. I find also nothing in the written statement filed by the respondents which might change the proposed result of this petition. It was the duty of the Judge who passed the judgment dated 11.02.2012 to make it available to the office on that day itself.

18. For the variety of reasons recorded above, I find substantial merit in this petition. The same is accepted. The order dated 18.05.2018 dropping further proceedings on the subject matter of the alleged misconduct is upheld, while the order dated 20.08.2018 is set aside. Accordingly, a mandamus is issued to respondent No.2 – learned District & Sessions Judge, Karnal to promote the petitioner w.e.f. 21.03.2014, the date when his

junior/s were promoted to the post of Assistant/Reader Grade-III for the first time and to do so with all consequential benefits including arrears of difference of pay and allowances. Necessary orders of promotion be passed before the petitioner retires on superannuation on 31.08.2019 by re-fixing last pay drawn, the actual benefit of arrears can be paid thereafter within reasonable time.

17.05.2019
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes
Yes/No