

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

CWP-28082-2018

Date of decision : 02.05.2023

Charandeep Singh Sandhu

....Petitioner

Versus

Chairman-cum-Managing Director, PSPCL, Patiala and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. D.S. Randhawa, Advocate
for the petitioner.

Mr. Shubham Thakur, Advocate for
Mr. Alok Mittal, Advocate for the respondents.

PANKAJ JAIN, J. (ORAL)

By way of present writ petition filed under Article 226/227 of the Constitution of India, the petitioner has raised grievance qua adverse remarks made in the ACR of the petitioner for the year 2017-2018.

2. The petitioner who was working as Junior Engineer earned adverse remarks in his ACR which was communicated to him on 12th of July, 2018. The petitioner immediately applied for documents under RTI Act and received those documents only on 25th of July, 2018 and resultantly represented against such adverse remarks on 23rd of October, 2018. However, the claim of the petitioner stands rejected without consideration on the ground that the representation was not made within three months from 12th of July, 2018 and thus as per the relevant instructions the same being barred by time could not be considered.

regarding Annual Confidential Report issued vide memo No.142376/3426/R.EG-20 dated 4th of August, 1976 wherein the provision regulating time limit for filing representations against the adverse remarks and the authorities to whom the representations are to be addressed, reads as under :

“12. Time limit for filing representation against the adverse remarks and the authorities to whom the representations are to be addressed.

- (1) The Board does not encourage representations against adverse remarks given in Confidential Reports by the competent authority. If however, a representation is to be made, it should not be entertained, unless it is received within three months from the date of the letter communicating adverse remarks to the officer/officials concerned. It is dangerous to allow officers/officials to go on putting-up representations when-ever they thing the situation is favourable to them, and post fact attempts to clean up Confidential Reports files must be resisted.
- (2) The representations against adverse remarks may be addressed direct to a authority conveying the adverse remarks.
- (3) Remarks recorded in the Annual Confidential Report against which representation has not been filed within the prescribed period or, if so filed, has been rejected, should not be expunged, inspite of the fact that at some later date a succeeding Officer may record his own remarks and get the same also placed on the Confidential Report file of the employee reported upon where he has a different view in regard in the remark in the Confidential Report recorded by a previous officer.

Where an officer/official who wanted to represent against

adverse remarks, but could not do so, because he was unable to lay hands on the relevant record in order to prepare his representation. In such cases officers/ officials concerned should promptly intimate to the authority conveying the adverse remarks that he would be making a detailed representation after examining the relevant record. As far as possible, the detailed representation should also be sent within the prescribed time-limit of three months. But where this is not practicable owing to the circumstances beyond an officer's control and the authority dealing with the representation is satisfied about it, the representation may be entertained and dealt with as if it had been received within the prescribed time limit of three months. However the period of delay required to be condoned on this account will, in no case, exceed one year. In other words, no such representation against adverse remarks shall be entertained, in any circumstances, after the expiry of one year reckoned from the date of issue of communication conveying the adverse remarks. In case of rejection of representation of an employee against adverse remarks, no further review will lie in such cases. Further if there is a patent error of fact, then the competent authority (to review such cases) will be one step higher than the authority who initially rejected, the representation of the employee i.e. in case representation was in the first instance rejected by the Head of the Department, then the competent authority in such cases shall be the Member Incharge, in case the representation was rejected by Member Incharge then the Competency will be of WTMs and in case representation was rejected at the level of WTMs then the competent authority will be the Board.

Such reviews have to be considered only in rarest of rare cases and where it is felt that there has been gross miscarriage of justice.”

4. I have heard counsel for the parties and have gone through the

relevant provision which specifically provides that the time spent by the officer in procuring documents may be exempted and where it is not practicable for the officer owing to circumstances beyond his control to represent, such representation can be dealt with even upto one year. The petitioner in the present case was prompt to ask for relevant record under RTI Act after adverse remarks were communicated to him on 12th of July, 2018. Once he got those documents on 25th of July, 2018, he represented within three months thereof i.e. on 23rd of October, 2018. Thus, it can't be said that the petitioner delayed the representation and that his representation was beyond the prescribed period.

5. In view of above, the present writ petition is disposed off with the directions to the respondents to reconsider the claim of the petitioner without raising the boggy of the same being barred by time, within a period of eight weeks from the date of receipt of certified copy of this order.

May 02, 2023
Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No