

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

CWP-5139-2018

Reserved on 08.12.2022

Pronounced on: ~~22~~.12.2022

Parkash Singh

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. K.S. Dadwal, Advocate and
Ms. Neha Jain, Advocate,
for the petitioner.

Mr. Mohit Kapoor, Additional Advocate General, Punjab

JAISHREE THAKUR.J

1. The petitioner herein seeks a writ in the nature of certiorari for quashing the order dated 20.12.2017 (Annexure P-2) passed by respondent No.2-Director General of Police, Punjab, whereby while considering his ACRs, his claim for promotion to the post of Inspector of Police was rejected.

2. The brief facts of the case are that the petitioner was recruited as Constable in Punjab Police in the year 1981 and thereafter, from time to time, he gained promotions and in the year, 2004, he was promoted to the post of Sub Inspector. The next promotion was to the post of Inspector of Police, as per Rules contained in Chapter XIII of Punjab Police Rules, 1934. It is contended by the petitioner that the person junior to him, namely, Sukhwinder Singh, who was placed below him in the seniority list prepared, was promoted to the post of Inspector. Thereafter, when he came to know about the said fact, he served a legal notice dated 08.07.2017 upon the respondents, but when no action was

taken thereon, he approached this Court by way of CWP No.18670 of 2017, which petition was disposed of vide order dated 28.09.2017 with a direction to respondent No.2 to consider that legal notice and take necessary action in accordance with law within a period of one month. However, his claim was rejected vide order dated 20.12.2017 by stating that the petitioner is not having the necessary bench mark of 10 for consideration to the post of Inspector. Hence, the present petition.

3. Learned counsel for the petitioner has argued that while passing the impugned order dated 20.12.2017, his ACRs for the period 01.04.2011 to 31.03.2016 were taken into consideration. A perusal thereof would show that for the said period, he earned "Good" except for the period 01.04.2014 to 31.03.2015 which was recorded as "Average". It is contended that the ACR for the period 01.04.2014 to 31.03.2015 was never communicated to him. Had it been communicated to him, he would have an opportunity of making representation against that entry. In support of his contention, he has relied upon ***Dev Dutt Versus Union of India and others, 2008(3) SCT 429.***

4. On the other hand, learned State counsel would argue that as per Government instructions dated 28.05.1993 (Annexure R-5), only adverse entries recorded in the ACR of an official, are communicated to the concerned employee, whereas the ACR of the petitioner for the period 01.04.2014 to 31.03.2015 was not adverse, as such, it was not communicated to him. It is submitted that the case of the petitioner along with other 164 officials of Armed Police Cadre was considered for inclusion of their names in promotion list-F (Executive) and further for promotion to the rank of Officiating Inspector of Police by the Departmental Promotion Committee in the light of instructions

issued by the State Government vide circulars dated 13.10.2009 (Annexure R-1), dated 29.12.2000 (Annexure R-2) and dated 06.09.2001 (Annexure R-3), however, vide its proceedings dated 29.09.2016 (Annexure R-4), name of the petitioner along with two others was not considered because of having less benchmark against the requisite benchmark of 10. The petitioner scored only 9 marks. It is also submitted that the senior of the petitioner who was having 9.41 marks was also not considered.

5. I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the pleadings of the case.

6. Admittedly, petitioner's name was considered along with the others for inclusion of his name in List-F (Executive) and further for promotion to the post of Officiating Inspector of Police, however, the Departmental Promotional Committee after considering his ACRs did not recommend his name for inclusion in List-F and for promotion. The Committee considered his last five years ACRs i.e. w.e.f. 01.04.2011 to 31.03.2016 whereby he earned "Good" entries except for the period 01.04.2014 to 31.03.2015 which was recorded as "Average". The contention of the petitioner is that the said entry was never communicated to him and had it been communicated to him within the relevant period, he would have had an opportunity of making a representation for upgrading that entry and if that representation was allowed, he would have also become eligible for promotion. Whereas the stand of the respondent is that as per Government instructions dated 28.05.1993 (Annexure R-5), only adverse entry is to be communicated to the employee concerned and the ACR of the petitioner for the period 01.04.2014 to 31.03.2015 was not an adverse entry.

7. The benchmark for promotion list 'F' was 10 and the petitioner earned only 9 marks. The ACRs, as per government instructions, were to be evaluated as under:-

'Outstanding'	4 marks
'Very good'	3 marks
'Good'	2 marks
'Average'	1 mark

The petitioner could not obtain requisite 10 benchmarks for his promotion. While considering the petitioner for promotion, the ACRs for the following periods were taken into consideration:-

Period of ACR	Marks
01.04.2011 to 19.10.2011 (+B)	2
20.10.2011 to 31.03.2012 (+B)	
01.04.2012 to 31.03.2013 (+B)	2
01.04.2013 to 31.03.2014 (+B)	2
01.04.2014 to 31.03.2015 (Average)	1
01.04.2015 to 05.08.2015 (+B)	2
06.08.2015 to 08.12.2015 (+B)	
09.12.2015 to 31.03.2016 (+B)	
Grade (Nil)	9

8. The law is well settled that every entry whether it is poor or otherwise, is to be communicated to the concerned employee, as held in ***Dev Dutt's case (supra)***. The Hon'ble Supreme Court in the said case has held as under:-

*“Learned counsel for the respondent relied on a decision of this Court in **Vijay Kumar vs. State of Maharashtra & Ors. 1988 (Supp) SCC 674** in which it was held that an un-communicated*

*adverse report should not form the foundation to deny the benefits to a government servant when similar benefits are extended to his juniors. He also relied upon a decision of this Court in **State of Gujarat & Anr. vs. Suryakant Chunilal Shah ,1999 (1) SCC 529** in which it was held:*

"Purpose of adverse entries is primarily to forewarn the government servant to mend his ways and to improve his performance. That is why, it is required to communicate the adverse entries so that the government servant to whom the adverse entry is given, may have either opportunity to explain his conduct so as to show that the adverse entry was wholly uncalled for, or to silently brood over the matter and on being convinced that his previous conduct justified such an entry, to improve his performance".

On the strength of the above decisions learned counsel for the respondent submitted that only an adverse entry needs to be communicated to an employee. We do not agree. In our opinion every entry must be communicated to the employee concerned, so that he may have an opportunity of making a representation against it if he is aggrieved.

In the present case the bench mark (i.e. The essential requirement) laid down by the authorities for promotion to the post of Superintending Engineer was that the candidate should have 'very good' entry for the last five years. Thus, in this situation the 'good' entry in fact is an adverse entry because it eliminates the candidate from being considered for promotion. Thus, nomenclature is not relevant, it is the effect which the entry is having which determines whether it is an adverse entry or not. It is thus the rigours of the entry which is important, not the phraseology. The grant of a 'good' entry is of no satisfaction to the incumbent if it in fact makes him ineligible for promotion or has an adverse effect on his chances.

Hence, in our opinion, the 'good' entry should have been

communicated to the appellant so as to enable him to make a representation praying that the said entry for the year 1993-94 should be upgraded from 'good' to 'very good'. Of course, after considering such a representation it was open to the authority concerned to reject the representation and confirm the 'good' entry (though of course in a fair manner), but at least an opportunity of making such a representation should have been given to the appellant, and that would only have been possible had the appellant been communicated the 'good' entry, which was not done in this case. Hence, we are of the opinion that the non-communication of the 'good' entry was arbitrary and hence illegal, and the decisions relied upon by the learned counsel for the respondent are distinguishable.”

Following the dictum laid down by the Apex Court, it is clear that the average report relating to the period 01.04.2014 to 31.03.2015 which clearly had an adverse effect insofar as consideration of the petitioner for the purpose of promotion to the higher post of Inspector of Police, was required to be conveyed to him.

9. The present petition was filed in the year 2018 and at that time, petitioner was of 57 years of age. So it is presumed that by now, he may have been retired. If the petitioner makes a representation for upgradation of his “Average” entry recorded for the year 2014-15 and the same is allowed, it may benefit in his pension and get some arrears as well.

10. Consequently, the present writ petition is disposed of with a direction that in case the petitioner makes a representation against the entry recorded for the year 2014-15, within a period of two months on receipt of certified copy of this order, and on consideration of his representation, if his Annual Confidential Report is upgraded, he shall be considered for promotion

retrospectively by the Departmental Promotion Committee within three months thereafter and if he gets selected for promotion retrospectively, he shall be given the higher pension with arrears of pay and interest @ 8% per annum till the date of payment.

(JAISHREE THAKUR)
JUDGE

22.12.2022

sanjeev

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No