
(2020) 10 SHI CK 0272

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 4142 Of 2020

Harjeet Singh

APPELLANT

Vs

State Of Himachal Pradesh And Another

RESPONDENT

Date of Decision : 05-10-2020

Acts Referred:

Citation : (2020) 10 SHI CK 0272

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Jagat Paul, Sudhir Bhatnagar, Arvind Sharma, Kunal Thakur

Final Decision : Dismissed

Judgement

Sandeep Sharma, J

1. Precisely, the grouse of the petitioner, who at present is working as an Assistant Sub Inspector with Himachal Pradesh Police, is that he has been wrongly denied the opportunity to go for training of Upper School Course/Sub Inspector and Departmental Promotion Committee, while considering his aforesaid claim, ought not have taken into consideration the adverse entries made in the ACRs for the period 1.4.2016 to 9.4.2017 since same were not communicated to him. Record reveals that the petitioner, at the first instance for the redressal of his aforesaid grievances, filed an OA No. 2411 of 2019 before erstwhile Himachal Pradesh Administrative Tribunal, which came to be decided on 19.6.2019. Perusal of order dated 19.6.2019 passed by erstwhile Himachal Pradesh Administrative Tribunal reveals that the Tribunal, having taken note of the fact that the petitioner has already made representation for redressal of his grievances, directed the respondents to decide the same in a time bound manner, after affording opportunity of hearing to the petitioner. In compliance of aforesaid direction, respondents, after having afforded due opportunity of hearing to the petitioner, decided the representation vide order dated 22.8.2019, Annexure P-6, whereby representation having been filed by the petitioner came

to be rejected. In the aforesaid background, petitioner has approached this Court, in the instant proceedings, by way of instant petition, praying therein for following reliefs:

"i) That the respondent No.2 may kindly be directed to decide the claim of the petitioner for training of Upper School Course/Sub-Inspector after ignoring the Annexure P-6 which has been passed without issuing any show cause notice, without conducting any departmental enquiry vide Annexure P-7 and without considering the Annexure P-12 (colly) in the interest of justice.

ii) That the action of the respondents about passing of order Annexure P-6 and P-13 may be cleared as wrong, illegal and arbitrary.

iii) That the respondents may kindly be directed to recommend the name of the petitioner for Upper School Course and as such his training may be directed to be concluded within a time bound period by granting promotion to the petitioner when his juniors were promoted."

2. Having heard learned counsel for the parties and perused material available on record, this Court finds that adverse entries recorded in the ACR's of the petitioner for the period with effect from 1.4.2016 to 2.9.2017 were duly communicated to the petitioner vide communication dated 8.2.2019 (Annexure P-2). Vide aforesaid communication, petitioner was called upon to file representation, if any, qua aforesaid adverse entries within a period of 15 days. In response to aforesaid communication, petitioner, vide Annexure P-3, submitted a detailed representation but since the same was not decided, petitioner was compelled to approach erstwhile Himachal Pradesh Administrative Tribunal by way of the Original Application, as has been taken note herein above but now representation filed by him stands finally decided vide order dated 22.8.2019 (Annexure P-6) in terms of orders passed by the Tribunal.

3. If, communication dated 8.2.2019, Annexure P-2 is read juxtaposing order dated 22.8.2019, Annexure P-6, passed by the respondents in compliance to order dated 19.6.2019 passed by the Tribunal in OA No. 2411 of 2019, this court finds no force in the submission of learned Counsel appearing for the petitioner that neither adverse entries in the ACR were communicated to the petitioner nor he was afforded opportunity to explain his position. Bare perusal of aforesaid communication, as has been taken note herein above, clearly reveals that the petitioner was not only communicated adverse entries recorded in the ACR but he was also afforded opportunity to file representation against the same.

4. Similarly, this Court finds from the reply filed by respondents Nos. 1 and 2 that while the petitioner was posted as In Charge, Police Post, Daulatpur, District Una, compliant was received in the office of replying respondents, alleging therein that illegal mining was rampantly going on at Baiya Khad, Daulatpur, Marwar area and illegal liquor mafia and prostitution rackets were active in the jurisdiction of Police Post Daulatpur and local police was rarely taking any action against the culprits. Having received said complaint, the Inspector-General of

Police, Northern Zone, Dharamshala directed the Superintendent of Police, Una, to take immediate necessary action in the matter and to shift the petitioner to Police Lines, Una. Vide aforesaid communication dated 4.11.2016 (Annexure R-2) name of petitioner was also ordered to be put in the list of Officials Undesirable for Sensitive Post (Ousp). Though learned Counsel appearing for the petitioner. argued before this Court that since order putting name of the petitioner in the Ousp list was never communicated to the petitioner, same could not be made basis to deny further promotion but, such plea of learned Counsel appearing for the petitioner is wholly untenable for the reason that no challenge to aforesaid decision taken by the authorities ever came to be laid by the petitioner either before higher authorities or in any competent Court of law, rather, he acquiesced to the same and only raked up the issue with respect to non-communication of adverse entries in the ACR by way of OA No. 2411 of 2019, that too in the year 2019. As per the standing order circulated by the respondents dated 18.12.2018 (Annexure R-4), adverse APAR (Annual Performance Appraisal Report) below average or 0-39) during previous 5 years on the day of recommendations/ Departmental Promotion Committee will debar the incumbent from being included in E-1 list. Since there were adverse reports against the petitioner, his case could not be recommended by the Departmental Promotion Committee for his selection to undergo Upper School Course at Police Training College, Daroh with effect from 3.6.2019.

5. Though this Court finds no material available on record suggestive of the fact that Departmental appeal, if any, ever came to be filed by the petitioner against order dated 8.2.2018 passed by Inspector-General of Police, but learned Counsel appearing for the petitioner states that an appeal having been filed by the petitioner against aforesaid order is pending for considerable time.

6. Consequently, in view of above, present petition is dismissed being devoid of merit alongwith all pending applications. However, appellate authority, respondent No.2/Director-General of Police is directed to consider and decide the appeal, if any, filed by the petitioner, expeditiously, preferably within four weeks from today. Needless to say, appellate authority, while deciding appeal/ representation of the petitioner would afford an opportunity of hearing to the petitioner and shall dispose of the same by way of a speaking order.