

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

CWP No.10672 of 2019(O&M)
Date of Decision.27.05.2022.

Hari Om and another

...Petitioners

Vs

State of Haryanaand others

...Respondents.

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR.

Present: Mr. Sunil Kumar Nehra, Advocate
for the petitioners.

Mr.Sanjay Mittal, Addl. A.G., Haryana.

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JAISHREE THAKUR J. (ORAL)

1. By this instant petition, the petitioners herein have approached this Court seeking quashing of the ACRs for the period 22.11.2014 to 08.03.2015 as well as the impugned orders 16.08.2016, 17.02.2017 and 16.03.2017 whereby representations submitted by the petitioners against the impugned ACRs have been rejected by a non-speaking order.

2. In brief, facts as enumerated in the writ petition are, that the petitioners had joined the respondent-Department as Constable and earned promotions to the post of Head Constable and Assistant Sub Inspector with the passage of time. A complaint dated 04.12.2014 (P-2) was submitted by an under-trial prisoner namely Ramesh in FIR No.402 of 2014 registered under Sections 186, 363, 307, 34 IPC and Section 25 of the Arms Act to the Senior Superintendent of Police, Sonipat wherein allegations were levelled against Inspector Kanwal Singh along with petitioners that they took him along with his companions in custody from his friend's water plant but later on, shown

them to be engaged in encounter with the police. Similar allegations were levelled by son of one of the co-accused vide complaint dated 17.12.2014 submitted to the Superintendent of Police, Sonipat. On the complaint filed by Ramesh, an enquiry was conducted by Deputy Superintendent of Police, Sonipat and in the enquiry report dated 14.02.2015 submitted by the enquiry officer, petitioners were found innocent. Thereafter, a letter dated 09.03.2015 was written by the Superintendent of Police, Sonipat to the Assistant Registrar, National Human Rights Commission, New Delhi stating therein that allegation levelled by Ramesh had been found baseless upon an enquiry conducted in the matter. However, the petitioners came to know on 18.12.2015 that their ACRs for the period 22.12.2014 to 08.03.2015 were recorded as 'Below Average' by the Reporting Officer and their integrity has been recorded as "Doubtful". The petitioners were never communicated with the said ACRs. Thereafter, when the petitioners approached the department with regard to the same, they were supplied with the ACRs for the aforesaid period. Upon receipt of ACRs, petitioners submitted representations dated 24.12.2015 to the department for expunction of adverse remarks, which representations were rejected vide order dated 16.08.2016 by passing a non-speaking order. Revisions filed by the petitioners against the aforesaid order were also rejected vide order dated 17.02.2017 and 16.03.2017 in the case of petitioner No.1 and 2 respectively on the ground that no revision/second representation lies against the adverse remarks in ACR, in view of instructions dated 22.03.1971 issued by the Government. Aggrieved against the aforesaid orders, petitioners have approached this Court in the instant writ petition.

3. Learned counsel appearing on behalf of the petitioners would submit that the ACRs of the petitioners for the period 22.11.2014 to

08.03.2015 have been downgraded only on the basis of complaint made by the accused in the FIR against the petitioners and other police officials, totally ignoring the fact that they have been found innocent in the enquiry conducted by an officer of the rank of Deputy Superintendent of Police. It is argued that in fact, the accused Ramesh, who had made complaint against the petitioners and other police officials that he and his companions had been falsely implicated by the police in an encounter case, was convicted by the court of Additional Sessions Judge, Sonapat vide judgment dated 15.03.2018 under Sections 307, 353 IPC and Section 25 of the Arms Act. It is further argued that there is no other adverse entry in the entire service records of the petitioners. In fact, petitioner No.1 has 17 good entries in his service whereas petitioner No.2 has 19 good entries. Even, the Reporting Officer i.e. Abhishek Garg, IPS, who had written ACRs of the petitioners had never observed the working of the petitioners for the relevant period i.e. 22.11.2014 to 08.03.2015, as he joined as Superintendent of Police, Sonipat only in March, 2015 whereas the ACRs were conveyed to the petitioners on 18.12.2015. Therefore, recording of adverse remarks in the ACRs of the petitioners only on the basis of complaint made by an accused in the FIR is wholly unjustified especially in view of the fact that petitioners had been found innocent in an enquiry conducted by the department in the said matter and therefore, the adverse entries are liable to be expunged.

4. Counsel for the petitioners also relies upon the relevant instructions, which detail that reasons are to be recorded wherever adverse entries are made. He states that no reasons have been given in the ACR for the adverse entries. In support of his arguments, he relies upon the judgment rendered by a Coordinate Bench of this Court in **Davinder Singh ASI Vs.**

State of Haryana and others 2011 (20 RSJ 12 wherein it has been held that adverse remarks of “doubtful integrity” made in the ACR on the basis of criminal case and punishment of stoppage of increment, when the petitioner was not even challaned, and in the departmental enquiry he was exonerated, becomes totally baseless and unjustified and therefore, were quashed.

5. Learned counsel appearing on behalf of the respondent-State would submit that ACRs of the petitioners for the period 22.11.2014 to 08.03.2015 had been recorded by B. Sateesh Balan, IPS whereas the adverse remarks were conveyed by Abhishek Garg, IPS vide letter dated 18.12.2015 and therefore, the ACRs for the relevant period were recorded by an officer, who observed the work and overall performance of the petitioners. The adverse entries recorded in the ACRs for the aforesaid period of the petitioners were based on their overall performance during the relevant period and not on the sole basis of complaint made against them by an accused in the FIR.

6. I have heard learned counsel for the parties and have perused the pleadings with their assistance.

7. The facts are not in dispute. The respondent-State has not been able to controvert the fact that *other* than the adverse entries for the period 22.11.2014 to 8.3.2015 which are under challenge, the record of the petitioners is Good. The adverse entries recorded for the petitioner No.1 for the period in question is:

1	Discipline	Indisciplined
2	Integrity	Doubtful
3	Reliability	Unreliable
4	Moral Character	Immoral
5	General remarks	Below Average

And the entries for petitioner No.2 for 22.11.2014 till 8.3.2015 are as under:-

1	Discipline	Indisciplined
2	Integrity	Doubtful
3	Reliability	Unreliable
4	Moral Character	Immoral
5	General remarks	Below Average.

8. It is not possible to see from the records that the Reporting Officer had any other objective criterion to make adverse entries, other than the fact of receipt of complaints, one by the undertrial himself and one by the son of another. The complaints were appropriately dealt with by holding a departmental enquiry in which both the petitioners were exonerated. One of the reports was available with the Reporting Officer as it is dated 14.2.2015, before the entries were made. Even the report furnished to the National Human Rights Commission stated that *'till now no authenticity has been found in the charges inscribed in the complaint'*. This report is dated 9.3.2015. The representation made against the adverse remarks has been disposed of by the Inspector General of Police on 16.8.2016 with the cryptic observation that *'the appellant during period of hearing could not give satisfactory reply regarding the advisory note.'* The result of the departmental inquiry and the report of Sh. Ashok Kumar, SP Sonapat, as sent to the Human Rights Commission have also not been dealt with.

9. There are instructions as issued from time to time regarding recording of adverse entries. In Haryana Government Letter No.61/20/85/S(I) dated 12.12.1985 *"Report Regarding Integrity — A special mention, should invariably be made regarding the integrity of the Officer to which*

Government attach the greatest importance. It should be clearly stated if the officer is suspected of corruption or is believed to be corrupt and this opinion should generally be fortified by reasons, which may be in the possession of the reporting officer. Any ill-considered remarks in this respect may do a lot of mischief and harm. On the other hand, the reporting officers must be quite honest and frank and discuss an officer's worth from the point of view of his integrity openly and frankly in the column "Defects, if any" or elsewhere. Government observe that reporting officers are still following the practice of making non-committal remarks like 'no complaints.' Government view this with disfavour and desire that the practice of making non-committal entries in the column relating to integrity should cease. Reporting officers should give a definite opinion on the integrity of their subordinates while writing their confidential report. Further, instances have come to the notice of Government in which even though officers are being proceeded against for serious forms of corruption, their confidential, report for the same periods certify their integrity to be good. It is felt that contradictions of this type arise only because reporting officers are failing in their duty to make entries in the columns relating to integrity forthrightly and without hesitation. In case an officer has been given a good report for integrity which is later proved to be wrong, the reporting officer will run the risk of earning Government's displeasure. Ordinarily, the inference would be that either he did not exercise proper supervision or he was in dishonest collusion with this subordinate. The intention of Government is that the truth about subordinates should be known to reporting officers and brought to the notice of higher authorities. This would not, however, justify the entering of ill-considered remarks based on inadequate observation." A reading of the instructions would spell out that

special mention should invariably be made regarding the integrity of the officer in which the government attaches the greatest of importance. It should be clearly stated if the officer is suspected or is believed to be corrupt and this opinion should generally be fortified by the reasons, which may be in the possession of the reporting officer. In the instant case, there is no material as such that has been relied upon either in the written statement or arguments addressed to establish that the integrity of the employees is doubtful.

10. The authority has also not recorded reasons as per the instructions, since there are reports of the departmental enquiry holding that the complaints were unfounded. Moreover, the Inspector General of Police has not assigned any cogent reasons in rejecting the representation. Consequently, the writ petition stands allowed and the adverse entry for the period 22.11.2014 to 8.3.2015 are expunged and impugned orders rejecting the representation and dismissing the revision petitions are set aside.

(JAISHREE THAKUR)
JUDGE

May 27, 2022

Pankaj*

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No