

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

CWP No.3999 of 2020 (O&M)

Reserved on:12.09.2022

Pronounced on:29.09.2022

Joginder Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Kshitij Sharma, Advocate
for the petitioner.

Ms. Upasana Dhawan, AAG, Haryana.

JAISHREE THAKUR, J.

1. The petitioner has approached this Court by way of Article 226/227 of the Constitution of India seeking expunging the adverse remarks recorded in ACR of the petitioner for the period from 19.06.2015 to 31.12.2015 conveyed to the petitioner vide letter dated 01.08.2016 and further for setting aside the order dated 02.02.2017 (Annexure P-5) passed by respondent No.3 dismissing the representation submitted by the petitioner against the aforesaid adverse remarks and dated 14.04.2017 (Annexure P-7) passed by respondent No.2 whereby review representation for expunging the aforesaid adverse remarks has been rejected.

2. In brief, the facts are that the petitioner joined the police department as Constable on 12.09.1985 and with the passage of time was promoted upto the post of Sub Inspector on 11.09.2014 and was posted in the Commissionerate of Gurugram. The petitioner was suffering from chronic paralysis and since his movement was restricted and he was not able to move freely without

assistance, he was posted in Police Lines. The petitioner has nearly 71 good ACRs and there has been no instance of any adverse entry in his service record till 01.08.2016, when the petitioner was communicated adverse remarks in his ACR for the period from 19.06.2015 to 31.12.2015. Against the said adverse remarks, petitioner submitted a representation, which was dismissed by the Commissioner of Police, Gurugram vide order dated 02.02.2017 on the ground that the same was delayed by 3 months 1 day. Against the order dated 02.02.2017, a review representation was filed before the Director General of Police, Haryana, which also stood dismissed on the ground that no second representation is maintainable for expunging of adverse remarks in ACR. Hence, the writ petition.

3. Learned counsel appearing for the petitioner would submit that adverse remarks recorded in the ACR are irrelevant on account of the nature of posting held by the petitioner, who suffered from paralysis and in his long service span, there had not been any adverse entry. The petitioner has 71 good ACRs to his count. It is argued that adverse remarks recorded in the ACR for the period in question are totally against the rules and instructions, as no reasons have been recorded while assessing honesty of the petitioner as doubtful. As regards columns related to discipline, reliability, moral character and general remarks, the reporting officer filled the same as below average, non-reliable, average and below average respectively, which is against the rules/instructions and have been recorded without any substantial proof and evidence. He relies upon the judgments passed by this Court in ***State of Haryana Vs. Karan Singh 2002 (1) RSJ 109*** and ***Prabh Dayal Vs. Haryana State and others 2002 (II) SLR 307***. Further reliance has been

placed upon the judgment passed by the Hon'ble Supreme Court in ***Sukhdeo Vs. The Commissioner Amrawati Division 1996 (3) SCT 613*** wherein it has been held that the employee must be given sufficient opportunity to improve informing him of his deficiency. However, if still he does not improve, the adverse remarks would be well founded and it would form material basis in support thereof. It is argued that since the adverse remarks are recorded against the instructions and the settled position of law, the same are liable to be expunged.

4. Per contra, learned counsel appearing on behalf of the respondent-State would submit that a departmental inquiry was conducted against the petitioner on the allegation of forgery by making false signatures of Assistant Commissioner of Police, Headquarters, Gurgaon and Inspector Surender Kumar, which charges stood proved against him. However, taking a lenient view the punishing authority awarded a penalty of stoppage of two future increments with permanent effect vide order dated 24.09.2016. The petitioner had filed an appeal against the said order before the Commissioner of Police, Gurugram who dismissed the same vide order dated 06.01.2017. Revision petition filed against the said order also stood dismissed. It is further argued the present writ petition is not maintainable as the petitioner had already challenged the adverse remarks recorded in his ACR for the period from 19.06.2015 to 31.12.2015 in CWP No.10068 of 2017 titled as *Joginder Singh Vs. State of Haryana and others*, which was dismissed as withdrawn with liberty to challenge the instructions No.60/4/87-S(1)-A dated 14.08.1987. However, the instant writ petition has been filed with the identical prayer as had been made in CWP No.10068 of 2017 and thus, liable to be dismissed.

5. I have heard learned counsel for the parties and have perused the paper book. As a matter of fact, the petitioner approached this Court by filing CWP No.10068 of 2017 on the same cause of action, which was dismissed as withdrawn vide order dated 06.11.2019 with liberty to the petitioner to challenge the instructions dated 14.08.1987. The order dated 06.11.2019 is reproduced as under:-

“[1] After arguing for some time, learned counsel for the petitioner prays for permission to withdraw the writ petition with liberty to challenge the instructions No.60/4/87-S(1)-A dated 14.08.1987.

[2] In view of statement of learned counsel for the petitioner, the writ petition is dismissed as withdrawn with the liberty as prayed for.”

6. The present writ petition has been filed on similar grounds as were taken in CWP No.10068 of 2017 i.e. to challenge the impugned orders whereby his representation/appeal against adverse remarks in the ACR for the period from 19.06.2015 to 31.12.2015 were rejected being barred by the period of limitation as has been pleaded herein. Even the head note and prayer clause of CWP No.10068 of 2017 and the instant petition are verbatim same. In view of the aforesaid facts and circumstances, the instant petition is dismissed being not maintainable.

(JAISHREE THAKUR)
JUDGE

September 29, 2022

Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No