

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

CWP No. 2637 of 2022 (O&M)

Date of Decision: May 6, 2022

EASI Rajesh Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. S.K. Redhu, Advocate
for the petitioner.

Ms. Upasana Dhawan, AAG, Haryana.

JAISHREE THAKUR, J.

1. The petitioner herein by way of instant writ petition seeks quashing of the order dated 14.05.2013 (Annexure P/1) by which punishment of censure has been awarded to him without affording opportunity of hearing, letter dated 30.5.2014 (Annexure P-2) vide which adverse remarks were communicated to him, letter dated 10.9.2014 vide which his representation was rejected, letter dated 4.9.2018 vide which his mercy appeal was declined, and release of 3rd ACP and to consider the case of promotion of the petitioner to the post of Exemptee Sub Inspector Police w.e.f. 1.10.2019 and to grant all consequential benefits.

2. In brief the facts are that the petitioner was recruited as a Constable in the Haryana Police on 25.09.1989 and thereafter was promoted as EHC in the year 2005 and as EASI in the year 2011. It is claimed that the petitioner has 18 Good Entries in his character roll. However, by impugned

order dated 14.05.2013 (Annexure P/1), the petitioner was awarded a punishment of censure by respondent No.4 without affording proper opportunity of hearing and without issuing any show cause notice. It is averred that on the basis of the punishment of censure dated 14.05.2013, the reporting officer i.e. Superintendent of Police, Rewari, recorded adverse remarks in his ACR for the year 2013-2014, which were conveyed to him by letter dated 30.5.2014 (Annexure P/2). Against the adverse remarks recorded for the period 18.2.2013 to 31.3.2013 and 1.4.2013 to 31.3.2014, vide which the integrity and moral character of the petitioner was assessed as '*average*', he submitted a detailed representation dated 16.6.2014 (Annexure P/3), which was rejected by the Inspector General of Police, South Range, Rewari, vide order dated 10.9.2014 (Annexure P/4).

3. Aggrieved against the order dated 10.9.2014, the petitioner filed a detailed mercy petition before the Director General of Police, Haryana, which was rejected by order dated 25.08.2015 (Annexure P/5) on the ground that there is no provision to entertain second representation against the adverse remarks. Thereafter, the petitioner moved a representation to the Additional Chief Secretary to Government, Haryana, Home Department, which too was filed by passing a non-speaking order dated 4.9.2018 (Annexure P/6), giving rise to the instant petition.

4. Learned counsel for the petitioner submits that the impugned order imposing punishment of censure is absolutely illegal, arbitrary and against the record. It is submitted that all the ACRs of the petitioner are 'Good' and 'Very Good' except for the period 2013-2014. It is further submitted that the adverse remarks recorded in his ACR for the year 2013-

2014 are not substantiated by any documentary proof and the same deserve to be quashed. It is further submitted that in terms of Standing Order No. 127/2008 dated 22.09.2008 the petitioner was entitled to be promoted to the rank of Exemptee Sub Inspector w.e.f. 24.9.2019, but he was not promoted in view of the punishment of censure awarded to him. It is further submitted that an employee is entitled to an ACP on completion of 8, 16 and 24 years of service and as such the petitioner, who has completed 24 years of services, is entitled to 3rd ACP. Learned counsel relies on judgment rendered by this Court in CWP No. 6969 of 2009 titled **Azad Singh EHC No. 180/BWN versus State of Haryana and others decided on 26.9.2012** to contend that remarks of *average integrity* cannot be treated as dishonest nor punishment of 'censure' can be made basis for denying promotion as well as 3rd ACP.

5. Per contra, learned counsel appearing on behalf of the respondent—State submits that there is nothing wrong in the impugned orders passed by the respondents. The petitioner had made representations against the impugned remarks and the same was rejected after taking into consideration all the facts and circumstance of the instant case and as such no interference is called for.

6. I have heard learned counsel for the parties and have gone through documents as well as the case law cited.

7. At the outset, the annual confidential reports for the period 18.2.2013 to 31.3.2013 (period of report is less than 90 days) and 1.4.2013 to 31.3.2014, recorded by the officer under whom he had worked during this period, reads as follows: -

<i>Sr. No.</i>	<i>Summary of Report</i>	<i>Remarks</i>
1	Discipline	xxxx
2	Integrity	Average
3	Reliability	Reliable
4	Moral Character	Average
5	General Remarks	Average/Censure vide No. 563-67/ST dated 14.05.13 for challning Heavy Vehicles and compounding challans.

8. In the reply on the one hand, the respondent has submitted that censure is not a punishment as per the service rules and on the other hand, it is asserted that the petitioner is not entitled to be promoted as Exemptee Sub Inspector w.e.f. 24.9.2019 in the light of the fact of recording of adverse remarks in his ACR in question. It is also admitted that censure cannot be a ground for denying promotion. It is submitted that the reporting authority observed his overall conduct and gave his remarks in the ACR which can not be faulted.

9. It can be taken to be an admitted fact that the petitioner was not issued a show cause notice before the order dated 14.5.2013 was passed by Superintendent of Police Rewari, as the State has not refuted the same in the written statement. By the said order, the punishment of censure was awarded for showing grave negligence and carelessness on account of challaning many heavy vehicles and not challaning light vehicle which act cast a doubt on his conduct. This punishment then became a ground to record **“Average/ Censure Vide No.563-67/ST dated 14.5.2013 for challaning Heavy Vehicles and compounding Challans”** in the General Remark Column of the ACR for the period from 18.2.2013 to 31.3.2013 and

1.4.2013 to 31.3.2014 which was communicated to him on 30.5.2014. The act of not giving any show cause notice to the petitioner before awarding punishment even of censure, is violative of the principles of natural justice as has been held in the case of **Shri B.D. Gupta v. State of Haryana, AIR 1972 Supreme Court 2472**, wherein it was held that if an order affects the employee financially, it must be passed after an objective consideration and assessment of relevant facts and circumstances and after giving the person concerned full opportunity to make out his own case about that order. Even though the order of censure may not affect the petitioner financially, it is a penalty and it did affect his subsequent ACRs which in turn has affected his chances of promotion and getting his 3rd ACP. Even in **State of UP vs Vijay Kumar Tripathi and another Civil Appeal No 8918 of 1974 decided on 7.12.1994**, the Supreme Court has held that imposition of penalty without opportunity of show cause to an employee is violative of principles of natural justice. This was held in spite of the fact the Court noticed that Rule 55-B of U.P. Civil Services (Classification Control And Appeal) Rules 1930 did not prescribe for notice to be given before imposition of penalty of censure/ stoppage at an efficiency bar. In the case in hand, the order dated 14.5.2014 was issued based on a report received from Inspector Shri Bhagwan, the then officiating SHO Model Town, Rewari, regarding the conduct of the petitioner in challaning heavy vehicles and the said report was never put to the petitioner seeking his response, instead he was imposed with punishment of censure, which order can not be held to be sustainable and deserves to be set aside.

10. A further reading of the ACR in question reveals that the reporting officer has given the remarks of average integrity which report should have contained remarks about the reputation for integrity of the officer. In the judgment rendered in **Azad Singh EHC's case (Supra)**, it has been held *“Another aspect which needs to be taken note of is that the integrity of an officer can either 'good or bad', but it can never be 'average'. He can be honest or not honest or dishonest. This shows non-application of mind and a casual approach adopted, while recording the annual confidential report for the period 2.10.2003 to 28.1.2004 and therefore, the said report qua integrity of the petitioner cannot sustain.”* The judgment rendered would be applicable here as well since the integrity has been held to be average which would not reveal whether the petitioner is honest or dishonest.

11. As regards the second submission of the petitioner for grant of promotion of the petitioner to the post of Exemptee Sub Inspector Police from the post of Exemptee Assistant Sub Inspector, the Standing Orders No 127 of 2008 can be referred to. As per the Standing order, those officers who have served in the department for more than 12 years, 22 years and 30 years, with a clean service record but could not be promoted as prescribed under the Punjab Police Rules as applicable to Haryana, would be entitled to one rank promotion and EASI would be entitled to promotion to post of Exemptee Sub Inspector after completion of 30 years' service provided, they have completed 5 years' service in the present rank. One of the eligibility criteria for promotion is that integrity of the official during the last ten years should be certified and if ACR contains adverse remarks

regarding reliability, then such official should not be promoted for at least two years after the last date of ACR in which adverse remarks regarding reliability have been recorded. In the instant case, the petitioner became due for promotion *w.e.f* 2019 as he has served for more than 30 years in the department as he was appointed in 1989 and promoted to the post of EASI in 2011. The gist of ACRs of the petitioner, obtained under the Right to Information Act, will show that his ACR from 1.10.2005 to 31.8.2020 have been '*Good/ Very Good*' other than one entry of '*Average*' based upon the Censure awarded on 14.5.2013. In fact, punishment of censure is not a valid ground to withhold promotion or increments as admitted by the respondent State itself. Even if the ACR for the year 2014-2015 is taken into account, as per the Standing Order two years had elapsed since the last date of ACR in which adverse remarks regarding reliability have been recorded. Therefore, the petitioner could not have been denied promotion as sought for.

12. This court having held that the ACR for the year 2013-2014 is based upon a punishment order dated 14.5.2013 issued without show cause notice being issued to the petitioner, the order is not sustainable. Furthermore, it is held that the ACR recording average qua overall assessment based upon punishment cannot be relied upon as there is nothing other than the 'censure' to show the unreliability or dishonesty of the petitioner. The same thus stand expunged. The petitioner in the light of the above, fulfills the requirement and norms as laid down for promotion in the Director General's Standing Order No. 127/2008, dated 22.9.2008 (Annexure-P-7) and would be entitled to all consequential reliefs that flow.

13. Consequently, the writ petition stands allowed and the impugned orders declining appeals and representations are set aside. The respondents are directed to consider the petitioner for promotion to the post of Exemptee Sub Inspector with effect from the date he became eligible and also release his 3rd ACP, as per his entitlement.

May 6 , 2022
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No