

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

226

CWP No.8626 of 2017
DECIDED ON : 28.01.2020

EASI, Lokesh Kumar

...Petitioner

versus

State of Haryana & Ors.

...Respondents

CORAM : HON'BLE MR. JUSTICE GIRISH AGNIHOTRI

Present : Mr. Sunil K. Nehra, Advocate for the petitioner.

Ms. Safia Gupta, Asstt. AG, Haryana.

GIRISH AGNIHOTRI, J. (ORAL)

Present petition has been filed by the petitioner-EASI, Lokesh Kumar, *inter alia*, praying for quashing the punishment order dated 05.07.2013 (Annexure P-6) and also the impugned inquiry report dated 05.04.2013 (Annexure P-3). The petitioner has also prayed for quashing of the consequential orders passed by the Inspector General of Police, Karnal Range, Karnal, dated 21.05.2014 (Annexure P-8) and order passed by the Director General of Police Haryana dated 09.11.2016 (Annexure P-9) to the limited extent, whereby, even punishment of simple warning was so ordered.

The main grievance of the petitioner is to the non committal comments i.e. Average, recorded in the ACR vide memo dated 26.04.2013 (Annexure P10) for the period from 01.04.2012 to 31.03.2013.

For ready reference, the said memo dated 26.04.2013 is reproduced as under:-

“No.226/ST dated, the 26.04.2013

Subject: Conveying Adverse Remarks:EASI Lokesh Kumar No.160/YNR for the period from 01.04.2012 to 31.03.2013.

The following adverse remarks have been recorded in the Annual Confidential report of EASI Lokesh Kumar No.160/YNR for the period from 01.04.2012 to 31.03.2013.

- 1.Discipline: Undisciplined
- 2.Integrity: Average
- 3.Reliability: Unreliable
- 4.Moral Character: Average
- 5.General Remarks: Facing DE absents from duty.

He is, the therefore, advised to remove the above state defects.

Two copies of the advise note are sent to you. One copy of the same be returned to this office after putting your signature with date, in token of having received the same, for this office record.

-Sd/-

26.04.2013
Superintendent of Police,
Yamunanagar.

EASI Lokesh Kumar No.160/YNR”

It is the matter of record that the Director General of Police, Haryana vide order dated 04.11.2016 (Annexure P-9) had reduced the punishment to warning. The case of learned counsel for the petitioner is that in the punishment so provided under the rules, warning is not even any of the punishment so provided, nor it can affect the career prospects. Therefore, the main question would be 'Is it appropriate to quash the memo dated 26.04.2013 (Annexure P-10)'. A perusal of the same, which is reproduced above, would show that the intention of the Reporting Officer is evident from the fact that in the General Remarks it was mentioned that 'Facing Departmental Enquiry absents from duty'. All the other comments are non-committal for the obvious reason that the Reporting Officer was not sure as to if in the departmental enquiry, the petitioner would be held guilty or not. The fact that the departmental enquiry had direct bearing over the comments recorded in the ACR, is evident from the memo/order dated

11.02.2014 (Annexure P-12), wherein the Competent Authority itself has recorded that the comments were based on overall performance and he was reportedly indulging in providing secret information to provide persons due to some ulterior motive for which he was punished in the departmental enquiry. It can be noticed that on the date, the memo dated 26.04.2013 was issued, the enquiry report dated 05.04.2013 had already been available with the department.

Therefore, in the above circumstances, this Court is of the considered view that the order dated 11.02.2014 deserves to be quashed.

This Court directs the Director General of Police, Haryana to himself examine the matter or may depute any other Competent Officer to examine the issue of appropriately expunging/upgrading the ACR in view of the fact that the comments in the ACR were primarily based on the departmental enquiry being faced by the petitioner.

Let the Competent Authority consider and pass an appropriate order in accordance with law within four weeks from receipt of certified copy and shall also keep in view all the prevalent instructions on the subject of confidential reports, one of which has also been appended here as Annexure P14.

Writ petition is disposed of accordingly.

(GIRISH AGNIHOTRI)
JUDGE

January 28, 2020
 jyoti3

Whether speaking/reasoned : YES/NO
Whether reportable : YES/NO