

CWP No.592 of 2017

2023:PHHC:110927

MANOJ KUMAR
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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.592 of 2017

Date of decision : 24.08.2023

Anit Kumar

....Petitioner

Versus

State of Haryana and Ors.

....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present :- Mr. Parveen Chauhan, Advocate for the petitioner.
Mr. Saurabh Mohunta, DAG, Haryana.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present petition, the challenge is to impugned order dated 08.05.2014 (Annexure P.1) vide which first annual increment of the petitioner was withheld due to adverse remarks recorded in his Annual Confidential reports for the year 2005-2006 and 2006-2007; as well as orders dated 21.01.2016 (P.5) and 20.09.2016 (P.7) passed by the Authorities, rejecting the representation and also appeal filed against the said adverse remarks.

The petitioner was conveyed adverse remarks for the year 2004-2005, as per which, serious deficiencies qua the working of the petitioner were mentioned including the one recorded qua the integrity being doubtful. Said remarks were assessed as average and below average. Taking note of the record of the petitioner being not good, the petitioner was not held entitled for grant of promotion, hence, no benefit under Assured Career Progressive Scheme has been extended to him.

After the remarks were conveyed to the petitioner vide Annexure P.1, the petitioner filed a representation before the Authorities concerned and the

CWP No.592 of 2017

Director General, Jail, Haryana after considering all the facts rejected the said representation vide order dated 21.01.2016 (P.5), which is under challenge in the present petition. Even further, appeal made to the Government also stands rejected vide order dated 20.09.2016, a copy of which is appended herewith as Annexure P.7. The said order has also been impugned in the present petition. The ground which has been taken by the petitioner to assail the adverse remarks in the ACRs as well as the orders rejecting his appeal/representation is that the petitioner was communicated the said remarks after such a long period and since there was an inordinate delay in conveying the same, the said remarks cannot be taken into account for any purpose much less than denying him the benefit of higher scale under the ACP Scheme.

Learned counsel appearing for the respondents submits that the remarks were conveyed to the petitioner against which the petitioner has already filed a representation as well as appeal, which have been dismissed by the Authorities concerned and once the adverse remarks against the petitioner have attained finality and the same have been recorded in the Annual Confidential Reports, the petitioner is not entitled for further promotion, thus the benefit under ACP Scheme cannot be extended to him.

I have heard learned counsel for the parties and perused the paper book with their able assistance.

Though it is settled proposition of law that in case, there are adverse remarks recorded against an employee, they have to be conveyed to the employee concerned for information as well as necessary action if the employee is aggrieved against the recording of the same. In the present case, the remarks have been conveyed to the petitioner against which he has availed the remedy of filing appeal as well as representation to the higher authorities as well as

CWP No.592 of 2017

Government but still the adverse remarks have been maintained by the Authorities concerned. That being so, this Court is not in a position to set aside the remarks merely on the ground that the same have been conveyed to him after a long period. Further, it has been held by Hon'ble Supreme Court that such uncommunicated adverse remarks should be given to the employee concerned so as to enable him to make representation and if the employee remains successful in getting adverse remarks expunged, the benefit should be extended. Even, Hon'ble Supreme Court in its judgment passed in **Civil Appeal No.7631 of 2002, titled as Dev Dutt vs. Union of India and Others, decided on 12.05.2008**, has held that every entry in the A.C.R. of a public servant which has effect of being treated as adverse must be communicated to him/her within a reasonable period, so that he/she can make a representation for the upgradation of the said confidential report. Only the benefit extended was of providing an opportunity to the employee to file representation against the adverse remarks which option, in the present case has already been exercised by the petitioner, who remained unsuccessful in getting the remarks expunged. Relevant para of Dev Dutt's case (supra) reads as under:

“47. We are informed that the appellant has already retired from service. However, if his representation for upgradation of the 'good' entry is allowed, he may benefit in his pension and get some arrears. Hence we direct that the 'good' entry of 1993-94 be communicated to the appellant forthwith and he should be permitted to make a representation against the same praying for its upgradation. If the upgradation is allowed, the appellant should be considered forthwith for promotion as Superintending Engineer retrospectively and if he is promoted he will get the benefit of higher pension and the balance of arrears of pay along with 8% per annum interest.

48. We, therefore, direct that the 'good' entry be communicated to the appellant within a period of two months from the date of receipt of the copy of this judgment. On being communicated, the appellant may make the representation, if he so chooses, against the said entry within two months thereafter and the said representation will be decided within two months

thereafter. If his entry is upgraded the appellant shall be considered for promotion retrospectively by the Departmental Promotion Committee (DPC) within three months thereafter and if the appellant gets selected for promotion retrospectively, he should be given higher pension with arrears of pay and interest @ 8% per annum till the date of payment”.

In view of facts and circumstances of the present, no relief can be granted to the petitioner as being prayed in the present petition.

Dismissed.

August 24, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable : No