



In the High Court of Punjab and Haryana at Chandigarh

CWP No. 16658 of 2017 (O&M)

Reserved on: 19.9.2024

Date of Decision: 28.10.2024

Sangeet Pal Singh

.....Petitioner

Versus

State of Punjab and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. D.S.Patwalia, Senior Advocate assisted by
Ms. Rishu Bajaj, Advocate
for the petitioner.

Mr. Maninder Singh, Sr. DAG, Punjab
for respondent No. 1.

Mr. Gaurav Chopra, Senior Advocate assisted by
Mr. Ranjit Singh Kalra, Advocate and
Ms. Mona Yadav, Advocate
for respondent No. 2.;

SURESHWAR THAKUR, J.

1. The instant petition has been preferred by the petitioner seeking quashing of -

(i) B satisfactory/average grading in ACRs of 2007-2008 of the petitioner.

(ii) The impugned adverse remarks in ACR of 2008-2009 of the petitioner.

(iii) B satisfactory/average grading in ACRs of 2009-2010 of the petitioner.

(iv) The non-recording of ACR of 2010-2011 of the petitioner.



- (v) The impugned order dated 8.8.2012 reverting the petitioner.
- (vi) The impugned change in the venue and of inquiry officer and impugned invalid inquiry report dated 19.5.2014.
- (vii) The impugned recommendation of Vigilance/Disciplinary Committee in its meeting dated 16.9.2014 and the resolution passed on dated 21.1.2015 of the Hon'ble Full Court for imposing penalty of dismissal of the petitioner from service on the basis of the impugned ACR for the year 2008-2009.
- (viii) The impugned order dated 10.3.2015 of the Government of Punjab dismissing the petitioner from service with immediate effect.
- (ix) Impugned withholding of GPF of the petitioner till the pendency of the present petition.

Brief facts of the case

2. In the instant petition, it is averred that the petitioner was appointed as a Civil Judge-cum-Judicial Magistrate and was posted at Jalandhar on 5.6.1997. In the impugned ACR for the year 2007-2008, B satisfactory/average grading was given to the petitioner without appraisal of his work done. The petitioner was promoted as Additional Civil Judge (Senior Division) and became posted at Balachaur on 5.6.2008. It is further averred therein that during the entire service of the petitioner, prior to the period in question, his integrity was found good by the Hon'ble Administrative Judges, and, that the adverse remarks were noted against the petitioner only in the ACR for the year 2008-2009, whereas, no adverse remarks became recorded by the Hon'ble Administrative Judge in the ACR



of 2009-2010. The petitioner was never appraised of acts leading to doubt vis-a-vis his integrity during the entire inspection for the year 2008-2009. It is further averred, that though in para 9 of the ACR of the petitioner for the year 2008-2009 it is recorded as “C” integrity doubtful’, whereas, in column 2 of the said ACR, it is recorded that the units earned by the petitioner in the relevant period were more than the prescribed norms. It is also averred that the petitioner vide application dated 14.5.2015 applied for the copies of written or oral complaints regarding his work and conduct as judicial officer for the relevant period relating to his integrity, promotion of groupism in bar and not acting as per law. In response to the said application, the petitioner was provided four complaints, whose perusal discloses, that 3 complaints were filed against his work and conduct at Gurdaspur, where he was posted from mid 2006 till mid 2008, and, only one complaint was filed against him by one Harpreet Singh for the relevant period i.e. from 5.6.2008 to 31.3.2009, and, the said complaint was in the nature of transfer application, wherein, the complainant was having grudge against short adjournments.

3. The petitioner received the impugned ACR dated 16.9.2009 for the year 2008-2009 wherein adverse remarks qua his integrity were recorded. Subsequently, the petitioner filed a representation dated 23.3.2010 for expunging the adverse remarks in the impugned ACR (supra). He also moved representations against average grading in the ACRs of 2007-2008 and 2009-2010. However, in the meeting of the Vigilance Committee, the representations (supra) became rejected. Consequently, on the basis of adverse remarks in the impugned ACR of 2008-2009, and, on the basis of the impugned report of the inquiry officer dated 19.5.2014, the impugned order dated 21.1.2015 was passed by this Court, which recommended the



imposition of major penalty upon the petitioner, and, which resulted in the passing of the impugned order dated 10.3.2015 by the Governor of Punjab, whereby the petitioner was dismissed from service.

Submissions of the learned senior counsel for the petitioner

4. The learned senior counsel for the petitioner has argued before this Court-

(i) That before the period in question, neither any adverse remarks were ever recorded, nor any action was taken against the petitioner. Moreover, when the impugned ACR (Annexure P-3) was recorded, no oral or written complaint regarding the integrity of the petitioner rather was pending. He has further argued, that in the impugned ACR (supra) it is recorded that the petitioner rarely attends the meetings, whereas, in the letter dated 23.3.2010 (Annexure P-43), written by the petitioner to this Court, it is categorically mentioned that during the entire service, the petitioner only once on a meeting day rather remained on leave. The supra contention embodied in Annexure P-3, when remain un rebutted, thereby the allegation against the petitioner, that he rarely attends the meetings, is contended to become falsified.

(ii) That the making of findings in the inquiry report (Annexure P-18) rather against the petitioner, qua the charge(s) qua his abusing Ahlmad Manjinder, qua the charge qua the petitioner not forwarding his appeal and qua the charge qua the imposition of excessive fine upon Reader Rajinder Kumar, thus contain(s) false recitals, besides are malafidely and arbitrarily drawn. He rests the above submission on the ground, that charge No. 1 was founded upon the sole oral version of the complainant Manjinder Singh. Conspicuously, when the alleged eye witnesses to the incident namely



Reader Moti Lal (PW-5) and Copyist Gurnam Singh (PW-7) did not support the complainant's case. Moreover, when DW-1 to DW-5, who are the other employees of the said Court, also stated that neither such an occurrence took place, nor the petitioner ever abused any employee. Resultantly it is argued, that the apposite findings recorded against the petitioner in the enquiry report, are not required to be accepted.

(iii) That the complaint (Annexure P-24) qua the period in question i.e. 2008-2009 is with regard to short adjournments and the same does not pertain to the integrity or efficiency of the petitioner.

(iv) That the impugned order dated 10.3.2015 (Annexure P-21) is hit by the principle of double jeopardy, as vide order dated 8.8.2012 (Annexure P-14), the petitioner had been already punished by way of reversion to the post of Civil Judge (Junior Division) from the post of Additional Civil Judge (Senior Division).

(v) That though, the petitioner was dismissed from service, on the basis of the impugned ACR of 2008-2009, and, on the basis of the impugned report dated 19.5.2014, however, the respondents have failed to produce any material to justify the recording(s) of adverse remarks in the impugned ACR. Moreover, the Hon'ble Administrative Judge has erred in making adverse remarks against the petitioner, as there existed no proven fact/situation rather warranting the making of such adverse remarks in the inspection report of 2008-2009.

(vi) Therefore, it is argued that the impugned ACRs and the impugned orders are arbitrary, unreasonable and not supported by any material, thereby they are made in violation of the principles of natural justice.



Submissions of the learned senior counsel for respondent No. 2

5. The learned counsel for respondent No. 2 has argued before this Court-

(i) That the disputed entries recorded in the impugned ACRs were recorded by the Hon'ble Administrative Judges concerned, after careful consideration of the material available on record, and, that these were not done in a casual manner.

(ii) That the Hon'ble Administrative Judge concerned, recorded the ACRs on the work and conduct of the petitioner after thoroughly considering the work done statement.

(iii) That the remarks recorded in the column No. 3 of the ACR for the year 2008-2009, that the petitioner rarely attends meeting, are based on the report of the District and Sessions Judge concerned.

(iv) That the representations made by the petitioner against the adverse entries in the ACRs were considered and rejected on merits, and, that the principles of natural justice have not been violated.

Reasons for allowing the instant writ petition

6. Before proceeding to decide the instant case, it is necessary to extract the Article(s) of Charges, as became drawn against the present petitioner. The said Article of Charges are extracted hereinafter.

“1. That on 12.01.2009 you, Shri Sangeet Pal Singh, were posted as Additional Civil Judge (Senior Division), Balachaur and Sh.Manjinder Singh was posted as Civil Ahlmad in your court. On 12.1.2009 in between 10.00 a.m. and 10.30 a.m., you called him in your retiring room. You got irritated without any reason and uttered vulgar, abusive, indecent and obscene words to the following effect in the presence of Sh.Moti Lal, Reader and Sh. Gurnam Singh, Copyist posted in your court:



"Have you seen my penis. Its head is much bigger. If, I will insert it into your rectum/anus. It will give you more pain and swelling, then the pain which you are feeling at present on your face and I will also see how you get increment 4-9-14 for which you are putting pressure on Kamaljit, Bill Clerk, to implement the same."

Your such act is against the Judicial ethics which tantamounts to be an act of unbecoming of a judicial officer.

2. *That Sh. Manjinder Singh, Civil Ahlmad attached to your court had filed his departmental appeal dated 31.1.2009 in your court vide your office diary no.639 dated 11.2.2009, requesting you for forwarding the same to the District & Sessions Judge, Jalandhar. But you being biased against the official due to incidence as referred to in Charge No.1, did not forward the same till 4.6.2009 and the same was forwarded by your successor. As such you having acted in a biased manner have misused the authority of your office and thereby acted in a manner unbecoming of a judicial officer.*

3. *That when you, Shri Sangeet Pal Singh, were posted as Additional Civil Judge (Senior Division), Balachaur then Sh.Rajinder Kumar had worked as Reader in your court for a short period from June, 2008 to 3rd December, 2008 and you by initiating action, under Section 36 of the Punjab Courts Act, against him issued as many as 17 notices to him on 26.8.2008 and by misusing your powers imposed a fine of Rs.5000/- in each notice totaling to Rs.85000/- by passing different orders, dated 11.9.2008. Your act of imposition of such a heavy fine of Rs.85000/- upon your subordinate employee on a single day clearly shows an act of abuse of power on your part, which is neither desirable nor expected from a judicial officer."*

7. Upon Article of Charges (supra), the enquiry officer returned the hereinafter findings-

"Charge No. 1

x x x x



(x) Firstly, it is observed that complainant Manjinder Singh, while appearing as PW6 has entirely reiterated the allegations, as recorded in his complaint Ex.PW6/A. During his cross-examination, he (PW6) was asked to repeat the alleged abusive words by the delinquent officer; on which, he (PW6) has deposed that, he could not repeat them because of their vulgar content. PW6 has also deposed during his cross-examination that prior to said incident, no other incident had occurred, during his working with delinquent officer. However, PW6 has specifically denied if, instant complaint is false or if, it has been filed just with a motive to get himself transferred from Balachaur to Jalandhar.

(xi) In my view, said deposition made by Manjinder Singh (PW6) is unflinching and creditworthy. The bare reading of contents Mark-A, recorded on complaint (Ex.PW6/A) by itself shows that these are extremely derogatory and abusive and that it is not expected from any prudent man to repeat them before other people Otherwise, PW6 has substantially deposed that, said words had actually been spoken by delinquent officer. So, it is concluded that, the mere fact that the contents of abusive words were not spoken during recording of testimony of Manjinder Singh (PW6), does not falsify them.

(xii) Moreover, although PW5 Moti Lal has resiled from his statement recorded during preliminary enquiry proceedings and he has denied the fact if, he was present inside the retiring room of delinquent officer and if, alleged abusive words were spoken in his presence. But, said Moti Lal (PW5) has admitted disputed occurrence, as he has deposed that Manjinder Singh (PW6) told him about his being abused by delinquent officer. Similarly, although PW7 Sh. Gurnam Singh has not entirely supported the departmental case but, he has admitted that, altercation has actually taken place inside the retiring room of delinquent officer and at that time, PW5 Sh. Moti Lal was present inside the room. Moreover, said Gurnam Singh (PW7) has admitted the correctness of contents of his statement Ex.PW7/A recorded on 6.10.2009 by learned Registrar Vigilance, Haryana, during preliminary enquiry proceedings. The perusal of said statement Ex.PW7/A shows that during preliminary enquiry proceedings, said Gurnam Singh (PW7) has made depositions as per contents of complaint (ExPW6/A). Meaning



thereby that, there is quite possibility of exercise of undue influence over said witness by delinquent officer and in consequent thereof, he (PW7) has raised contradictions during his statement recorded during regular enquiry proceedings.

(xiii) Otherwise, testimony of complainant Manjinder Singh (PW6) is credible and trust-worthy and it being corroborated by available testimony of PW5 Moti Lal and PW7 Gurnam Singh as discussed above is sufficient to establish that, delinquent officer has used abusive words upon complainant, who was working under his control.

(xiv) In rebuttal to said affirmative evidence led by department, delinquent officer has examined five witnesses (DW1 to DW5), as discussed above. After going through their testimony, it is observed that, the testimony of DW1 to DW5 is pertaining to a general fact that, delinquent officer had never used any abusive language in their presence. However, said DWs have nowhere deposed as if, the disputed incident did not take place at all. Moreover, the defence witnesses namely Kewal Singh, DW3 was Bailiff; Bhupinder Singh DW4 was Mali and Surjit Singh, DW5 was Process server at the time of disputed incident and that, they cannot have any access to the retiring room of their officer (i.e. delinquent officer); as such, these officials are not competent to raise any deposition regarding any fact which has allegedly occurred inside the retiring of the delinquent officer. Besides this, the testimony of DW1 Kuldeep Rai Joshi, Stenographer and DW2 Gurwinder Singh, Ahlmad is also not sufficient to rebut the direct ocular testimony of PW6 Manjinder Singh (complainant), as both these officials were admittedly not present alongwith delinquent officer, at the time of disputed occurrence. All said defence witnesses have merely deposed that the delinquent officer had not misbehaved with any official in their presence. But, undisputedly, complainant has no personal grudge against delinquent officer giving him any opportunity or occasion to file any false complaint against him.

(xv) Furthermore, it is observed that, the defence taken by delinquent officer that the allegations are false because the complainant intended his transfer from Balachaur to Jalandhar is not plausible at all. The matter pertaining to transfer of an official



within Sessions Division, is in exclusive hands of District & Sessions Judge and that any other Judicial Officer has no role to play in it. Otherwise also, the delinquent officer has not placed on record any kind of application/representation moved by any of the official through the delinquent officer, who was posted at Balachaur, to get himself transferred to Jalandhar, at any point of time. Even the delinquent officer has not pleaded that the complainant had ever requested him to get himself transferred to Jalandhar or that, complainant had ever moved any application in this regard through him. So, said defence pleaded by delinquent officer being non-plausible is hereby rejected.

(xvi) One more thing which requires consideration is that though it has come in evidence that complainant was not much happily working at Balachour and he wanted to get himself transferred to Jalandhar and it has also come in evidence that, complaint has been found negligent while performing his duties. But, such a situation does not justify the delinquent officer who was holding a responsible post of a Judge, to use abusive and derogatory language towards his staff members. Witnesses PW5 to PW7 are nowhere related to each other and they have no common interest So, they, cannot be termed as interested witnesses. PWs have time and again deposed against delinquent officer to the effect that, he has been using abusive language for his staff members. Said official PWs have no reason to make any false deposition against delinquent officer who was been their immediate boss. Moreover, I have gone through the case law relied upon by the delinquent officer but it is observed that these authorities are not applicable to the facts and circumstances of present enquiry, as such no reliance can be placed upon them.

(xvii) As concluded above, it stands proved on the record that the delinquent officer has actually spoken abusive and derogatory words to complainant Manjinder Singh (PW6) as recorded at Mark- A on complaint Ex.PW6/A. As such charge no.1 stands proved against the delinquent officer.

Charge No.2.

15. The department has alleged that the delinquent officer did not forward the departmental appeal dated 31.1.2009 filed by Sh.Manjinder Singh, Civil Ahlmad attached with his court till



4.6.2009 and as such, delinquent officer had acted in a biased manner, had misused the authority of his office and thereby acted in a manner unbecoming of a judicial officer. In order to substantiate this charges, the department has examined said Manjinder Singh as PW6 who has deposed that he had filed an appeal (Ex.PW6/B) regarding his promotion to said judge but the same was not forwarded to the District & Sessions Judge, Jalandhar. Said oral testimony of PW6 is corroborated with the requisite documents i.e. Ex.P1 and Ex.P2 which are duly proved on record by witnesses Rajinder Kumar, PW1 and Vikas Sharma, PW2. Said Rajinder Kumar, PW1 has deposed that he has joined sub division Balachaur with his posting in the court of Addl. Civil Judge (Senior Division) since 13.5.2010. PW1 had brought the summoned record receipt register maintained by said Court. He has produced copy of receipt register bearing sr. no.639 dated 11.2.2009 (Ex.P1) which records that an appeal had been received against order no. 8168/PF, Vikash Sharma, PW2 has deposed that he is posted in the office of District & Sessions Judge, Jalandhar since 24.12.2010. He had brought summoned record and thereby proved the copy of receipt register bearing entry no. 13529G dated 19.12.2009 Ex.P2 which is an entry pertaining to appeal against order no. 8168G/PF dated 16.12.2008. The perusal of these documents by itself shows that the appeal filed by PW6 Manjinder Singh was kept pending by the delinquent officer from 11.2.2009 to 19.12.2009 (i.e. for about ten months) without any convincing or justifiable reason. On this aspect, delinquent officer had argued that on receipt of the appeal, it was marked to reader to report but thereafter it was never put up before him, so he is not at fault. I am not convinced with said contention raised by the delinquent officer because there is no requirement of calling report from Reader in such type of matters as the delinquent officer was only to forward the appeal to the District & Sessions Judge, Jalandhar and there was nothing to be reported by Reader of the delinquent officer on said appeal. Moreover, even if the delinquent officer had called any such report from Reader, undisputedly he did not make any enquiry from Reader as to why report was not made by him, which shows that delinquent officer had deliberately and intentionally kept that matter pending being biased against the



official/PW6 Manjinder Singh.

In view of the abovesaid discussion, I am of the considered view that the charge no.2 stands proved against the delinquent officer.

Charge No. 3

x x x x

(ix) It is observed that admittedly PW4 Rajinder Kumar has been fined a sum of Rs.85,000/- on a single day in view of raid conducted by the delinquent officer on 25.8.2008 Keeping in view the monthly salary of an employee, said amount of Rs.85,000/- as fine is quite excessive Although it has come out that Rajinder Kumar, PW4 was quite negligent while performing his official duties but the interest of justice requires that punishment should rationalise and commensurate with the misconduct of an employee. In present case, imposing huge fine of Rs.85,000/- while serving different notices on single instance of checking is surely abuse of power by the delinquent officer. Hence in my view, imposition of said huge fine of Rs.85,000/- on a single day is an act of abuse of power by the delinquent officer. As such charge no.3 also stand proved against the delinquent officer.”

8. However, for the reasons to be assigned hereinafter, the findings (supra) recorded by the enquiry officer upon the Article of Charges, are erroneous, and, are liable to be quashed and set aside.

9. The contents of the impugned ACRs (supra) as carried respectively in Annexures P-3, P-6 and P-7 become extracted hereinafter.

“(Annexure P-3)

x x x x

Memorandum

Hon’ble Administrative Judge of Jalandhar Sessions Division has been pleased to record the following inspection remarks on your work and conduct for the year ending 31.3.2009 (2008-09):-

1. Quality of work:



- a) *Conduct of business in Court and Office* The conduct of business of the officer in Court is defective. He fails to maintain punctuality. Even on the day of inspection he sat in the Court at 10.40 A.M. He was sitting in the Retiring Room when statement of the witnesses was being recorded by the Judgment Writer (Photocopy of the concerned file is added). His office working is also poor.
- b) *Quality of Judgment* Average
2. *Quantity of work* The officer gave disposal of 1268 $\frac{1}{2}$ units which is slightly more than the prescribed norm.
3. *Capacity of management, leadership, initiative, planning and decision making.* He lacks basic tools of management and planning. According to the report of the Ld. District and Sessions Judge he rarely attends the monthly meeting and disobeys the directions. All other qualities of the officer have been eclipsed by wrong attitude.
4. *Inter personal relationship and team work* He maintains good relationship with one group of lawyers which shows that he promotes groupism. No comments with regard to the team work of the officer are offered as he is the only officer at Balachaur.
5. *State of health* Good
6. *Period under observation of the Administrative Judge* 5.6.2008 to 31.3.2009
7. *Integrity* Doubtful. The spoken reputation of the officer is of doubtful integrity. He has earned the reputation of a corrupt officer.
8. *General assessment regarding strengths and shortcomings.* The officer does not act according to law. He uses filthy language in respect of his subordinates. He absents himself from the meetings called by the District and Sessions Judge.



He has not been able to maintain discipline expected of a Judicial Officer. There is a report by the PWD Department that he raised construction in the Government accommodation by spending Rs. 60,000/-. A copy of the report has already been sent to the Registry. A copy is added. Another report sent by learned District and Sessions Judge along with annexure is also added.

9. Grading

“C” Integrity doubtful

(Annexure P-6)

Memorandum

Hon’ble the Chief Justice and Judges have been pleased to record the following Annual Confidential Remarks on your work and conduct for the years 2006-2007 to 2007-2008:-

2006-2007 : B Plus (Good)
2007-2008 : B-Satisfactory

(Annexure P-7)

x x x x

Memorandum

Hon’ble Administrative Judge of Faridkot Sessions Division has been pleased to record the following inspection remarks on your work and conduct for the year ending 31.3.2010 (2009-10):-

- 1. Quality of work:
 - a) Conduct of business in Just Satisfactory.
Court and Office
 - b) Quality of Judgment Satisfactory
- 2. Quantity of work Satisfactory
- 3. Capacity of management, Satisfactory
leadership, initiative, planning



- and decision making.*
- | | | |
|----------|---|---|
| 4. | <i>Inter personal relationship Satisfactory and team work</i> | |
| 5. | <i>State of health</i> | <i>Good</i> |
| 6. | <i>Period under observation of 2009-2010 the Administrative Judge</i> | |
| 7. | <i>Integrity</i> | <i>No complaint received.</i> |
| 8. | <i>General assessment regarding strengths and shortcomings.</i> | <i>Nothing special to be highlighted</i> |
| 9. | <i>Grading</i> | <i>B-Average/Satisfactory</i> |
| Part-III | <i>Remarks of the Administrative Judge</i> | <i>The officer shall improve the performance”</i> |

10. The above remarks were asked to be expunged by the petitioner, but the said made request became declined. Accordingly, pursuant to the making of the above remarks in the ACR pertaining to the year 2008-2009, wherein in column No. 9, it becomes recorded that the integrity of the petitioner is doubtful, that vide order dated 8.8.2012 (Annexure P-14), thus the petitioner was reverted from the post of Additional Civil Judge (Senior Division) to the post of Civil Judge (Junior Division). Therefore, though the said order became passed in the year 2012, however, the instant petition was preferred in the year 2017. Resultantly, though the learned counsel for respondent No. 2 has argued, that as such, the delayed challenge, as made to the order of reversion, thus is hit by the vices of delay and laches, whereby the present petitioner becomes estopped to challenge the same. However, the said argument is rejected, thus on the following premises-

(a) Despite the said adverse entry (supra) leading to the present petitioner becoming reverted from the post of Additional Civil Judge (Senior Division) to the post of Civil Judge (Junior Division), yet the said



order of reversion, when apart from the enquiry report, thus conjointly becomes the foundation for the making of the order of dismissal (Annexure P-21), thereby the present petitioner has been effectively enabled to also challenge the said order of reversion.

(b) The challenge to Annexure P-21 may be rested not only on the ground (supra) but also on the further count qua thereby the principle of double jeopardy rather has been breached. Reiteratedly since the said order of reversion also becomes the foundation of Annexure P-21, whereby the adverse remarks (supra) entered in the ACR, thus are also amenable to become concluded to be made in violation of the principle of natural justice, de hors the fact, that various representations, as made against the said remarks rather became earlier rejected, especially when even at the stage (supra), there is no material on record, suggestive, that during the course of the decisions being made on the said representations, thus the petitioner became granted an opportunity of personal hearing or if granted, he was permitted to avail an opportunity to either ask for the material justifying the making of the said entry or his being permitted to avail a further opportunity to rebut the said adduced material.

(c) Reiteratedly, given the foundational material for the recording of the adverse entry (supra) in the ACR, thus remaining unforwarded to the petitioner, whereby naturally he became disabled to ably contest the same by adducing cogent rebuttal evidence thereto. Reiteratedly thereby, it may become concluded that, as such, the principles of natural justice become unadhered to, besides qua thereby the petitioner becoming condemned unheard.

11. Moreover, the further reason for not ill attracting the vice of



delay and latches against the present petitioner, becomes grounded in the factum, that there is a breach made to the declaration of law made by this Court in a case titled as ***Dr. Sanjeev Arya versus High Court of Punjab and Haryana*** reported in ***2014(1) SCT 708***, wherein, in the relevant paragraphs, paragraphs whereof becomes extracted hereinafter, it has been held that without an enquiry being made qua the adverse remarks entered in the ACR of the officer concerned, thereby the imposition of major penalty (supra) becomes vitiated.

“35. We have heard learned counsel for the parties and found that under the guise of re-designation, an Officer of the rank of Civil Judge (Senior Division), which includes an Officer of the rank of Additional Civil Judge (Senior Division), cannot be re-designated as Civil Judge (Junior Division) without conducting a regular departmental enquiry, as it amounts to reduction in rank, a major penalty.

36. The decision of the Sub-Committee that an Officer of the cadre of Civil Judge (Junior Division) posted as Civil Judge (Senior Division), would be liable to be posted back as Civil Judge (Junior Division), is fallacious in as much as the Officers either of the rank of Civil Judge (Junior Division) or Civil Judge (Senior Division), are the members of cadre of the Haryana Civil Service (Judicial Branch). Even as a member of the same cadre, an Officer acquires a status, which is higher in rank than the status of the Civil Judge (Junior Division). There is a classification of the [Courts in the Punjab Courts Act](#). The post of Civil Judge (Senior Division) and Civil Judge (Junior Division) are the separate classes in terms of [Section 18](#) of the Punjab Courts Act. The number of Civil Judges (Junior Division) and Civil Judge (Senior Division) are also contemplated by the Statute in [Section 22](#) of the said Act, whereas [Section 26](#) determines the pecuniary In terms of [Section 26](#) of the said Act, this Court had determined the pecuniary jurisdiction, as reproduced above.

37. Therefore, the Civil Judge (Junior Division) is a lower post



than the post of Civil Judge (Senior Division) against which the petitioner was working at the time of re-designation. The protection of pay is not an inference of the fact that there is no reduction in rank. In fact, Clause (vii) of Rule 4 of the Rules contemplates reduction to either lower time scale of pay or grade or post or service as a major penalty. Imposition of any of such punishment without regular department enquiry contemplated under Rule 7 is not permissible.

38. In *M. Ramanatha Pillai v. The State of Kerala & another*, (1973) 2 SCC 650, the Constitution Bench has pointed out the expression 'rank' in [Article 311\(2\)](#) of the Constitution of India, has reference to a person's classification and not to his particular place in the same cadre. The test to be applied is to determine whether the order is of punishment; and whether the Government employee has a right to the post or the rank or whether evil consequences such as forfeiture of pay or allowances, loss of seniority in his substantive rank, stoppage or postponement of future chances of promotion follow as a result of the order. The Bench observed as under:-

"19.The expression "rank" in [Article 311 \(2\)](#) has reference to a person's classification and not to his particular place in the same cadre in the hierarchy of the service to which he belongs. Merely sending back a servant to his substantive post has been held not to be a reduction in rank as a punishment since he had no legal right to continue in officiating post. The striking out of a name from the panel has been held to affect future rights of promotion and to be a reduction in rank.

20. A reduction in rank is a punishment if it carries penal consequences with it. In *Parshotam Lal Dhingra Vs. Union of India* AIR 1958 SC 36, it has been said that whether a servant is punished by way of reduction in rank is to be found by applying one of the two following tests; Whether the servant has a right to the post or the rank or whether evil consequences such as forfeiture of pay or allowances, loss of seniority in his substantive rank, stoppage or postponement of future chances of promotion follow as a result of the order."

39. In *Kulwant Singh Gill v. State of Punjab*, 1991 Supp. (1) SCC 504, the Hon'ble Supreme Court has held that stoppage of two



increments without cumulative effect is a punishment of reduction in rank. The Court observed as under:-

"4.But when penalty was imposed withholding two increments i.e. for two years with cumulative effect, it would indisputably mean that the two increments earned by the employee was cut off as a measure of penalty for ever in his upward march of earning higher scale of pay. In other words, the clock is put back to a lower stage in the time scale of pay and on expiry of two years the clock starts working from that stage afresh. The insidious effect of the impugned order, by necessary implication, is that the appellant employee is reduced in his time scale by two places and it is in perpetuity during the rest of the tenure of his service with a direction that two years' increments would not be counted in his time scale of pay as a measure of penalty. The words are the skin to the language which if peeled off its true colour or its resultant effects would become apparent....."

40. In the present case, though the order is of re-designation, yet if the real effect is seen, it amounts to reduction in rank from the post of Additional Civil Judge (Senior Division) to Civil Judge (Junior Division). Such reduction in rank has not preceded with any enquiry nor is limited in time. Such an order of reduction in rank in perpetuity is a major penalty and could not have been awarded except following the procedure prescribed under Rule 7 of the Rules.

41. Thus, we find that under the guise of redesignation, an Officer, who has been graded integrity doubtful, cannot be reverted to a lower rank without following the procedure contemplated for inflicting a major penalty. Consequently, the present writ petition is allowed. The impugned order dated 8.8.2012 (Annexure P.36), is set aside."

12. The said view has also been taken by the Apex Court in a case titled as ***Kulwant Singh Gill versus The State of Punjab*** reported in ***1991(2) SCT 30***, wherein it has been expounded, that the order imposing a major penalty but without any enquiry being held into the purported misconduct, thus would vitiate the said passed order. The said order is also



analogically applicable to the instant case, as adverse entries are made foundation of Annexure P-14 and Annexure P-21, whereby for reasons (supra), there has been a breach to the principles of natural justice.

13. Moreover, reiteratedly in view of the fact, that the said order of reversion became founded upon the adverse entry (supra), besides also became the foundation for the order of dismissal from service (Annexure P-21), as, made upon the present petitioner, thereby unless a fair enquiry, thus became embarked into qua the foundational facts relating to the making of the said entry, thereby the re-reliance placed upon the order of reversion by the respondent concerned, in the impugned order of dismissal, but is to be concluded to be a misplaced reliance thereons.

**Reasons for disconcurring with the findings recorded
in the enquiry report**

14. Now coming to the placing of reliance by the respondent concerned, upon the above findings recorded against the present petitioner in the enquiry report, it is necessary to bear in mind the depositions, as became made before the enquiry officer concerned, respectively by PW-5 Moti Lal, Reader, and, by PW-7 Gurnam Singh. Moreover, it is also necessary to bear in mind the depositions, as became made by the DWs before the enquiry officer concerned.

15. The testifications, as occur in the examination(s)-in-chief, and, in the cross-examination(s) of PW-5 and PW-7 are extracted hereinafter.

“PW-5 *On SA*

Statement of Moti Lal, Reader in the Court of Sh. Randhir Verma, Addl. Civil Judge (Sr. Divn.), Nawanshahr.

I worked in the Court of Sh. Sangeet Pal Singh, the then Id. Addl. Civil Judge (Sr. Divn.), Balachaur from 4.11.2008 till the transfer of the officer. Sh. Manjinder Singh told me that officer has



abused him. However, no such incident has taken place in my presence. I did not hear anything against Manjinder Pal Singh. I did not hear any abusive language against Manjinder Singh by the officer.

Xxxxxxx by Sh. Sangeet Pal Singh, PCS

It is correct that the houses of Rajinder Kumar, Manjinder Singh and Gurnam Singh were at Jalandhar. It is correct that Gurnam Singh and Manjinder Singh were not happy with their posting at Balachaur as they have to go up and down from Jalandhar every day and used to reach the Court at 10.15 or 10.30 AM. It is correct that there were three sub divisions of District Jalandhar i.e. Phillaur, Nawanshahr and Balachaur at that time. It is also correct. that Balachaur was situated far of place. It is correct that when Manjinder informed about the use of abusive language by the Presiding Officer he also informed that he may be transferred on this ground from Balachaur to Jalandhar.

x x x x

PW-7

Statement of Gurnam Singh, aged 57 years, son of Sh. Hansa Singh, now posted as Record Clerk, Judicial Record Room, Jalandhar.

On SA

I was posted as Copyist in the court of Sh. Sangeet Pal Singh, the then Addl. Civil Judge (Senior Division), Balachaur on 25.11.2008 and remained posted there in the year 2009. It was incident of the year 2009 but I do not remember the exact date. On that day. Sh. Sangeet Pal Singh was present in his Retiring room. Moti Ram Reader as well as Manjinder Singh were in the retiring room. I was still at the door of the chamber. There was altercation between two persons in the chamber but, I cannot tell in between whom the said altercation took place but Sh.Sangeet Pal Singh used derogatory language (upshabad) to Manjinder Singh but Sh. Sangeet Pal Singh did not annoy with me. During the period I worked under. Sh. Sangeet Pal Singh, he never abused me nor used derogatory language against me. However, as a routine he used to remain annoy with all the staff members. However, I was served many notices under section 36 of the Punjab Courts Act and fine was imposed upon me. However, I appeared before Enquiry officer-cum-Registrar Vigilance Haryana in October, 2009 where my statement was recorded on oath, but I do not



remember the date. -

(At this stage, learned Presenting officer wants to confront the witness with his statement recorded on 6.10.2009 recorded by Enquiry officer-cum-Registrar Vigilance, Haryana. Request allowed).

I have seen my original statement recorded on 6.10.2009 by learned Registrar Vigilance Haryana-cum-Enquiry officer. I have heard its contents and also read the same. I admit the same to be correct. identify my signatures thereon. Its copy is Ex.PW7/A.”

xxxx by Sh. Sangeet Pal Singh

Ques: Have you heard with your own ears the exact words which have been reproduced by complainant Manjinder Singh Bal in his complaint?

Ans. I do not remember today. However, I was outside the room and in the door when those words were used but I can say that derogatory language was used by Sh. Sangeet Pal Singh again said I have not heard those words as I was away from the door of the chamber.

Manjinder Singh Bal belongs to Jalandhar. He was unhappy due to his posting at Balachaur. I cannot say if Manjinder Singh had submitted the complaint solely for the purpose to get himself transferred to Jalandhar or Phillaur However, it is correct that the employees always treated Jalandhar and Phillaur as good stations as compared to Balachaur. I cannot tell whether Sh. Sangeet Pal Singh was wearing the uniform prescribed for judicial officers for summer season or that which was prescribed for winter season as was outside the room. I cannot say if Manjinder Singh Bal had concocted absolute false story as narrated in his complaint for the purpose of getting him transferred from Balachaur to Jalandhar or Phillaur.

It is correct that at Balachaur the residence of the Judicial officer is within the judicial complex and near the court room. It is incorrect to suggest that Manjinder Singh Bal was not called inside the court/chamber nor he ever met Sh. Sangeet Pal Singh prior to 4.00 pm volunteered I had seen him in the chamber at about 4.45/5.00 pm. I do not remember if Manjinderpal Singh had met Sh. Sangeet Pal Singh at 4.45 pm outside the court room and near his house i.e. between the house and court room for the first time

It is correct that notices photocopies of which are Ex.D1 to Ex.D5 were served upon me. It is also correct that fine was imposed upon me vide orders copies of which are Ex.D6 to Ex D10. I had filed an appeal against the imposition of fine upon me before learned District & Sessions



Judge, Jalandhar. I do not know if Sh. Sangeet Pal Singh had submitted report mark D1 vide no.97 dated 14.3.2011 (copy placed on record by delinquent official having total pages 25). had moved application for being transferred from Balachaur to Jalandhar. I do not know if Sh. Sangeet Pal Singh had sent report mark D2 in said application vide no.98 dated 14.3.2011 (copy placed on record by delinquent official).

x x x x"

16. The testifications, as occur in the examination(s)-in-chief of the defence witnesses are extracted hereinafter.

DW-1 Statement of Sh. Kuldeep Rai Joshi, Stenographer Grade II.

x x x x

At Balachaur there is post of Sub Divisional Judicial Magistrate-cum- Addl. Civil Judge (Senior Division).

I remained posted as Judgement Writer with Sh.Sangeetpal Singh, when he remained posted as Sub Divisional Judicial Magistrate-cum-Addl. Civil Judge (Senior Division), Balachaur. The officials of Session Division Jalandhar, who were resident of Jalandhar, but posted at Balachaur, had been treating Balachaur as punishment station because they have to travel for two hours to reach Balachaur, hence they used to commit mischief to get himself transferred to Jalandhar from Balachaur, Raiinder Kumar, who was posted as Reader at relevant time at Balachaur and Gurnam Singh, Copyist and MS Bal. Ahlmad, all were residents of Jalandhar.

Quest by Enquiry officer

Ques: During your posting at Balachaur, had you been staying at station?

Ans: I had been residing in the official accommodation at Balachaur.

Ques: Is it necessary for the employees posted at Balachaur to stay there?

Ans: It was necessary for them.

Further examination in chief by Sh. Sangeetpal Singh, Delinquent officer

No occurrence of abusing any employee by the officer Sh.Sangeetpal Singh ever took place in my presence. Sh.Sangeetpal Singh never abused me nor to any official.

Sh. Sangeetpal Singh had raided the almirah of Sh Rajinder Kumar, Reader in presence of entire staff and myself from where many documents which were dumped by Rajinder Kumar were found and



recovered for which notice vide endst no.801-802 dated 25.8.2008 was issued. I have seen copy of original notice bearing no.801-802 dated 25.8.2008 which is Ex.D11. Our entire staff including myself had given representation to learned District Sessions Judge, Jalandhar on 28.8.2008 against Sh. Rajinder Kumar, Reader. I have brought copy of same and its copy is Ex.D12.

From the documents which were recovered from the almirah of Rajinder Kumar, there was one Caveat petition dated 17.6.2008 was recovered including notice given to Criminal Ahlmad and urgent instructions of Hon'ble High Court, District Court, various bail bonds, application for getting certified copy and one application for marking presence before CJM, Nawanshahar were also recovered. Said Rajinder Kumar Reader used to kept conceal and dump the court documents in his illegal custody and he had spoiled the environment which badly effected functioning of the Court. Said Rajinder Kumar used to keep a suicide note, in his pocket and also in pocket of his family that if anything ever happened to him, Sessions Judge and Court employee will be responsible. It can be possible that about hundred enquiries could be pending against Sh.Rajinder Kumar.

Rajinder Kumar ran away with the record of the Court regarding Shamsher Singh who was employed at Balachaur.

x x x x

*DW-2 Statemnent of Sh.Gurwinder Singh, Ahlmad, court of Chief Judicial Magistrate
on SA*

I remained posted as Ahlmad in the court of Sh.Sangeetpal Singh. ACJ(SD). Relachaur we.f. August, 2008 and remained posted upto 2012. Employees who were resident of Jalandhar used to sondier Balanchar as a punishment station and they used to create one mischief after the other to force their transfer. In my presence no occurrence of abusing me or any employee by Sh.Sangeetpal Singh, ever took place. Generally Sh.Sangeetpal Singh used to ask the officials to arrange files, which were fixed for arguments at least Rajinder Kumar was not posted as Reader during my tenure at Balachaur. I do not remember if any employee ever applied for his/her transfer from Balachaur.

x x x x

DW-3 Statement of Sh. Kewal Singh, Bailiff, court of Civil Judge (Senior Division), SBS Nagar.

On SA

I remained posted as Bailiff under Sh.Sangeetpal Singh



while he posted as ACJ(SD) at Balachaur. Balachaur is at a distance of about 85 kms. From Jalandhar, therefore, employees who were resident of Jalandhar used to consider Balachaur as a punishment station. Sh.Sangeetpal Singh never abused me nor misbehaved me. Even he had never misbehaved and abused any of the officials posted with him.

x x x x

DW-4 Statement of Sh. Bhupinder Singh, Peon, court of Ms. Manpreet Kaurm Judicial Magistrate Ist Class, SBS Nagar.

On SA

I remained posted as Malli under Sh.Sangeetpal Singh while he posted as ACJ(SD) at Balachaur. The employees who were resident of Jalandhar but posted at Balachaur used to consider Balachaur as a punishment station. I cannot say if Rajinder Kumar, Manjinder Singh Bal and Gurnam Singh, employees of court at Balachaur had applied for their transfer from Balachaur to Jalandhar. Sh. Sangeetpal Singh never abused me nor misbehaved me. Even he had never misbehaved and abused any of the officials posted with him., Though my post was that of Mali, yet I used to work in the court room and remained with Sh.Sangeetpal Singh till I was deputed to work somewhere else In my presence search of almirah under the control Rajinder Kumar was conducted by Sh.Sangeetpal Singh and in presence of other officials which led to various important documents which had been kept concealed by him unlawfully.

x x x x

DW-5 Statement of Sh.Surjit Singh, Bailiff, court of Civil Judge (Senior Division).

On SA

I remained posted as Process Server under Sh.Sangeetpal Singh while he posted as ACJ(SD) at Balachaur The employees who were resident of Jalandhar but posted at Balachaur used to consider Balachaur as a punishment station. Sh.Sangeetpal Singh never abused me nor misbehaved me. Even he had never misbehaved and abused any of the officials posted with him

x x x x”

17. A close study, perusal, and, analysis of the said made statements reveals, that the enquiry officer concerned, ill maneuvered his mind to derogate from the statements made by the supra, thus to the effect that the incident alleged did not take place inter se Manjinder Singh and the



present petitioner. Moreover, the enquiry officer also derogated from the statement made by the supra, wherein they echoed that the present petitioner did not indulge in derogatory behaviour against them.

18. Though, PW-7 Gurnam Singh upon being confronted with his previous statement made before the Enquiry Officer-cum-Registrar (Vigilance), Haryana, to which Ex. PW-7/A is assigned, rather accepted that he had made the said statement. However, when he apparently thereby contradicted the contents of PW-7/A. Resultantly, the said contradiction, thus leads this Court to infer that the witness (supra) was a vacillating witness, and, thereby no reliance was required to be placed upon his statement, as became made by him either before the enquiry officer concerned, or before the Enquiry Officer-cum-Registrar (Vigilance), Haryana.

19. Even otherwise, before the Enquiry Officer-cum-Registrar (Vigilance), he was not subjected to cross-examination thereby the previous statement made by him before the above, cannot be said to be containing the absolute truth with respect to the relevant incident, especially when despite his becoming confronted with Ex. PW-7/A, upon his being cross-examined by the petitioner, thus then to a query being put to him, he categorically stated that he had not overheard the purported derogatory remarks, as were made by the petitioner against the complainant. Therefore also the said witness failed to support the relevant Article of Charge, nor thereby any iota of reliance was required to be placed upon the fact, that he has admitted that he had recorded his previous statement Ex. PW-7/A.

20. If so, the only worthwhile statement which is required to be examined, thus is the statement of PW-5 Moti Lal, who however exonerated the guilt of the petitioner, besides even in his cross-examination, he has



failed to make any adverse statement against the present petitioner. As such, after discarding the statement of the vacillating witness PW-7, the only testimony which remained on record, thus was the testimony of PW-5, who however, exonerated the guilt of the accused. Resultantly, the relevant imputation of misconduct against the present petitioner, thus even on the preponderance of probabilities, rather was neither required to be answered against the present petitioner, nor could be construed to be proven against the present petitioner. In sequel, the findings adversarial to the present petitioner, as recorded qua Charge No. 1 are infirmly recorded findings.

21. Moreover, insofar as Charge No. 2 relating to the non-forwarding of the apposite statutory appeal filed by complainant Manjinder Singh rather is concerned, the present petitioner had stated that he had not made any written endorsement pertaining to the non-forwarding of the apposite statutory appeal, to the appellate authority but had asked for an office report from the Reader of the Court. However, the said reply did not persuade the enquiry officer concerned, on the count, that there was no requirement for the calling of a report from the Reader, besides on the ground that no enquiry was ordered to be made by the petitioner against the Reader, rather for the latter not making any report. However, unless further evidence is spoken by the Reader of the Court, to the telling effect, that he had been orally directed by the petitioner to omit to make a report, thereby the marking of the statutory appeal by the present petitioner to the Reader, thus for a report, but may not have led to a conclusion that, as such, an ill intention became etched in the mind of the present petitioner to, thus upto a period of ten months delay the forwarding of the statutory appeal. However, since no such evidence exists on record, thereby in the present petitioner



asking from the Reader for a report being made on the apposite statutory appeal, which ultimately became forwarded after ten months, thus cannot foster a further conclusion, that he had a mens rea to defeat the cause in the appeal, as became filed by one Manjinder Singh.

22. Moreover, if there was a delay, if any, and, if it was prima facie attributable to the present petitioner, therebys the complainant was required to be making a complaint against the present petitioner before the learned Sessions Judge concerned. However, he did not make any such complaint, therebys it appears that unless grave prejudice, evidently accrued to the complainant, on account of the delayed forwarding of the apposite statutory appeal, qua thereupon the delayed forwarding of the apposite statutory appeal, thus may not have resulted in adverse findings becoming recorded on charge No. 2 against the petitioner. Since there is no such evidence on record, to the extent, that any prejudice became encumbered upon the complainant on the score of the delayed forwarding of the apposite statutory appeal. Resultantly therefroms thus, apart from the factum of the complainant evidently omitting to make a complaint against the present petitioner for his purportedly delaying the forwarding of the statutory appeal, hence leads this Court to form a conclusion, that the findings recorded on charge No. 2 against the present petitioner, are ill-informed findings recorded thereons.

23. Moreover, the charge No. 3 framed against the petitioner relates to the allegations, that he had issued 17 notices under the Punjab Courts Act on 26.8.2008 to Rajinder Kumar, the then Reader of his Court, and, subsequently vide different orders passed on 11.9.2008, had imposed a fine of Rs. 5,000/- in each notice totalling Rs. 85,000/-. In support of his case,



the petitioner examined DW-1 Kuldeep Rai Joshi, Stenographer Grade-II, who deposed that when the almirah of the said Rajinder Kumar, became checked by the petitioner, thereupon it was found that he had dumped and kept concealed therein many documents, one caveat petition, notice given to Criminal Ahlmad, urgent instructions of the High Court and, bail bonds etc. upon which the said notices were issued upon Rajinder Kumar. Furthermore, the said Rajinder Kumar had also admitted that he had not filed any reply to the said notices, and, that the orders (supra) passed by the petitioner have been upheld in appeal, and, that the fine amount was reduced from Rs. 5,000/- to Rs. 2000/- on each notices. Moreover, in the findings recorded by the enquiry officer concerned, upon the charge (supra), thus it is not only recorded that keeping in view the monthly salary of Rajinder Kumar, the fine amount is excessive, besides it is also recorded therein, that the said Rajinder Kumar was negligent while performing his official duties. Therefore, when the orders (supra) passed by the petitioner became affirmed in appeal and became not set aside, besides the fine amount became already reduced in an appeal filed by Rajinder Kumar, whereupons if the same had been deposited, yet the same became refunded to him, whereby no financial loss was caused to him. Consequently therebys besides when the said Rajinder Kumar was declared to be negligent in performing his duties, resultantly, the findings recorded against the petitioner on charge No. 3 are infirmly recorded findings.

Final order

24. For all the above stated reasons, this Court finds merit in the instant petition, and, is constrained to allow it. Consequently, the instant petition is allowed. The impugned order dated 10.3.2015 (Annexure P-21),



wherebys the petitioner was dismissed from service, is quashed and set aside. The impugned order dated 8.8.2012 (Annexure P-14), thus reverting the petitioner, is also quashed and set aside. Resultantly, the petitioner is ordered to be forthwith reinstated in service along with all consequential benefits excepting monetary benefits.

25. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

October 28th, 2024
Gurpreet

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