

**207 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 21715 of 2020

DATE OF DECISION: 04.02.2022

Dinesh Singh

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Aman Pal, Advocate,
for the petitioner.

Mr. Samarth Sagar, Addl. AG, Haryana.

Mr. Kanwal Goyal, Advocate,
for the respondent-HPSC.

(Presence marked through video conferencing).

ARUN MONGA, J. (ORAL)

Petition herein, *inter-alia*, is for issuance of a writ in the nature of certiorari seeking quashing of order dated 14.08.2020 (Annexure P13) passed by respondent No.2 whereby representation dated 28.02.2020 (Annexure P-12) has been rejected, upholding the downgrading of the ACRs of the petitioner for the years 2013-14 and 2014-15.

2. Short controversy for adjudication thus is with regard to downgrading of the Annual Confidential Reports (hereinafter referred to as "ACRs") of the petitioner, without communicating the same to him.

3. Succinctly put the factual narrative which is not in dispute is that having rendered eight years of service as Naib Tehsildar, the petitioner was promoted as Tehsildar in 2015 and thereafter he is an aspirant for being further promoted/selected in Haryana Civil Services on the basis of having earned ‘Very Good’ ACRs for six years. Inter-se merit for selection was to be assessed by Haryana Public Service Commission (hereinafter referred to as ‘HPSC’) on the basis of marks awarded as per grading in ACRs. This is borne out from the affidavit dated 12.01.2022 on behalf of HPSC filed pursuant to this Court’s order dated 06.01.2022. Its relevant part is reproduced herein below :

“3) That in compliance of the said order, it is respectfully submitted before the Hon’ble court that the following criteria was adopted by the commission for assessing the inter-se merit vis-à-vis the selection of candidates to the post of HCS (Ex. Br.) for Register A-1 on the basis of ACRs supported by the Government/department to the answering respondent commission:-

<u>Remarks in “ACR”</u>	<u>Marks to be awarded</u>
<i>Outstanding</i>	<i>8.75</i>
<i>Very good</i>	<i>7.00</i>
<i>Good</i>	<i>5.00</i>
<i>Satisfactory</i>	<i>Nil</i>
<i>Bad</i>	<i>Nil</i>

The candidates should have at-least 6 ACR of “Very Good” category and 2 ACRs of not less than “Good” category during the last eight years’.

4. From perusal of above stand taken in the affidavit filed by the HPSC, it is thus not in dispute that candidates have to be evaluated on the basis of ACRs earned in the past and their different gradations.

The petitioner claims that he had throughout been given 'Very Good' ACRs. However, for the years 2013-14 and 2014-15, his ACRs were downgraded *exparte* by the competent authority from 'Very Good' to 'Good', without the same being communicated to him. His representation dated 28.02.2020 (Annexure P-12) was declined vide impugned order dated 14.08.2020 (Annexure P-13), which is under challenge through the instant writ proceedings.

5. In the return filed by the respondents, the writ petition has been opposed primarily on the ground that the downgrading of the ACRs is required to be communicated only if there is adverse consequence arising therefrom. In addition, learned State counsel also canvasses that even if there is an adverse consequence, the ACR is not necessarily to be communicated as long as it does not result in lowering the bench mark for being considered to the next level of promotion.

6. Learned State counsel emphatically argues that mere downgrading of the ACR, as long as it does not result in ousting the candidate from the zone of consideration, is not to be construed as adverse and, therefore, vide the impugned order dated 14.08.2020, representation has been rightly rejected. It was in this premise that vide an order dated 06.01.2022, the HPSC was asked to file an affidavit, relevant part of which is reproduced herein above. The purpose was to ascertain: a) whether the downgrading of ACR of the petitioner resulted in any adverse consequence; b) whether the petitioner is ousted from the zone of consideration and/or is adversely

affected qua the bench mark adopted by the HPSC for considering him eligible for selection to the next level of promotion?

7. I have heard rival contentions of learned counsels for the parties and perused the pleadings.

8. First and foremost, reliance has been placed by all the learned counsels on the Apex Court judgment rendered in “**Dev Dutt v. Union of India and others**” 2008 (8) SCC 725. Relevant part thereof is as below:

“24 It may be mentioned that communication of entries and giving opportunity to represent against them is particularly important on higher posts which are in a pyramidal structure where often the principle of elimination is followed in selection for promotion and even a single entry can destroy the career of an officer which has otherwise been outstanding throughout. This often results in grave injustice and heart burning and may shatter the morale of many good officers who are superseded due to this arbitrariness while officers of inferior merit may be promoted.

25. In the present case the action of the respondents in not communicating the good entry for the year 1993-94 to the appellant is in our opinion arbitrary and violative of natural justice because in substance the good entry operates as an adverse entry for the reason given above.

XXXX

39 In the present case we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries whether poor, fair, average, good or very good in the Annual Confidential Report of a public servant whether in civil judicial police or any other State service except the military must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our opinion is the correct legal position even though there may be no Rule/G.O requiring communication of the entry or even if there is a Rule/G.O prohibiting it because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or Government orders,”

9. A perusal of the above would reveal that no doubt where there are no adverse consequences arising out of the downgrading of the ACRs, the same need not be communicated as a matter of right. However, it is the effect of the entries to be seen while determining whether there are any adverse consequences. In the light thereof, learned counsel for the petitioner argues that lowering the entries in the ACRs of the petitioner has actually resulted in adverse consequences qua his evaluation on the basis of ACRs gradation as evident from affidavit filed by HPSC. Thereby, the petitioner is ousted from the zone of consideration for being selected to Haryana Civil Services for having got lesser marks than the bench mark level. The petitioner's merit would have been higher inter se the candidates who were within the zone of consideration, if his ACR entry not been lowered from 'Very Good' to 'Good' for the relevant years.

10. On the other hand, learned State counsel argues that minimum bench mark for being considered for selection to Haryana Civil Services as determined by HPSC was six 'Very Good' entries and two 'Good' entries for the past 08 years of service. In the premise, since the petitioner is not ousted from the zone of consideration for selection to Haryana Civil Services, therefore, in terms of the ratio rendered in Dev Dutt's case (supra), his representation has been rightly rejected.

11. I am in agreement with the argument of learned State counsel on the technicality of not ousting the petitioner from the zone of consideration for being selected in Haryana Civil Services.

However, in present case, it is clear that the net effect of lowering the ACR of the petitioner has indeed adversely affected his chance of being selected in Haryana Civil Services, due to award of lesser marks than the marks which he would have got if his assessment would have remained 'Very Good' in ACRs for the aforesaid two years i.e 2013-14 and 2014-15. It is another matter that had the department communicated the lowering of his gradation in the aforesaid ACRs and if the petitioner had acquiesced to the same, he would have no case to agitate. In the present case, it is only under RTI when the petitioner applied for the requisite information that he got to know that his ACRs have been downgraded without having been communicated or being opportunity to give any representation. The petitioner, after receipt of information under RTI represented on 28.02.2020 against downgrading of his assessment in the ACRs. The same was disposed of vide the impugned order dated 14.08.2020 (Annexure P-13).

12. In the impugned order no reasons, whatsoever, have been given as to what transpired in the mind of competent authority to downgrade the ACRs and for rejecting the petitioner's representation except by saying that since it does not amount to any adverse consequences, therefore, the same was not required to be communicated.

13. Having already given my mind that the lowering of the petitioner's assessment in the aforesaid ACR entries, resulted in adverse consequences against him. I, therefore, do not subscribe to the view expressed by the learned State counsel and/or the reasons given in the impugned order for rejection of the petitioner's representation.

14. In the premise, impugned order dated 14.08.2020 (Annexure P13) is hereby set-aside with consequences to follow. The respondents are directed to correct the entries for the years 2013-14 and 2014-15. To that extent the writ petition is allowed. No order as to costs.

15. The claim of petitioner to direct the respondents to consider him for the selection retrospectively for the years he was though considered but not selected, to that extent, by sheer lapse of time stands extinguished at this stage, since the selection process *qua* the same culminated way back. Accordingly the benefit, if any, of the restoration of the petitioner's assessment, as it originally was before downgrading of the entries in his ACRs for 2013-14 and 2014-15, would enure to him for future selection, subject of course, to the petitioner otherwise being eligible for the same.

FEBRUARY 04, 2022
shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No