IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 27100 of 2018 (O&M)
Date of Decision: 11.10.2022

Amar Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Tara Chand Dhandwal, Advocate
for the petitioner.

Mr. Tapan Kumar, DAG, Haryana.

JAISHREE THAKUR, J.

1. By way of instant writ petition, the petitioner herein seeks quashing of the adverse remarks recorded in his Annual Confidential Report for the period 1.4.2015 to 21.12.2015, conveyed to him on 8.6.2016 (Annexure P/15) and the orders dated 16.9.2016, 21.12.2016 and 31.01.2017 passed by the respondents, vide which the representations and the mercy appeal filed by the petitioner against the said adverse remarks have been rejected.

2. The brief facts are that the petitioner was appointed as Constable on 14.4.1989 in the Haryana Police. After joining the service, the petitioner did his graduation as well as post-graduation. It is claimed that by the dint of his hard work, the petitioner rose to the rank EASI. In the month of March, 2015, when the petitioner was posted as EASI in Police Station Sadar Hisar, he was entrusted with the investigation of FIR No. 224 dated 14.3.2015 registered under Sections 323, 341, 147, 149, 506 IPC, which was registered on the complaint of one Sandeep against Dharambir son of Bhal Singh, Santosh wife

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of Dharambir, Sanjay son of Dharambir, Satbir son of Bhal Singh, Manoj son of Satbir and Sukhbir son of Balwant. During investigation, the petitioner being Investigating Officer arrested Dharambir, Sanjay and Satbir on 17.3.2015 and the remaining persons were found innocent. Further investigation was done by the SHO himself and the action of the petitioner with regard to arrest of Dharambir etc. and finding the remaining persons innocent was found fair and legal. On 2.4.2015 (Annexure P/1), one Sheela Devi wife of Ravinder made a complaint against Dharambir alleging that he continuously committed raped upon her and his wife—Santosh made a film of this illegal act. During the investigation, Sheela Devi submitted an application regarding the matter having been compromised and accordingly after recording the statement of Sheela Devi, the complaint was filed on 9.4.2015 (Annexure P/4). After the matter was compromised on 9.4.2015, Dharambir made a false complaint dated 22.4.2015 to the Director General of Police, Haryana—respondent No.2 against the petitioner, alleging that the petitioner demanded a bribe from him, in which a preliminary inquiry was conducted and statement of the complainant and the petitioner were recorded. Thereafter, vide order dated 29.7.2015 (Annexure P/6), the petitioner was suspended and a regular inquiry was ordered to be held. The petitioner was charge sheeted on 14.5.2016 (Annexure P/7), to which he submitted a detailed reply dated 21.6.2016 (Annexure P/8). The Inquiry Officer, vide his report dated 23.6.2016 (Annexure P/9), held that the allegations levelled against EASI demanding bribe from the complainant—Dharambir could not be ascertained/confirmed. However, it was held that allegation of not carrying out investigation as per rule was proved. On submission of the inquiry report, a show cause notice

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dated 27.6.2016 was issued to the petitioner, to which the petitioner gave a detailed reply (Annexure P/10). The punishing authority, after considering the reply submitted by the petitioner to the show cause notice, reinstated the petitioner in service, while awarding punishment of stoppage of five annual increments with permanent effect vide order dated 1.8.2016 (Annexure P/11).

3. Aggrieved against the order dated 1.8.2016, the petitioner preferred an appeal, which was allowed by the Inspector General of Police, Hisar Range, Hisar, vide order dated 17.11.2016 (Annexure P/13) and the order dated 1.8.2016 was set aside and the suspension period of the petitioner from 29.7.2015 to 19.12.2015 was ordered to be treated as a period spent on duty for all intents and purposes. It is submitted that due to the false complaint dated 22.4.2015 made against the petitioner, he was conveyed adverse remarks by respondent No.4 vide letter dated 8.6.2016 **(Annexure P/15)**. The petitioner submitted a detailed representation for expunging adverse remarks recorded in his ACR for the period 1.4.2015 to 21.12.2015. However, respondent No.3, vide order dated 16.9.2016 **(Annexure P/17**), rejected the representation on the ground that the same was not filed within the prescribed period of 45 days and there was delay of four days. After rejection of his representation, the petitioner filed a mercy appeal along with an application for condonation of delay, which was again rejected by respondent No.3 on 21.12.2016 **(Annexure P/20)** on the ground that the second representation is not maintainable. Thereafter, against the order dated 16.9.2016, the petitioner filed an appeal before the Director General of Police, Haryana, Panchkula, which too was rejected by the Inspector General of Police, Hisar Range, Hisar, on 30.1.2017 **(Annexure P/22**) on the same ground that the second representation is not

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maintainable. Hence, the instant writ petition.

4. Learned counsel appearing on behalf of the petitioner herein would submit that the adverse remarks recorded in the ACR of the petitioner for the year 1.4.2015 to 21.12.2015, conveyed on 8.6.2016 (P-15) are not sustainable in the eyes of law. It is submitted that these adverse remarks were recorded on the basis of an inquiry which was held against the petitioner on a false complaint made by one Dharambir. Initially, the petitioner was awarded a punishment of stoppage of five annual increments with permanent effect, however, on an appeal filed against the same, it was set aside and the petitioner who had been suspended was reinstated in service. The ACR in question was downgraded only on account of the complaint and since the same was found to be false in the departmental inquiry, the adverse ACR is required to be expunged.

5. Per Contra, the learned State counsel would oppose the prayer by contending that the petitioner was found to be derelict in performing his duty and the reviewing authority had rightly downgraded the ACR of the petitioner herein.

6. I have heard the counsel for the parties and with their assistance have gone through the pleading of the case.

7. The facts, as narrated above, are not in dispute. The ACR for the period 1.4.2015 to 21.12.2015 as communicated to the petitioner were of integrity doubtful; moral character not good; with general remarks that he had been placed under suspension and that a regular departmental inquiry had been initiated against him on the 29.7.2015 on the allegations of demanding a bribe in FIR No.224/2015 u/s 323/341/147/149/506 IPC Police Station Sadar Hisar.

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In the regular inquiry that was held the charge of demanding illegal gratification was not proved, but he was found to be derelict in performing his duty which led to the punishing authority imposing a punishment of stoppage of 5 annual increments with cumulative effect, which orders have been set aside on appeal and the suspension period of the petitioner treated as spent on duty. If the corruption case against the petitioner was not proved, the petitioner would then be entitled to have the adverse remarks expunged. The very basis and the foundation of making an adverse entry was on account of the suspension of the petitioner and the initiation of the departmental inquiry and if the edifice does not stand then the entries made will necessarily have to have to be rectified.

8. For the reasons afore-stated, the writ petition is allowed, the impugned adverse remarks are set aside as well as the orders whereby the respondents refused to correct the same and the matter is remanded back to the respondents to pass a fresh order in respect of the ACR of the petitioner for the period in question i.e 1.4.2015 to 21.12.2015 within a period of two months from the date of receipt of a copy of this order.

11.10.2022 **(JAISHREE THAKUR)**
prem **JUDGE**

Whether speaking/reasoned : Yes
Whether Reportable : No

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