
(2013) 12 P&H CK 0121

In the Punjab And Haryana At Chandigarh

Case No : CWP No's. 11170, 15682 of 2012 (O and M)

Dr. Sanjeev Arya

APPELLANT

Vs

High Court of Punjab and Haryana

RESPONDENT

Date of Decision : 21-12-2013

Acts Referred:

Citation : (2014) 1 SCT 708

Hon'ble Judges : Hemant Gupta, J; Fateh Deep Singh, J

Bench : Division Bench

Advocate : Gurminder Singh and Mr. Ashok Kaushik, for the Appellant; Vikas Bahl, for the Respondent

Final Decision : Allowed

Judgement

Hemant Gupta, J.—This order shall dispose of Civil Writ Petition Nos. 11170 of 2012 and 15682 of 2012 inter-parties, raising the questions, which are interdependent.

CWP No. 11170 of 2012.

In the present writ petition, the petitioner is seeking a writ in the nature of Certiorari so as to quash the Annual Inspection Remarks dated 23.10.2008 for the year 2007-08; the orders dated 5.9.2011 and 3.2.2012, rejecting the claim of the petitioner for promotion to the Haryana Superior Judicial Services.

2. The petitioner joined as a Sub Judge-cum-Judicial Magistrate on 28.7.1997, as a member of the Haryana Civil Service (Judicial Branch). The petitioner was promoted as Additional Civil Judge (Senior Division) in March, 2005. He was transferred as such to Narwana on 28.5.2007. The petitioner was later transferred vide order dated 19.5.2008 to Dadri from Narwana.

3. It was on 23.10.2008, the petitioner was conveyed adverse remarks of "Integrity C-Below Average" and "Integrity Doubtful" for the year 2007-08 for the period, he was posted at Narwana. In Column No. 7, it was recorded that

there were complaints against the Officer. In respect of column of General Assessment, it was recorded "as per sheet attached". The remarks recorded in the said attached sheet read as under:--

The Officer has knowledge of law and is capable of doing good work. However, during the assessment year, there were complaints in regard to his integrity.

In a matter, which has been taken up to the Hon"ble Supreme court of India and no relief had been granted, the Officer passed orders and adopted an abnormal procedure, which raised suspicion.

The procedure adopted by Shri Arya gives a clear picture of the manner in which the proceedings were being moulded for an eventual favourable order. The matter was marked by me for a discreet inquiry to the District Judge. Agreeing with the recommendations of the District Judge, I ordered transfer of the case. My unambiguous conclusion is that the conduct of the Officer was not above board.

I expressly confronted him the sequence of events, the unusual approach of the Officer and the procedure adopted. The Officer admitted that he had never adopted the same procedure hither-to-for.

There were numerous complaints against the Officer of leave the station without intimation or permission, without regard to various High Court instructions. The Officer had to be advised to be careful in future.

The behavior of the Officer towards the members of Bar was harsh and he needs to treat the lawyers with courtesy.

4. The reference to a case, admittedly, in the Note is to the anticipatory bail application filed by Babu Ram (hereinafter referred to as the "accused") and dealt with by the Petitioner. The other comments are said to be advisory by the learned Administrative Judge himself.

5. Some background in which, the bail application was placed before and dealt with by the Petitioner are necessary to be stated. It was on 1.8.2007, the accused in FIR No. 75 dated 17.3.2007 for the offences under Sections 20, 467, 468, 471, 506, 120B IPC, Police Station, City Narwana, moved an application for surrender and bail in the Court presided over by the petitioner. The accused referred to an order dated 3.7.2007 passed by the Hon"ble Supreme Court in Special Leave to Appeal (Crl.) No. (s) 3609/2007, whereby the arrest of the accused was stayed for a period of one month. The said order reads as under:--

Let the matter be listed before appropriate Bench two weeks hence. The petitioner shall not be arrested till one month from today.

6. At this stage, it may be mentioned that earlier the accused sought anticipatory bail from this Court. The said application for anticipatory bail came to be decided on 9.5.2007 when the application for anticipatory bail of other accused was allowed, but that of the accused was dismissed. The accused, the Chairman of

the Mittaso Animal Welfare and Protection Society, is said to have admitted students, in its Veterinary Medical College on payment of capitation fee. The operative part of the order declining the prayer for anticipatory bail to the petitioner reads as under:--

In view of above, no ground is made out for grant of pre-arrest bail to Babu Ram. His application is, thus, dismissed. It will be a moot point during trial whether the petitioners have actually conspired with the Chairman of the Society to play a large-scale fraud with the complainants. The various advertisements and certificate have been issued under the signatures of names of the Chairman. As such, except for Babu Ram, others can be granted the concession of pre-arrest bail. The application in CrI. M. No. 24089-M of 2007 filed by Babu Ram is, thus, dismissed. So far as the remaining petitioners i.e. Chand Ram, Krishan Kumar, Bharat Lal, Sham Lal and Randhir Singh are concerned, they are granted the concession of pre-arrest bail and it is ordered that in case of their arrest they will be released on bail to the satisfaction of the Arresting Officer, subject to the condition that they will join investigation as and when required by the Police and will hand over every information and documents relevant for the fair investigation of the case and will not in any manner interfere in the investigation proceedings or trial. They will also not leave India without prior permission of the Court.

7. The petitioner passed an order of issuance of the notice of the regular bail application filed by the accused on 1.8.2007 to the Public Prosecutor for 2.8.2007. It was mentioned that in terms of the orders passed by the Hon''ble Supreme Court, the accused is not taken into custody.

8. On 2.8.2007, the petitioner has recorded an order that the prosecution has moved an application for joining the investigation by the accused in the case. In reply, the stand of the accused was that he remained always ready to join the investigation and had already joined the investigation from 1.5.2007 as per the orders of the High Court and that the accused is still ready to join the investigation. The petitioner directed the accused to assist the police during the investigation. It was observed that accused shall not be considered either in police custody or judicial custody in view of the fact that he had interim protection from the Hon''ble Supreme Court for one month. On the same day, the petitioner passed another order to take up application of the prosecution to seek police remand for a period of 14 days next day i.e. 3.8.2007. The stand of the accused was that he cannot be arrested for a period of one month and on that day, the period of one month had not expired. After hearing the Public Prosecutor and the counsel for the accused, the order recorded by the petitioner reads as under:--

Prosecution has duly filed reply to bail application. From perusal of case file, it is apparent to say that accused Babu Ram has already joined investigation in this case on 1.5.2007 as per order of Hon''ble Punjab & Haryana High Court. Since accused shall not be arrested for a period of one month w.e.f. 3.7.2007 as per

order of Hon''ble Supreme Court of India. However, prosecution has again made an application for joining investigation of accused in this case. Reply also filed by accused through counsel. He specifically averred in his reply that he remained always ready to join investigation in this case. Further, he has already joined investigation w.e.f. 1.5.2007 as per order of Hon''ble High Court. However, he is still ready to join investigation. Therefore, in the circumstances, prosecution is allowed to join accused again for investigation. Accused Babu Ram is directed to assist police during investigation. However, it is clarified that accused Babu Ram shall not be considered either in police custody or judicial custody during investigation.

9. On 3.8.2007, when the matter was again taken up, the petitioner permitted the accused to file reply to the police remand application, while remanding the accused to judicial custody for a period of 14 days. The operative part of the said order reads as under:--

Taking into account facts above, I find it justify to give some time to defence for filing reply to police remand application. Heard. Pending investigation, accused is remanded to judicial custody for a period of fourteen days and he be now produced on 17.8.2007. However, file be also put up on 6.8.2007 for filing reply and consideration on question of police remand. Regular bail application shall be taken into consideration after decision of question of police remand.

10. In another order passed on 6.8.2007 (the 4th and 5th August, being holidays), the petitioner recorded an order for producing the accused on 7.8.2007 and to argue the question of police remand in the presence of the accused. The said order reads as under:--

Reply to an application for police remand filed by defence counsel. Copy of this supplied. Arguments on question of police remand was also advanced by learned PP as well as defence counsel. Since accused Babu Ram is not present today before Court, therefore, I find it justify to pass order on question of police remand in presence of accused. Let, production warrant of accused Babu Ram be issued for 7.8.2007. Prosecution as well as defence shall be at liberty to reargue, if required, on question of police remand in presence of accused. Criminal Ahlmad is directed to issue production warrant of accused Babu Ram for 7.8.2007 forthwith.

11. It is explained during the course of arguments that in terms of the High Court Rules and Orders, Volume III, Chapter XI Part B, the police remand can only be given in the presence of the accused. It was on 7.8.2007, the petitioner granted the police custody of the accused for a period of one day. The accused was directed to be produced on 8.8.2007. The petitioner again extended the police remand of the accused for a period of one day.

12. It has also come on record that some of the students filed CWP No. 2684 of 2003 before this Court, claiming clarification as to whether the certificate course of the said petitioners is valid and recognized and also to initiate penal action

against respondents No. 8 and 9 therein (respondent No. 8 being the Society of which respondent No. 9 (accused) was the Chairman). In the said writ petition, the record of which was called from the office, the following relief was claimed:--

- i) Commanding respondents 2 to 4 to clarify as to whether the certificate course of the petitioners is valid and recognized;
- ii) quashing the action of the respondents 1 to 7 in not initiating any action against the respondents 8-9.
- iii) directing the respondent to initiate immediate penal action against respondents 8-9;
- iv) respondents 8 and 9 may kindly be restrained from operating the society to run the course during the pendency of the present case;
- v) directing the respondents 8-9 to refund fee of Rs. 50,000/- as also to compensate the petitioners and for the grant of other reliefs as prayed for hereunder.

13. The said writ petition was disposed of on 25.4.2006, when the counsel for the accused made a statement before this Court that the Society has closed down the aforesaid course. The order passed by the Division Bench of this Court reads as under:--

The petitioners have approached this Court seeking a directing against respondents No. 2 to 4 to clarify as to whether the certificate course obtained by the petitioners is valid and recognized. Additionally, a prayer has been made for initiating proceedings against respondents No. 8 and 9 for conducting a course which was not legal and recognized.

Respondent No. 3, Veterinary Council of India in its written statement has maintained that the certificate course conducted by respondent No. 8 was not recognized and as such the petitioners could not be permitted to carry on professional activities on the basis of the aforesaid course.

Shri Sanjeev Manrai, the learned counsel appearing for respondents No. 8 and 9 informs the Court that on receipt of the communication from respondent No. 3, the Society has already closed down the aforesaid course.

In view of the fact that the course in question is not being continued by respondents No. 8 and 9 and in view of the stand taken by the Veterinary Council of India, respondent No. 3 that the course in question is not recognized, the petitioners cannot be permitted to carry on any professional activities.

The writ petition is disposed of accordingly.

14. A perusal of the record shows that the writ petitioners in the aforesaid writ petition sought admission in pursuance of advertisement published in the newspapers on 11.9.2001, wherein it was alleged that a sum of Rs. 50,000/- was secured from 280 students for the veterinary course. The FIR in respect of such

alleged fraudulent admission was lodged only on 17.3.2007.

15. It appears that a complaint dated 6.8.2007 was received by the Hon''ble Administrative Judge of the Sessions Division Jind (where the petitioner was then posted) on 8.8.2007. The said complaint is available with the reply of the High Court being part of the documents (Annexure R.1, Pages 206 to 210 of the paper book). It was alleged in the complaint that the petitioner has accepted a sum of Rs. 5 lacs on 30.7.2007 at 10.30 pm for not granting the remand of the accused. The Hon''ble Administrative Judge, as per the record produced by the counsel for the High Court, recorded the following note on 8.8.2007:--

In view of the stage of the case, as disclosed by the contents of the complaint, DJ, Jind, is directed to peruse the record of the case and report.

16. It is in pursuance of the said Note, the learned District & Sessions Judge, Jind, has sent a report of seven typed pages to the Special Secretary to the Hon''ble Administrative Judge, on 8.8.2007 itself. A perusal of the comments would show that the said report was sent after the petitioner has granted one day''s police remand on 8.8.2007. Some of the extracts from the report of the learned District & Sessions Judge, read as under:--

12. It may be further noticed that instead of taking the matter of police remand for expeditious decision, the Court remanded the accused to judicial custody till 17.8.2007 and adjourned the matter to police remand of accused till 6.8.2007 for consideration after reply by the defence.

13. In addition to the above submissions, it is to be noted further that:--

(i) the allegations in the complaint are serious;

(ii) accusing finger is being raised against the conduct of judiciary as an institution.

(iii) stage of proceedings makes the matter more sensitive; and

(iv) utmost fairness to the Investigating Agency as also to the accused is to be exercised.

14. It is, thus, humbly submitted that keeping in view the totality of the matter, withdrawal of the case from the Court of Sub Divisional Judicial Magistrate to some senior Court other than the present one, may kindly be considered.

17. On the aforesaid report, the Hon''ble Administrative Judge has passed an order dated 9.8.2007, which reads as under:--

In view of the report, the case be withdrawn from Sh. Sanjiv Arya, Judicial Magistrate and be transferred to some other Magistrate, senior to Mr. Sanjiv Arya, having competent jurisdiction, immediately.

18. It is in pursuance of such order, the learned District Judge passed an order on 9.8.2007, to transfer the case arising out of FIR No. 75 dated 17.3.2007, to

the Chief Judicial Magistrate, Jind. The transferee court remanded the accused to two days" police custody on 9.8.2007. The accused was released on bail vide order dated 29.8.2007 passed by the Learned Additional Sessions Judge, Jind (Annexure P.4).

19. It is not disputed at this stage that the SLP against an order passed by this Court declining anticipatory bail to the accused, was taken up for hearing on 27.7.2007, when the same was dismissed. But the fact that the petition stands dismissed on 27.7.2007 was not brought to the notice of the petitioner either by the prosecution or the accused till such time the matter was pending before him i.e. till 8.8.2007.

20. The petitioner submitted a detailed representation on 9.12.2008 (Annexure P.21) for expunging the remarks recorded. The petitioner also submitted supplementary representation on 21.7.2010 (Annexure P.23). However, this Court affirmed the entry "C-Below Average Integrity Doubtful" as communicated to the petitioner on 28.2.2011 (Annexure P.28). It is, thereafter, the petitioner invoked the writ jurisdiction of this Court challenging the recording of the adverse remarks.

21. Learned counsel for the petitioner vehemently contended that the petitioner has got excellent reports for the period prior to the period in question and even thereafter. The petitioner has been graded "B+Good" for the year 2009-10 (by the same Hon"ble Administrative Judge, who recorded the ACR for the period 2007-08), "A-Very Good" for the year 2010-2011 and "B+Good" for the year 2011-12.

22. It is argued that the reason for recording adverse remarks is of not granting the police remand to the accused, though the anticipatory bail was declined. It is argued that the accused has protection of the interim order from the Hon"ble Supreme Court for a period of one month. Therefore, during such period, the petitioner could not remand the accused to police custody. The request for police remand was taken up for hearing on 6.8.2007, when the production warrant was issued for 7.8.2007 and the accused was sent to police custody for a period of one day. Again, the request of the police was accepted on 7.8.2007 and the police custody extended by another one day. The petitioner could not grant police remand on 6.8.2007 in view of the fact that the High Court Rules and Orders, Volume III, Chapter XI Part B, contemplated that the police remand can be ordered only in the presence of the accused. Such fact is admitted in report of the learned District Judge, as well. The failure of the petitioner to grant police remand prior to 7.8.2007 is one which led to the adverse remarks. It is contended that the petitioner in discharge of his judicial functions has the judicial discretion to grant police remand or not. Even if such discretion was wrongly exercised, it should not lead to the doubtful integrity of the petitioner. An order, which may be illegal or a wrong order, cannot be made basis of the report of integrity doubtful. Reliance is placed upon P.K. Shastri Vs. State of M.P. and Others, Ramesh Chander Singh Vs. High Court of Allahabad and Another, and

23. It is also argued that the complaint addressed by Mahabir Singh was handed over to the Hon"ble Administrative Judge, personally, in as much as the counsel for the High Court has admitted that such complaint has not been received by the Chief Justice's Secretariat as one of the addressees on such complaint. The said complaint is not received by the Administrative Judge by post as there is no indication of receipt of such complaint by post. The complaint was received on 8.8.2007. On the same day, report is sought from the District Judge. The District Judge sends his report the same day and the Hon"ble Administrative Judge passes an order of transfer of the case on the same day. The communication between the learned District Judge and the Hon"ble Administrative Judge was not said to be through normal means of communication i.e. through the Registrar General of this Court. It is contended that the complaint is motivated and such kind of allegations can be leveled against any judicial officer to overawe him. In these circumstances the recording of the remarks "integrity doubtful" for the reason that the petitioner has not granted police remand of a person accused of an offence of forgery etc., alleged to have been committed more than six years earlier to the lodging of the FIR, is damper on the working of the judicial officer. Therefore, the exercise of judicial discretion in a particular manner cannot be made the basis of adverse remarks. It is also argued that the Committee constituted to consider the recording of the adverse remarks, has considered the documents sent by the Hon"ble Administrative Judge to the Chairman of the Hon"ble Committee. Firstly there is "Note" from the Administrative Judge to the Chairman of the Committee on 21.10.2009. Such documents have been appended with the written statement of the High Court (Annexure R. 1, pages 195-205 of the paper book). Though the "Note" is unsigned, yet from the noting of the Chairman of the Committee to consider the ACRs, it is apparent that such papers were handed over by the Hon"ble Administrative Judge, who has recoded the adverse remarks. In such papers, there is not only reference to the complaint dated 6.8.2007 sent by Mahabir Singh, but another complaint is said to be addressed by one Raj Kumar, again leveling allegations that the petitioner has settled for grant of bail on 30.7.2007 at 10.30 p.m. for consideration of Rs. 5 lacs. The other complaints referred to, which were annexed as Annexures-B, C, and D, were filed. Secondly, another "Note" recorded by the Hon"ble Administrative Judge, is available (Page Nos. 235 to 237 of the paper book), wherein in respect of two complaints, the petitioner was advised to be careful in future and the third complaint was filed. Thirdly, there is another "Note" recorded by the Hon"ble Administrative Judge (available on pages 237-239 of the paper book), that when the Officer was summoned, he came with a bag containing whisky bottles. However, neither the "Note" nor the date on which the petitioner is said to have offered whisky bottle is available on pages 237-239. Since, the note and the documents, which are not part of the ACR have been taken into consideration at the back of the petitioner, therefore, the decision making process violates the principles of natural justice.

24. Learned counsel for the petitioner placed reliance upon the Division Bench judgment of the Delhi High Court in *Barkha Gupta Vs. High Court of Delhi and Lieutenant Governor of Delhi*, , to contend that the discreet inquiry as is conducted by the learned District Judge, which has been made the basis of adverse remarks, must not have been one of the affairs. Learned counsel for the petitioner contends that the adverse remarks have to be recorded objectively and that while exercising writ jurisdiction, this Court does not act as a Court of appeal, but this Court will interfere on limited grounds when there is violation of the law; mala-fide or patent arbitrariness. Reliance is placed upon the Division Bench Judgments in *Amrik Singh v. State of Haryana*, 1995(4) RSJ 269. It is also contended that the ACRs, can be based upon inputs received by the Hon''ble Administrative Judge from various sources, which may or may not be disclosed, as held by the Hon''ble Supreme Court in *Rajendra Singh Verma (Dead) through L.Rs Vs. Lt. Governor of NCT of Delhi and Another*, but where the Administrative Judge has recorded reasons, the legality of such reasons can be tested in exercise of the powers of the judicial review by this Court.

25. On the other hand, learned counsel for the respondents has relied upon two Division Bench judgments of this Court in *State of Punjab and Others Vs. Janak Raj Jain*, ; *Randhir Singh v. High Court of Punjab & Haryana*, (CWP No. 395 of 2006 decided on 27.7.2012) & *Anil Gour v. Punjab and Haryana High Court and others* (CWP No. 4567 of 2011 decided on 27.9.2013) and the judgments of the Hon''ble Supreme Court in *Pyare Mohan Lal Vs. State of Jharkhand and Others*, *Rajendra Singh Verma (Dead) through L.Rs Vs. Lt. Governor of NCT of Delhi and Another*, *Nawal Singh Vs. State of U.P. and Another*, and *Bharat Ram Meena v. Rajasthan High Court at Bharat Ram Meena Vs. Rajasthan High Court at Jodhpur and others*, , to contend that the recording of ACRs cannot be permitted to be disputed by the petitioner in the writ jurisdiction of this Court. It is further contended that the recording of the ACR is a matter of subjective satisfaction of the Reporting Officer and therefore, the correctness thereof could not be gone into by the Courts.

26. It is also argued that the accused has chosen the date of surrender before the Court at the fag end of the period available to him with a view to ensure that he is admitted to regular bail without suffering the police remand. The accused has not disclosed the fact that his bail application was already dismissed on 27.7.2008 i.e. before he surrendered before the petitioner on 1.8.2008. Thus, recording of the adverse remarks cannot be permitted to be disputed by the petitioner.

27. Shri Vikas Behl has argued that the petitioner granted the police remand on 7.8.2007 and 8.8.2007 only because he got wind of a complaint dated 6.8.2007 made to the Hon''ble Administrative Judge. Earlier, an attempt was being made by the petitioner not to grant police remand for one or the other reason, even though the accused's application for anticipatory bail was rejected. Thus, the orders passed by the petitioner lack bona-fide and the Hon''ble Administrative

Judge has correctly recoded the remarks.

28. The purpose of writing of annual confidential reports and also the scope of interference in exercise of the power of judicial review has been recently reiterated in Rajendra Singh Verma's case (supra), where the court said to the following effect:--

147. Writing the confidential report is primarily and essentially an administrative function. Normally tribunals/courts are loath to interfere in cases of complaints against adverse remarks and to substitute their own judgment for that of the reporting or reviewing officers. It is because these officers alone are best suited to judge the qualities of officials working under them and about their competence in the performance of official duties entrusted to them. Despite fear of abuse of power by prejudiced superior officers in certain cases, the service record contained in the confidential reports, by and large, reflects the real personality of the officer.

29. We, therefore, examine the adverse remarks recorded in the light of the above report. We find that the basis of the adverse remarks is a judicial order passed by the Petitioner of not granting police remand. A judicial officer has the discretion to pass an order, which cannot be made basis of the disciplinary proceedings against an officer, in the absence of proof of any extraneous considerations. In Ramesh Chander Singh's case, (supra), the Hon''ble Supreme Court observed as under:--

12. This Court on several occasions has disapproved the practice of initiation of disciplinary proceedings against officers of the subordinate judiciary merely because the judgments/orders passed by them are wrong. The appellate and revisional courts have been established and given powers to set aside such orders. The higher courts after hearing the appeal may modify or set aside erroneous judgments of the lower courts. While taking disciplinary action based on judicial orders, High Court must take extra care and caution.

xxxx

14. In M/s. Damodar Engineering and Construction and Co. Vs. Board of Trustees for the Port of Calcutta, where the High Court reversed the order passed by the lower court making remarks about interestedness and motive of the lower court in passing the unmerited order, this Court observed that one of the functions of the higher court is either to modify or set aside erroneous orders passed by the lower courts. Our legal system acknowledges fallibility of judges. It has to be kept in mind that a subordinate judicial officer works mostly in a charged atmosphere. He is under a psychological pressure--contestants and lawyers breathing down his neck. He does not enjoy the detached atmosphere of the higher court. Every error, however gross it may be, should not be attributed to improper motives. The Judges of the High Court have a responsibility to ensure judicial discipline and respect for the judiciary from all concerned. No greater damage can be done to the administration of justice and to the confidence of the

people in the judiciary if the higher courts express lack of faith in the subordinate judiciary for some reason or other. That amounts to destruction of judiciary from within.

xxxx

17. In *Zunjarrao Bhikaji Nagarkar Vs. U.O.I. and Others*, this Court held that wrong exercise of jurisdiction by a quasi judicial authority or mistake of law or wrong interpretation of law cannot be the basis for initiating disciplinary proceeding. Of course, if the Judicial Officer conducted in a manner as would reflect on his reputation or integrity or good faith or there is a prima facie material to show recklessness or misconduct in discharge of his duties or he had acted in a manner to unduly favour a party or had passed an order actuated by corrupt motive, the High Court by virtue of its power under Art. 235 of the Constitution may exercise its supervisory jurisdiction. Nevertheless, under such circumstances it should be kept in mind that the Judges at all levels have to administer justice without fear or favour. Fearlessness and maintenance of judicial independence are very essential for an efficacious judicial system. Making adverse comments against subordinate judicial officers and subjecting them to severe disciplinary proceedings would ultimately harm the judicial system at the grassroot level.

30. Therefore, the material question is as to what extent this Court, in exercise of the judicial review, can examine the legality of the adverse remarks recorded. As held by the Division Bench of this Court in *Janak Raj Jain's* case (supra) and recent two judgments in *Randhir Singh's* and *Anil Gour's* cases (supra), the ACRs are based upon the subjective satisfaction of the Reporting Officer. In *Janak Raj Jain's* case, it was the jurisdiction of the Civil Court, which was being examined by the Division Bench. In all three cases, adverse remarks of integrity doubtful were on the basis of subjective satisfaction of the reporting officers. If the reasons are not forthcoming, this Court in exercise of the powers of judicial review cannot examine the process of recording of ACRs, as the Courts have no expertise about the decision making process adopted by the Reporting Officer. Hon'ble Mr. Justice A.M. Ahmadi in his opinion recorded in *S.R. Bommai and others Vs. Union of India and others etc. etc.*, observed that "the Court would hardly be in a position to x-ray a subjective satisfaction for want of expertise....

31. In *Union of India and others Vs. E.G. Nambudiri*, the Supreme Court was considering recording of reasons for a decision in administrative matters such as recording of ACR and while deciding representation against the remarks recorded. It has been held that the superior authority while considering the representation of a government servant against adverse remarks is not required by law to act judiciously. It is under no obligation to record or communicate reasons for its decision to the government servant. It was further observed that no order of administrative authority communicating to its decision is rendered illegal on the ground of absence of reasons ex-facie and it is not open to the Court to interfere with such orders merely on the ground of absence of any

reasons. It was observed that in governmental functions before any order is issued, the matter is generally considered at various levels and the reasons and opinions are contained in the notes and file. It was observed as under:--

...The reasons contained in the file enable the competent authority to formulate its opinion. If the order as communicated to the government servant rejecting the representation does not contain any reasons, the order cannot be held to be bad in law. If such an order is challenged in a court of law it is always open to the competent authority to place the reasons before the Court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence aliunde before the Court to justify its action.

32. The exercise of power of judicial review in the present case is closest analogy to the recording of the reasons in an Award of an Arbitrator under the Arbitration Act, 1940. An Arbitrator could pass the award without any reasons, but where the reasons are recorded by an Arbitrator, it has been held that the Courts can examine the legality of such reasons.

33. In Bungo Steel Furniture Pvt. Ltd. Vs. Union of India (UOI), the Hon'ble Supreme Court observed as under:--

9. It is now a well-settled principle that if an arbitrator, in deciding a dispute before him, does not record his reasons and does not indicate the principles of law on which he has proceeded, the award is not on that account vitiated. It is only when the arbitrator proceeds to give his reasons or to lay down principles on which he has arrived at his decisions that the court is competent to examine whether he has proceeded contrary to law and is entitled to interfere if such error in law is apparent on the face of the award itself.

34. The Constitution Bench judgment in Raipur Development Authority Vs. M/s. Chokhamal Contractors etc. etc., has held that an Award can neither be remitted nor set aside merely on the ground that it does not contain reasons in support of conclusion or the decision reached but if the Arbitrator or umpire chooses to give reasons in support of his decision, it is open for the Court to set aside the Award on the ground of error of law on the face of such record on going through the records. The Court inter-alia observed:--

19. It is now well settled that an award can neither be remitted nor set aside merely on the ground that it does not contain reasons in support of the conclusion or decisions reached in it except where the arbitration agreement or the deed of submission requires him to give reasons. The arbitrator or umpire is under no obligation to give reasons in support of the decision reached by him unless under the arbitration agreement or in the deed of submission he is required to give such reasons and if the arbitrator or umpire chooses to give reasons in support of his decision it is open to the court to set aside the award if it finds that an error of law has been committed by the arbitrator or umpire on the face of the record on going through such reasons. The arbitrator or umpire shall have to give reasons also where the court has directed in any order such as

the one made u/s 20 or Section 21 or Section 34 of the Act that reasons should be given or where the statute which governs an arbitration requires him to do so.

35. In Trustees of The Port of Madras Vs. Engineering Constructions Corporation Limited, it has been interpreted as to when an erroneous interpretation placed by an Arbitrator upon the relevant term of the contract, can be treated as an error of law apparent on the face of an Award. The Court held as under:--

20. The proposition that emerges from the above decisions is this: in the case of a reasoned award, the court can interfere if the award is based upon a proposition of law which is unsound in law. The erroneous proposition of law must be established to have vitiated the decision. The error of law must appear from the award itself or from any document or note incorporated in it or appended to it. It is not permissible to travel beyond and consider material not incorporated in or appended to the award....

36. Therefore, we find that when the ACR records reasons for grading a judicial officer, then in exercise of the powers of judicial review, the Court can examine the legality and validity of the basis of the recording of the ACR. Thus the non speaking adverse remarks, based on the subjective satisfaction of the officer, cannot be examined in exercise of power of judicial review. But, where the remarks are based on a fact, then the legality of such remarks can be examined by way of judicial review.

37. The undisputed fact is that the dismissal of the bail application on 27.7.2008 was not disclosed by the accused to the Court nor by the Public Prosecutor, who was present in the Court on 2.8.2007. It was either for the accused or the Public Prosecutor, to bring to the notice of the Court the decision of the Hon"ble Supreme Court, but the order produced before the petitioner was of protection for a period of one month. Therefore, on the face of such order, the petitioner had no option, but not to take the petitioner in police or judicial custody during the protection period. The application for police remand was filed on 2.8.2007 when the accused had the protection of the Hon"ble Supreme Court's order produced before him. Therefore, the application for police remand was adjourned to next day i.e. 3.8.2007. The application for police remand was resisted, therefore, while adjourning the application to 6.8.2007 i.e. the next available working day, the accused was remanded to judicial custody on 6.8.2007. The accused was summoned through production warrants for 7.8.2007. Thus, it can be said that the petitioner should have granted police remand on 3.8.2007, but mere fact that the police remand was not granted in respect of an offence said to be committed six years earlier, cannot be said to be a reason so as to invite adverse remarks. The Judicial Officer, dealing with the numerous cases, has to be given play in joints to have discretion in not granting police remand.

38. Thus, an order passed by a Judicial Officer, during the course of discharge of judicial functions, cannot be made sole basis of recording adverse remarks without any other information or material. In view of the above discussion, we

find that the recording of the adverse remarks communicated to the petitioner on 23.10.2008, on the basis of the judicial order passed by the petitioner, suffers from patent illegality and thus, not sustainable in law.

39. Consequently, the communication dated 28.2.2011 (Annexure P.28) rejecting the representations of the petitioner, is set aside. The matter is remitted to the respondent-High Court to reconsider the representations of the petitioner in the light of the observations made above.

CWP 15682 of 2012

40. The challenge in the present writ petition is to the order dated 8.8.2012 (Annexure P.36), whereby the petitioner has been designated as Civil Judge (Junior Division) on account of the adverse remarks recorded.

41. The Petitioner contends that consequent to confirmation of the adverse remarks in the ACR for the year 2007-08, the petitioner was reverted vide order dated 8.8.2012. The petitioner has challenged the said order inter-alia on the ground that it amount to reduction in rank, a major penalty, and thus could not have been ordered without conducting a regular enquiry in terms of the provisions of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 (for short referred to as "the Rules").

42. In the written statement filed by the respondents, it is averred that a Sub Committee was constituted on the issue of re-designation of the Officers consequent to the recording of the adverse remarks. Such Committee has given its report on 2.12.1998. The said report read as under:--

Having pondered over the matter and considered various facets in that regard, the Committee recommends the following criteria for designation to Civil Judge (Senior Division) from Civil Judge (Junior Division) in the Lower Judicial Services:--

(i) to (iv) xx xx

v) An Officer of the cadre of Civil Judge (Junior Division) who is posted as Civil Judge (Senior Division) will be liable to be posted back as Civil Judge (Junior Division) in case he earns adverse remarks relating to his integrity after his re-designation.

43. The above said recommendations of the Sub Committee were accepted by the Full Court on 21.12.1998. Keeping in view the recommendations of the Sub-Committee, the Full Court in its meeting held on 7.8.2012, ordered re-designation of the petitioner. It is also mentioned that the note of one of the Judges dated 4.5.2012 seeking re-examination of the report dated 2.12.1998 was considered by the Rules Committee in its meeting held on 17.7.2012. The recommendations of the Rules Committee were accepted by the Administrative Committee in its meeting held on 29.8.2012 clarifying that as and when, any officer is re-designated as per the decision of the Full Court dated 21.12.1998,

his/her pay which he had been getting at the time of his re-designation shall be protected.

44. The petitioner was re-designated as Civil Judge (Junior Division) vide order dated 08.08.2012 from the post of Additional Civil Judge (Senior Division). Though Section 18 of the Punjab Courts Act, 1918, has been amended by the Haryana Act No. 9 of 2004 on 12.3.2004, classifying the Courts of Civil Judge (Senior Division Cadre) at intermediary level and Civil Judge (Junior Division Cadre) at entry level in pursuance of the recommendations of the Shetty Commission, yet this Court on 3.7.2013 has recommended that there is no need to change the present nomenclature of Civil Judge (Senior Division) and Civil Judge (Junior Division). Within this Court, in the State of Punjab, the classification of the Courts is of Civil Judge (Senior Division) and Civil Judge (Junior Division). Thus, as of now, the statute provides for three ranks each in one class of Civil Judge (Senior Division) and Civil Judge (Junior Division). But it is beyond doubt that there is separate class of Civil Judge (Senior Division) and Civil Judge (Junior Division).

45. Section 22 of the said Act provides the number of Civil Judges (Senior Division) and Civil Judges (Junior Division) to be appointed, whereas Section 26 confers jurisdiction on this Court to determine the jurisdiction to be exercised in original suits. The relevant Sections of the Punjab Courts Act, 1918 read as under:--

18. Classes of Courts - Besides the Court of Small Causes established under the Provincial Small Cause Courts Act, 1887, and the Courts established under any enactment for the time being in force, there shall be the following classes of Civil Courts, namely:--

- (1) The Court of District Judge.
- (2) The Court of Additional District Judge;
- (3) The Court of Civil Judge (Senior Division Cadre) at intermediary level;
 - (i) Senior Civil Judge;
 - (ii) Upper Senior Judge;
 - (iii) Superior Senior Judge; and
- (4) The Court of Civil Judge (Junior Division Cadre) at entry level:--
 - (i) Civil Judge;
 - (ii) Civil Judge, Grade II;
 - (iii) Civil Judge, Grade I.

xxxx

22. Civil Judges (Senior Division) and Civil Judges (Junior Division) - the State

Government may after consultation with the High Court fix the number of Civil Judges (Senior Division) and Civil Judges (Junior Division) to be appointed. (2) The High Court may confer on any Judicial Magistrate the powers of such class of Civil Judges (Senior Division) and Civil Judges (Junior Division) as it may deem fit to be exercised by the Judicial Magistrate within such local area as the High Court may define.

xxxx

26. Pecuniary limits of jurisdiction of Civil Judges (Senior Division) and Civil Judges (Junior Division) - The jurisdiction to be exercised in original civil suits as regards the value by any person appointed to a Civil Judges (Senior Division) and Civil Judges (Junior Division) shall be determined by the High Court either by including him in a Class or otherwise as it thinks fit.

46. In terms of Section 26 of the above, this Court has determined the jurisdiction of the Courts of Civil Judge (Senior Division) and Civil Judge (Junior Division). The notification dated 28.11.1995 determining the nature of suits, which can be entertained by each class of Officers, reads as under:--

I. Civil Judges (Senior Division) exercising jurisdiction in the cases above the value of Rs. 2 Lacs.

II. Civil Judges (Junior Division) exercising jurisdiction in the cases up to the value of Rs. 2 Lacs.

However, vide notification dated 30.08.1996, a slight amendment was made to the following effect:--

Civil Judges (Jr. Divn.) having at least 3 years" service to deal with cases having jurisdictional value above Rs. 2 lacs.

47. Rule 4 of the Rules, which contemplates for the penalties to be imposed upon a Government employee, reads as under:--

4. Penalties--(1) The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government employee, namely:--

Minor Penalties

xxxx

Major Penalties

(vi) reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government employee will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;

(vii) reduction of lower time-scale of pay, grade, post or service which shall

ordinarily be a bar to the promotion of the Government employee to the time-scale of pay, grade, post or service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or service from which the Government employee was reduced and his seniority and pay on such restoration to that grade, post or service;

48. Rule 4(vii) of the Rules, as reproduced above, defines the major penalties, which can be imposed after complying with the procedure contemplated under Rule 7 of the Rules. On behalf of the High Court, it is argued that vide the impugned order dated 08.08.2012, the petitioner has not been reduced in rank, as it only a case of re-designation. The pay & allowances payable to the petitioner have not been reduced in any manner. There is neither reduction in rank nor of status, therefore, it is not a case of major penalty, which may require a regular departmental enquiry before inflicting the same.

49. 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.

50. 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 jurisdiction. In terms of Section 26 of the said Act, this Court had determined the pecuniary jurisdiction, as reproduced above.

51. 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.

52. In *M. Ramanatha Pillai Vs. The State of Kerala and Another*, , 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 (UOI)*, 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.

53. In *Kulwant Singh Gill Vs. State of Punjab*, , 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....

54. 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. 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.