

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

CWP-12081-2020 (O&M)
Date of decision : 21.09.2020

Dr. Harinder Kumar

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Gagneshwar Walia, Advocate for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

ANIL KSHETARPAL, J.

The petitioner has filed this writ petition under Article 226 of the Constitution of India, seeking issuance of a writ in the nature of certiorari, for quashing the order dated 13.02.2020, passed by the Government of Punjab, through its Principal Secretary, Department of Health and Family Welfare, Punjab.

Learned counsel appearing for the petitioner has submitted that the writ petitioner has been graded as Average in the Annual Confidential Reports, for relevant years but on account of Instructions in vogue at that time, such ACRs were never communicated. He submits that the aforesaid Annual Confidential Reports have been used against the petitioner to deny him the benefit of placement in the higher pay scale under the Assured Career Progression Scheme, upon completion of 4/9/14 years of service.

Once the Annual Confidential Reports were never communicated to the petitioner, therefore, these could not be used against the petitioner in order to deny him the benefit of Assured Career Progression Scheme. He relied upon the judgment passed by the Supreme Court in the case of **Dev Dutt Vs. Union of India and others, (2008) 8 SCC 725.**

This Court has heard the learned counsel for the petitioner.

It has been noticed that the writ petitioner has repeatedly filed writ petitions in this Court. From the paper book, one can make out that the writ petitioner filed CWP Nos.10755, 19626 of 2009 and CWP No.7091 of 2012, apart from Execution, bearing EA No.31 of 2016.

On 04.10.2013, while disposing of CWP No.7091 of 2012, it was directed as under:-

“Having heard learned counsel for the parties at length, this Court is of the considered view that the issue with regard to entitlement of the petitioner for the grant of ACP benefit upon completion of 4/9 years service w.e.f. 1.1.1998 and 1.1.2005 would not require any adjudication on merits. The categorical pleadings on behalf of the petitioner that he had not been granted any opportunity of hearing prior to the passing of the impugned order have not met with any rebuttal in the written statement. It is by now well settled that the employer/State would have to comply strictly with the rules of natural justice prior to passing of any order which entails adverse civil consequences upon an employee. The petitioner has clearly been prejudiced to the extent that even the service record upon which reliance has been placed upon to justify the action of review and passing of the impugned order i.e. the ACRs in question were never conveyed to the petitioner.

For the reasons recorded above, the impugned order dated 23.2.2012, Annexure P4, cannot sustain and the same is quashed. However, this shall not preclude the State Government from proceeding afresh in the matter strictly in accordance with law and after observing the principles of natural justice.

Writ Petition is allowed in the aforesaid terms.”

Now on 10.2.2020, a speaking order has been passed. From the reading whereof, it is apparent that the petitioner was issued a Show Cause Notice, giving him an opportunity to file a reply, thereto. He was also granted opportunity of hearing on 17.01.2020. The service record of the petitioner has been reconsidered. In para 12 of the order, the summary of Annual Confidential Record of the petitioner has been compiled in a tabulated information, which is extracted as under:-

Sr. No.	Year	Grade	
	1993-94	Average	<i>Date of starting regular service : 16.12.1993 plus 4 years 15.12.1997 but the Confidential record upto 01.01.2001 is not good more than 50%. Therefore, the 4 years placement was found eligible from dated 01.01.2001.</i>
	1994-95	Average	
	1995-96	Average	
	1996-97	Very Good	
	1997-98	N.R.C.	
	1998-99	N.R.C.	
	1999-2000	Good	
	2000-01	Average	<i>As per Government instructions dated 17.10.1995, 5 years are to be counted onward from the date of placement of 4 years. 9 years placement date was becoming from 1.1.2006 but due to seeing 50 records good, this placement has been found eligible from 1.1.2007</i>
	2001-02	Average	
	2002-03	Good	
	2003-04	Good	

	2004-05	Average	
	2005-06	Good	
	2006-07	Very Good	By adding/accumulating 5 years in 01.01.2007, the 14 year placement has been found to be eligible from 1.1.2012
	2007-08	Good	
	2008-09	Good	
	2009-10	Good	
	2010-11	Good	

At this stage, it would be relevant to point out that in the judgment passed by the Supreme Court in Dev Dutt's case (Supra), the Supreme Court, ultimately directed that the appellant therein be communicated the entries within two months, against which a representation can be filed by the employee, which shall be decided within the specified time. It was also ordered that consequently, if the appellant is found entitled to any benefit, the same shall be granted to him. In the aforesaid judgment, the directions were issued that all entries in the Annual Confidential Reports should be communicated to the employees.

It is also apparent from careful reading of the order passed on 04.10.2013, in CWP-7091-2012, that the Government while filing its reply in the aforesaid writ petition had disclosed the summary of entries in the Annual Confidential Reports of the petitioner. The petitioner, thus, had knowledge of the Annual Confidential Reports.

The petitioner has not annexed the copy of representation/response filed by him in response to the Show Cause Notice. From the reading of the order, it is apparent that the petitioner never demanded copies of the Annual Confidential Reports, enabling him to represent.

The decision to grant the benefit of Assured Career Progression Scheme, is dependent upon many factors including Annual Confidential Reports for the relevant years. Thus, the impugned order passed by the Government can only be revised if the alleged uncommunicated remarks in the Annual Confidential Reports are upgraded/revised. Learned counsel for the petitioner has not assailed the correctness of the order passed by the Government, impugned herein, on any other ground. The Supreme Court in the case of Dev Dutt (Supra), did not chose to set aside the order denying promotion to the post of Superintending Engineer. It was considered appropriate that let the entries be communicated to the appellant and afford him an opportunity to make a representation in this regard. It was noticed that as per relevant instructions/Rules, prevalent at that time, only adverse remarks in the Annual Confidential Reports were being communicated. It was for this reason, the direction was issued that all reports including Excellent, Very Good, Good or average or adverse, should be communicated.

In the present case, the claim of the petitioner for placement in the higher scale on the basis of the Assured Career Progression Scheme, is entirely dependent upon the remarks in ACRs for the relevant years. Unless those remarks are revised and upgraded, the petitioner, cannot claim that he is entitled to any relief.

Keeping in view the aforesaid facts, this Court is of the opinion that the writ petition deserves to be disposed of on the first date of hearing, while granting liberty to the petitioner to make a representation to the Principal Secretary to Government of Punjab, Department of Health and Family Welfare, demanding copies of alleged uncommunicated Annual

Confidential Reports, which have been used against him to deny the benefit of ACP scheme. If it is found by the Department that infact the Annual Confidential Reports, were not communicated to him, the same shall be communicated within one month from the date of receipt of representation, against which the petitioner shall be entitled to make a representation. If such representation is made, the Principal Secretary shall decide the same within two months, thereafter. This order has been passed keeping in view the fact that the petitioner joined service on 16.12.2019 and has already filed repeated writ petitions. However, if the Department comes to a conclusion that all the Annual Confidential Reports used against the petitioner, to deny him the benefit of Assured Career Progression Scheme, has already been communicated, then no further order shall be required to be passed. Since this order has been passed on the very first date of hearing of the writ petition, therefore, the respondents shall be at liberty to move an application for recall thereof.

With these observations, the writ petition stands disposed of.

All the pending miscellaneous applications, if any, are disposed of, in view of the afore-said order.

21.09.2020

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No