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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CWP No. 27939 of 2017 (O&M)  
Decided on: 16.05.2022

VINOD KUMAR

Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Karamveer Singh Banyana, Advocate  
for the petitioner.

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

**JAISHREE THAKUR J.**

1. The petitioner herein is aggrieved against the down-grading of his Annual Confidential Report for the period 18.04.2011 to 20.04.2011 and 04.01.2012 to 31.03.2012 and hence, has approached this Court under Articles 226/227 of the Constitution of India to have the same expunged as well as to set aside the orders vide which his representations against the adverse remarks stand dismissed as well.

2. In brief, the facts as stated are that the petitioner was appointed as a Constable in Haryana Police on 01.11.1991 and was subsequently promoted as EHC on 27.12.2007. A regular departmental enquiry was initiated against the petitioner on the allegation that one accused namely Raj

Kumar alias Pintu was involved in FIR No. 0279 dated 16.11.2010, under Section 384/420/120-B IPC, registered at Police Station Madhuban and said Raj Kumar alias Pintu had made telephone calls on the mobile of the petitioner and the petitioner too had made calls on the mobile of the said accused. The enquiry officer submitted his enquiry report dated 22.06.2012, exonerating the petitioner from the charges levelled against him. However, adverse remarks were conveyed to the petitioner on 21.08.2012 pertaining to the period from 18.04.2011 to 20.04.2011 and 04.01.2012 to 31.03.2012 vide letter No.809/Steno dated 17.08.2012 passed by respondent No.4. Thereafter, the petitioner submitted a representation before respondent No.3 against the recording of adverse ACR, but the said representation was rejected by an order dated 14.05.2013. The petitioner was imposed with a punishment of stoppage of five annual increments with cumulative effect vide order dated 11.02.2013, against which the petitioner preferred an appeal, which appeal was partly accepted vide order dated 18.07.2013 and his punishment was reduced to stoppage of one annual increment with cumulative effect. In view of the fact that his appeal had been accepted in part, the petitioner again submitted a representation dated 03.12.2013 to respondent No. 3 against the adverse remarks through proper channel, which was also rejected vide order dated 01.01.2014. Petitioner herein preferred revision before respondent No.2 and his revision petition filed against the punishment of stoppage of one annual increment with cumulative effect was reduced to stoppage of one annual increment with temporary effect. In the meantime, the said Raj Kumar alias Pintu, who had been named as an accused in FIR No. 0279 dated 16.11.2010, under Section 384/420/120-B IPC, registered at Police Station

Madhuban, who was supposed to be in conversation with the petitioner, stood exonerated by the trial Court, which led the petitioner herein to again approach the authorities concerned for re-consideration of the adverse entries, which representation also stands declined and mercy petition too.

3. Learned counsel for the petitioner would argue that the ACR of the petitioner herein was down-graded despite the fact that there was no material available on the record to do so. The inquiry officer in the departmental inquiry had exonerated him and thereafter, the punishing authority disagreeing with the report had imposed a punishment of stoppage of five annual increments with cumulative effect. In appeal, it was then reduced to stoppage one annual increment with cumulative effect and on revision, the punishment was modified to stoppage of one increment with temporary effect. It is argued that without any basis, the ACR has been down-graded and that too without the reporting officer observing his work and conduct for at least a period of three months. It is argued that a combined ACR had been written for a period of three days i.e. from 18.04.2011 to 20.04.2011 and the next period of 87 days i.e. from 04.01.2012 to 31.03.2012, to make it a period on 90 days. It is also argued that the ACR for the intervening period had been recorded by another officer i.e. from the period 20.04.2011 to 04.01.2012 by the Commandant, 2<sup>nd</sup> Battalion, IRB, Bhondsi, Gurgaon as '*Good*'.

4. Learned counsel for the respondent-State would dispute the arguments raised by learned counsel for the petitioner and submits that the work and conduct of the petitioner was such that the reporting officer was compelled to write an adverse ACR. It is argued that the petitioner was found

involved in corrupt activities and had developed relations with accused namely Raj Kumar alias Pintu in FIR No. 0279 dated 11.11.2010, under Section 384/420/120-B IPC, registered at Police Station Madhuban.

5. I have heard learned counsel for the parties and have perused the pleadings of the case.

6. Recording of the ACR is the subjective satisfaction of the reporting officer. Until and unless it is shown that the recording of the remarks was arbitrary and *malafide*, this Court would be loath to interfere. However, there are executive instructions issued for the writing of confidential reports, which specify that the ACR should be written for the reporting/financial year (i.e. from 1st April to 31st March of the year). In this regard, reference may be made to letter No. 7116-3S-76/3368 dated 14.12.1977, as issued from the office of the Chief Secretary to Government of Haryana as well as instructions issued vide Haryana Government letter No. 2784-3S-70 dated 02.03.1971, which asks for the ACR to be written only for the financial year and that too for at least a period of three months during the financial year. Whereas, there are instructions which also specify that a reporting officer is not to record the remarks in the ACR of an employee until and unless he has seen his work for a minimum period of three months. These instructions were initially issued on 25.02.1971, after the formation of the State of Haryana and were subsequently repeated by a letter dated 31.10.1993 by the Chief Secretary to Government of Haryana and are still in place. The petitioner has relied upon the instructions issued by Haryana Govt. letter No.2784-3S-70 dated 02.03.1971 (Annexure P-11) in para 14 (vi) of his petition, which have not been controverted in the reply and deemed to

be accepted.

7. In view of the above factual position, it can fairly be concluded that the reporting authority has recorded an ACR for the period 18.04.2011 to 20.04.2011, i.e. for a period of 3 days for the reporting period 01.04.2011 until 31.03.2012, since the ACR is to be filled up for one financial year. The second ACR, i.e. from 04.01.2012 until 31.03.2012 is for a period of 88 days, which makes it less than the minimum period required of 90 days, for the work and conduct to be observed by the reporting authority before filling up the ACR. It appears that the reporting authority has deliberately added a period of 3 days i.e. from 18.04.2011 to 20.4.2011, so as to complete the mandatory period of 90 days for which any reporting authority can report on a subordinate as regards the Annual Confidential Report. This act and conduct itself would reflect the *malafide* of the reporting authority. It cannot be ignored that during the intervening period, the Commandant of the 2<sup>nd</sup> Battalion, IRB, Bhondsi has given a 'Good' remarks in the petitioner's ACR. Other than this period, the petitioner has been able to establish that he has been receiving all good reports and therefore, there is good reason to expunge the adverse remarks being entered contrary to the instructions as issued from time to time.

8. It is also noted that the petitioner had filed representations against the adverse ACR giving several reasons as to why they should be set aside, however, the said representations were dismissed in a casual manner without referring to any of the points raised. The Inspector General of Police, Karnal Range, Karnal stated that the adverse remarks recorded in the ACR are justified and therefore, rejected the representations being without merit.

In a similar matter reported as “Om Prakash Versus State Of Haryana 1995 (5) SLR”, the High Court has held that ‘*this action in any manner cannot be termed as satisfactory method of deciding the representation particularly when the representationist had raised several points to show that the remarks were legally and factually incorrect. Therefore, it has to be held that rejection of the representation of the petitioner vide annexure P5 is arbitrary.*’ The ratio as settled in the aforesaid case would be applicable to the instant case as well.

9. Consequently, the instant writ petition is allowed and the adverse remarks made in the Annual Confidential Report (ACR) of the petitioner herein for the period between 18.04.2011 to 20.04.2011 and 04.01.2012 until 31.03.2012 are set aside. Rejection orders of the representations of the petitioner are also declared illegal and hereby quashed.

(JAISHREE THAKUR)  
JUDGE

16.05.2022  
Chetan Thakur

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No