

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

CWP-5520-2020

Reserved on 19.04.2022

Pronounced on: 06.05.2022

BHIM SINGH

.... Petitioner

Versus

STATE OF HARYANA AND OTHERS

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Dr. Suresh Kumar Redhu, Advocate,
for the petitioner.

Mr. Tapan Kumar, DAG, Haryana.

JAISHREE THAKUR.J

1. The petitioner herein is aggrieved against the adverse remarks entered in his service record for the period from 22.12.2016 to 31.03.2017 and against the order of the Additional Director General of Police, South Range, Rewari, rejecting his representation, with a further prayer seeking a writ of mandamus to be issued to grant officiating promotion to the rank of Assistant Sub-Inspector from the day his juniors stand promoted.

2. In brief, the facts are that the petitioner was recruited as Constable on 28.10.2000 in the Haryana Police and was promoted to the rank of officiating Head Constable on 18.02.2010. He was awarded more than 31 commendation certificates on account of his excellent work. The petitioner was falsely implicated in a criminal case i.e. FIR No.78, dated 18.03.2017, registered under Sections 7/13 of the Prevention of Corruption Act, 1988 at

Police Station Chandhut. He was acquitted by the court of Additional Sessions Judge, Palwal vide judgment dated 15.05.2018 while noting that *“prosecution has failed to prove unequivocally the demand and acceptance of illegal gratification and the recovery thereof from the accused.”* The petitioner was acquitted of all the charges levelled against him. The State did not file any appeal in the matter on the opinion given by the District Attorney, Palwal. Based on the FIR that was initiated, a departmental enquiry was held by the Superintendent of Police, Palwal and the Enquiry Officer submitted his findings on 22.04.2019 exonerating the petitioner from all the charges levelled against him. The Superintendent of Police, Palwal after scrutinizing the report of the Enquiry Officer, agreed with the findings vide his order dated 14.05.2019 and treated his suspension period as period spent on duty for all intents and purposes. However, the then Superintendent of Police, Palwal, on the very basis of criminal case and departmental enquiry, recorded adverse remarks (Annexure P-8) in the ACR of the petitioner for the period from 22.12.2016 to 31.03.2017 which were conveyed to him, vide endorsement dated 15.05.2017. The petitioner filed a representation against the adverse remarks to the Additional Director General of Police, Rewari, which representation was rejected being devoid of any merit. Based on the adverse entries, the petitioner has been ignored for promotion to the next higher rank of Assistant Sub Inspector.

3. Aggrieved against the adverse entries for the period from 22.12.2016 to 31.03.2017 and the consequent denial of promotion based on the adverse entries, the instant writ petition has been filed.

4. Dr. S.K. Redhu, learned counsel appearing on behalf of the petitioner would contend that the petitioner was falsely implicated in the FIR No.78, dated 18.03.2017, registered under Sections 7/13 of the Prevention of Corruption Act, 1988 at Police Station Chandhut as would be evident from the fact that he was exonerated by a judgment dated 15.05.2018 as passed by the Additional Sessions Judge, Palwal. The petitioner was honourably acquitted and all charges against him were dropped as the prosecution failed to produce any cogent evidence regarding his demanding or accepting any illegal gratification. Furthermore, the District Attorney, Palwal also gave an opinion that it was not a fit case for filing an appeal. On the basis of criminal case, departmental proceedings were also initiated. However, the petitioner stood exonerated by the Enquiry Officer and the Superintendent of Police, Palwal filed the departmental enquiry by his order dated 14.05.2019 and treated the suspension period as spent on duty. It is submitted that adverse entries could not have been recorded as they pertain to the period 22.12.2016 to 31.03.2017 and since he was arrested on 18.03.2017, makes it a period less than 90 days. It is also submitted that the work of the petitioner was observed for a period of less than 90 days and, therefore, there is clear contravention of the Punjab Government circular dated 03.05.1960 which stipulates that the work and conduct of a person has to be observed for at least a minimum period of three months. It is further submitted that the petitioner has obtained his ACRs for the past 10 years and no such adverse entries had been reflected therein.

5. Mr. Tapan Kumar, learned DAG Haryana, on the other hand, contends that there is no infirmity with the order passed by the authority as

the integrity of the petitioner was doubtful as an FIR was registered against him under the Prevention of Corruption Act. It is argued that the recording of Annual Confidential Report was a matter of subjective satisfaction of the officer concerned and the correctness thereof cannot be doubted.

6. I have heard learned counsel for the parties. The facts are not in dispute. The petitioner was awarded adverse entries on the basis of an FIR that was registered under Sections 7/13 of the Prevention of Corruption Act and he faced departmental enquiry as well. Needless to note that he was acquitted by the trial Court after it came to conclusion that there was no material on the record to prove that the petitioner had demanded and accepted illegal gratification. The petitioner was acquitted of all the charges levelled against him. The departmental proceedings were dropped based on the fact that he stood acquitted and his period of suspension has even been treated as period on duty. The argument raised by the counsel for the petitioner that adverse entries could not have been recorded by the Reporting Officer on account of the fact that his work and conduct had been observed only for a period of only 87 days, whereas adverse entries had been conveyed for the period 22.12.2016 to 31.03.2017, has merit. It is to be noted that the petitioner stood arrested on 18.03.2017, making it a period to less than 90 days from 21.12.2016 to 18.03.2017 and, therefore, by virtue of circular issued by the Punjab Government on 03.05.1960, no Reporting Officer should have recorded the remarks unless he has seen his work and conduct for at least three months. This fact has not been taken into consideration by the Additional Director General of Police, South Range, Rewari, while passing the impugned order dismissing the representation.

7. A further reading of the impugned order would also reflect that it is not a reasoned one. The representation stands dismissed by stating that he has no reason to disbelieve the punishing authority *i.e.* Superintendent of Police, Palwal who has actually seen the working of the representationist for sufficient period of time. This cannot be deemed to be reasoned order specially when a contention has been raised that the ACR for a period of 87 days could not have been recorded. A fact that could not be ignored is that the State did not choose to file an appeal against the order exonerating the petitioner on legal advice received. He stood reinstated and the period of suspension regularized.

8. A perusal of the confidential report for the period from 22.12.2016 to 31.03.2017 would clearly reveal that no adequate reasons have been furnished as to why the integrity of the petitioner has been found to be doubtful for the period in question. It is worthwhile to note that in the preceding years, there is no report regarding his integrity being doubtful. In fact, the reports which have been obtained for the previous years under the provisions of RTI Act would reflect that the petitioner herein has been a disciplined, honest, reliable and a good official.

9. The Supreme Court in ***Amrik Singh Versus State of Haryana- 1995(3) S.C.T. 617*** has taken note of the government instructions which clearly enjoin upon the officer making adverse remarks regarding integrity to give reasons as to why he suspects the integrity recorded to be doubtful. On that basis, it was held that the respondent had acted in a casual manner casting aspersion on the integrity of the petitioner in the said writ petition.

The same ratio would be applicable in the instant case. The Reporting

Officer has not given any reason as to why she suspects the integrity of the petitioner to be doubtful. Neither was she competent at that relevant time to record the ACR for the period from 21.12.2016 to 31.03.2017 as it is an admitted fact that the petitioner stood arrested on 18.03.2017 and, therefore, the Reporting Officer did not have an occasion to observe his work and conduct for a minimum period of three months as stipulated under circular dated 03.05.1960.

10. Consequently, the writ petition is allowed. The adverse entries being unsustainable, are set aside, while further holding that the order passed on the representation is totally non-speaking, that too is set aside. As far as the claim of the petitioner for promotion is concerned, the respondents are directed to consider his case for promotion to the post of officiating Assistant Sub Inspector from the date his juniors have been promoted.

(JAISHREE THAKUR)
JUDGE

06.05.2022

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No