

(2018) 08 P&H CK 0423

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 22529 Of 2014 (O&M)

Manjinder Singh

APPELLANT

Vs

State Of Punjab And Another

RESPONDENT

Date of Decision : 15-08-2018

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2018) 08 P&H CK 0423

Hon'ble Judges : A.B. Chaudhari, J;Kuldip Singh, J

Bench : Division Bench

Advocate : Rajiv Atma Ram, Ranjit Singh Kalra, Nishant Bhardwaj, Harsimran Singh Sethi, Anand Chhibber, Jaivir Chandel

Final Decision : Allowed

Judgement

Petitioner was appointed to P.C.S. (Judicial Branch) as Sub Judge-cum-Judicial Magistrate 2nd Class on 09.06.1992. He was promoted as Additional District & Sessions Judge on 23.02.2008 for Fast Track Court,

Ludhiana. Thereafter, he was promoted as Additional District and Sessions Judge and was posted at Ludhiana, vide order dated 29.06.2009. The Administrative Judge of Ludhiana Sessions Division for the year 2010-11 recorded the following adverse remarks in his ACR:

Year

Remarks by the High Court

Adverse/advisory remarks if any

2010-2011

C Below Average Integrity Doubtful

7

Integrity

Integrity doubtful. Despite apprising the officer to improve his reputation but in vague

Part III

Remarks of the Administrative Judge

This officer could have proved an asset to the institution but he has failed to keep his reputation as per the standard of the judicial officer

He is advised to read the files thoroughly.

Petitioner claimed that he had been working with full devotion. During his service, he upgraded his educational qualification and completed Masters-of-laws (LL.M) from Kurukshetra University, Haryana, for which he was given advanced increments. The petitioner was never apprised to improve his reputation either in writing or verbally. No complaints were mentioned. The petitioner made the representation, which was rejected by the Full Court and his ACR for the year 2010-11 'Integrity Doubtful' was confirmed.

The petitioner further claimed that before and after the said ACR, his ACRs are 'B+ (Good)'. Therefore, prayer is made for quashing the said ACR along with the orders rejecting the representation and confirming the ACR.

The High Court in its written statement has taken the stand that during the entire service period of petitioner, there were several complaints against the petitioner from the years 1995-2005 and 2010 to 2013. Reference has also been made to the complaints, which shows that the complaints were filed. It was stated that the remarks recorded in the ACR for the year 2010-11 was correctly recorded. The remarks recorded in the

ACR of a judicial officer is based on many factors and material which is gathered by the Hon'ble Administrative Judge from different sources. The observation made in the ACR is self-explanatory, which does not need any further clarification. The rejection of the representation and confirmation of the ACR are not denied.

The entire summary of the ACRs of the petitioner from the years 1992-1993 till the date is reproduced as under:

Year Remarks by the High Adverse/advisory remarks if any

Year

Remarks by the High Court

Adverse/advisory remarks if any

1992-1993

B (Satisfactory)

5

Is he an efficient Judicial Officer?

Not yet. Advised to work hard and read files at home.

1993-1994

B (Satisfactory)

1994-1995

B Plus (Good)

1995-1996

B-Average

6

Has he maintained Judicial reputation for honesty and impartiality?

There were written complaints. Separate Note added. To be kept under watch.

1996-1997

B-Average

1997-1998

B-Average

1998-1999

B Plus (Good)

1999-2000

B Plus (Good)

2000-2001

B Plus (Good)

2001-2002

B Plus (Good)

2002-2003

B Plus (Good)

2003-2004

B Plus (Good)

2004-2005

B Plus (Good)

2005-2006

B Plus (Good)

2006-2007

A-Very Good

2007-2008

B Plus (Good)

2008-2009

B Plus (Good)

2009-2010

B Plus (Good)

8

General assessment regarding strength and shortcomings:

A good officer. Should be more assertive in court.

2010-2011

C Below Average Integrity Doubtful

7

Integrity Part III

Integrity doubtful. Despite apprising the officer to improve his reputation but in vague This officer could have proved an asset to the institution but he has failed to keep his reputation as per the standard of the judicial officer He is advised to read the files thoroughly.

2011-2012

B Plus (Good)

8.

General assessment regarding strength and shortcomings:

Good officer but there is scope of improvement in quality and quantity of work.

2012-2013

B Plus (Good)

3.

Capacity of management, leadership, initiative planning and decision making

Needs improvement Requires more initiative & planning as noticed in Hon'ble CJI's visit

4.

Inter personal relationship and team work

Needs improvement Requires more initiative & planning as noticed in Hon'ble CJI's visit

2013-2014

B Plus (Good)

2014-2015

B Plus (Good)

2015-2016

B Plus (Good)

2016-2017

B Plus (Good)

7

Integrity

Complaints pending

2017-2018

Remarks are awaited from Hon'ble Ms. Justice Ritu Bahri, Administrative Judge of Bathinda Sessions Division

The entire ACR for the year 2010-2011 is reproduced as under:

"1. Quality of work

(a) Conduct of business in Court and office

(b) Quality of judgment

2. Quantity of work

Good

Just OK

The officer has claimed total 1078.5 units for the period from 1.4.2010 to 28.2.2011 which is more than the prescribed norm.

3. Capacity of management, leadership, Average initiative, planning and decision making.

4. Inter personal relationship and team work.
5. State of Health.
6. Period under observation of the Administrative Judge.
7. Integrity Good Good 1.4.2010 to 31.3.2011 Integrity doubtful. Despite apprising the officer to improve his reputation but in vague.
8. General assessment -regarding This officer is quite intelligent and strength and shortcomings could work for the upliftment of the institution. He has applied his energy in different directions as mentioned in the preceding columns.
9. Grading 'C' Below average. Integrity doubtful Part-III Remarks of the This officer could have proved an Administrative Judge asset to the institution but he has failed to keep his reputation as per the standard of the judicial officer. He is advised to read the files thoroughly."

The information sought by the petitioner under the RTI shows that there was only one complaint, which was filed. In the RTI reply dated 30.05.2013 (Annexure P-22), it was stated that there are no other material/documents available on the record.

Even during the arguments, Mr. Anand Chhibber, learned counsel for the High Court has fairly conceded that there is no material with the High Court to support the said adverse remarks regarding the integrity doubtful.

Now, the legal question would arise as to whether the remarks 'integrity doubtful' in the ACR could be recorded without there being any material?

Learned counsel for the High Court has contended that the matter has been referred to the Full Bench by the Single Bench of this Court for authoritative decision.

On the other hand, Mr. Rajiv Atma Ram, learned counsel for the petitioner has contended that the law point has already been settled by Hon'ble the Supreme Court of India and there is no need to wait for the decision of the Full Bench of this Court.

Learned counsel for the High Court has relied upon the authority of "Rajendra Singh Verma vs Lt. Governor (NCT of Delhi)", 2011(10) SCC 1, wherein the Apex Court observed as under:

"195. It is a matter of common knowledge that the complaints which are made against a judicial officer, orally or in writing are dealt with by the Inspecting Judge or the High Court with great caution. Knowing that most of such complaints are frivolous and by disgruntled elements, there is generally a tendency to discard them. However, when the suspicion arises regarding integrity of a judicial officer, whether on the basis of complaints or information received from other sources and a committee is formed to look into the same, as was done in the instant case and the committee undertakes the task by gathering

information from various sources as are available to it, on the basis of which a perception about the concerned judicial officer is formed, it would be difficult for the Court either under Article 226 or for this Court under Article 32 to interfere with such an exercise. Such an opinion and impression formed consciously and rationally after the enquiries of the nature mentioned above would definitely constitute material for recording adverse report in respect of an officer. Such an impression is not readily formed but after Court's circumspection, deliberation, etc. and thus it is a case of preponderance of probability for entertaining a doubt about integrity of an official which is based on substance, matter, information etc. Therefore, the contention that without material or basis the adverse entries were recorded in the ACR of the appellants cannot be upheld and is hereby rejected."

It has been pressed by Mr. Chhibber that it is not necessary that there should be tangible material to support the ACR.

The observations relied upon by the learned counsel for the High Court to show that in the said case on the basis of the complaints oral or in writing dealt with the Inspecting Judge of the High Court and the information received from other sources and the Committee is found to undertake the task by gathering information from various sources on the basis of which perception regarding the Judicial Officer is formed.

Herein, in the present case, there is no averment on behalf of the High Court that the then Administrative Judge of Ludhiana Sessions Division gathered information from other sources and that the concerned

Committee also gathered some material and formed the opinion that the integrity of the petitioner is doubtful. Therefore, the said observations go against the respondents, particularly, when even before this Court a categorical stand of the High Court is that no material is available for 'integrity doubtful' report.

The matter has already been examined by the Apex Court in case of "Ishwar Chand Jain v High Court of Punjab & Haryana, AIR 1988 SC, 1395, wherein the Apex Court observed that the adverse ACR must be supported by the supporting material.

The matter was also examined by the Division Bench of this Court in CWP No.1161 of 2014, titled as "Ravinder Singh vs High Court of Punjab and Haryana" decided on 19.07.2018, wherein the following observations have been made:

" The question as to whether Annual Confidential Reports containing adverse remarks are subject to judicial review, was examined by a Division Bench of this Court in Jatinder Pal Singh vs. High Court of Punjab and Haryana, 2015(4) SCT 1. The question regarding complaints against judicial officers and action on the same was also examined and the following observations were made by the Division Bench of this Court:-

34) There is a growing tendency of making false and fabricated complaints

against Judges at all levels, especially the District Judiciary. Realising this menace, High Court has issued office order dated 10.04.2015 with reference to DO letter No. CJI/CC/Comp/2014-15 dated 3.10.2014 of the Hon'ble Chief Justice of India that complaints should not be entertained in the absence of supporting affidavit. The said order is to protect the judicial officers. In other words not to entertain false and fictitious complaints. Extract of the order reads as follows:-

"i) The complaint making allegations against members of the Subordinate Judiciary in the States will not be entertained and no action will be taken thereon, unless it is accompanied by a duly sworn affidavit of the complainant and verifiable material to substantiate the allegations made therein;

ii) If action on such complaint meeting the above requirement is deemed necessary, authenticity of the complaint will be duly ascertained and further steps thereon will be taken only after satisfaction of the competent authority designated by the Chief Justice of the High Court; and

iii) If the above requirements are not complied with, the complaint will be filed/ lodged without taking any steps thereon."

Regarding the scope of interference by this Court in the remarks in the ACRs, it was observed that it was quite limited and the following observations were made:-

35. There is no doubt that the scope of interference with the remarks in a ACR is quite limited. However, having regard to the factual aspects of the present case, in our considered view, the decision of the then Hon'ble Administrative Judge and its approval by the High court was clearly erroneous for the reason that if there were some serious allegations made against petitioner in that case it was necessary to hold an enquiry. However, if it was a case of gathering overall report on the general reputation of officer, the most damaging remarks ought to have been supported by any material evidence/any reason. Or in the alternative the petitioner should have been given opportunity to meet those allegations by way of furnishing copy of the complaints and to seek his explanation or against those allegations. It is relevant to note that writing of ACR against an officer/employee is akin to quasi judicial function. The Apex Court has held that if there are civil consequences, necessary and reasonable opportunity should be given to the concerned person. In the present case against ACR, the petitioner submitted a detailed representation but no reasons are discernible while rejecting the same. It is to be noted that even the administrative decisions must be supported by reasons when it is appealable or for judicial review, since effective appeal would be deprived.

Therefore, it was observed that writing of ACRs against an officer/ employee are akin to quasi judicial function. If there are civil consequences, necessary and reasonable opportunity should be given to concerned person. It was also held by this Court that if it was a case of gathering over all report on the general

reputation of the officer, the most damaging remarks ought to have been supported by material evidence/reasoning or in the alternative, the petitioner should have been given opportunity to meet those allegations by way of furnishing copy of the complaint and to seek his explanation against those allegations. Judgment of Jatinder Pal Singh's case (supra) was upheld by Supreme Court of India."

Recently in a case relating to a Judicial Officer working under the control of High Court of Delhi, the matter was recently examined by the Apex Court in case of "H.C. of Delhi Through Registrar General vs Barkha Gupta & Anr.", in Civil Appeal No.5984 of 2013, decided on 06.10.2016, it was observed as under:

"1. We have perused the order of the High Court under challenge. The High Court has very elaborately discussed and considered the totality of the facts in which the Annual Confidential Report (A.C.R.) of the officer(s) concerned was given the grading 'C' - integrity doubtful. Before the Division Bench of the High Court, which had passed the impugned order, no material whatsoever had been laid to sustain the said conclusion of the Full Court. Before us also there is not even a whisper as to the basis on which grading 'integrity doubtful' has been recorded.

2. In the aforesaid circumstances, it will not be necessary for us to traverse the detailed facts and circumstances of the case except to record our conclusion that the remarks recorded in the A.C.Rs. of the officer concerned for the years in question i.e. 1999-2004 are wholly unsustainable in law. We accordingly dismiss the appeal and affirm the order of High Court. -----"

It follows that the adverse ACR must be supported by the material. At least, such material should be placed before the Court to enable it to examine whether there is justification for recording such adverse remarks.

It is not that the High Court is not sensitive about the material in support of the adverse remarks, particularly, 'integrity doubtful' or confronting the same with the concerned Judicial Officer. From the concerned file, produced by the High Court, it comes out that a Committee consisting of three Senior Judges, namely, Hon'ble Mr. Justice G.S. Singhvi,

Hon'ble Mr. Justice V.K. Bali and Hon'ble Mr. Justice H.S. Bedi constituted in the year 2004 submitted a report dated 31.01.2005. The Committee was entrusted with the job to consider the norms required to be followed at the time of inspection and before recording the remarks 'integrity doubtful'. The Committee of Hon'ble Senior Judges after considering the information gathered from some High Courts, rules and the case law on the point had made the following recommendations:

"The law laid down by the Hon'ble Supreme Court in the judicial precedents, mentioned above, and number of others taking the same view, is well entrenched and has no exception whatsoever. The principle of audi-alteram-partem which has been universally recognised lays down that the concerned

officer should be confronted with the material forming the basis of opinion of the reporting officer with regard to his integrity. It is not only with regard to various Government services but also with regard to Judicial Officers as well that this principle is applicable. The Committee is, thus, of the unanimous view that before forming an opinion to make adverse entry in the confidential report of a Judicial Officer, Hon'ble Judge should confront the concerned Judicial Officer with the material, on the basis of which he is likely to form an opinion that the integrity of the Judicial Officer is doubtful. If the material is not a part of record and though the conduct, reputation and character of the concerned officer might be public knowledge or notoriety which is within the knowledge of the Hon'ble Judge, before forming an opinion to make adverse entry in confidential report, the Hon'ble Judge should share the information with the concerned officer. It is only after the officer is confronted either with the material or information, as mentioned above, and he is unable to satisfactorily explain the facts and circumstances appearing against him that integrity of the Judicial Officer should be doubted and 'C' (Integrity Doubtful) report should be given to him and not otherwise."

Unluckily, the said report failed to find favour with the Full Court, which in its meeting dated 31.07.2015, decided to follow the past practice.

In the present case, learned counsel for the High Court has fairly stated that the High Court does not have the material to support the adverse ACR.

That being so, the adverse remarks recorded in ACR of the petitioner for the year 2010-2011 are liable to be quashed along with consequential orders rejecting his representation order by the Full House and confirming the ACR. Considering the previous ACRs and subsequent ACRs of the petitioner, which are 'B Plus (Good)', the ACR for the year 2010-2011 is to be treated as 'B Plus (Good)'.

As a result of the foregoing discussion, the present petition is allowed. The adverse remarks recorded in the ACR for the year 2010-2011 are hereby quashed and the over all grading 'Below Average'-'Integrity doubtful' is also ordered to be quashed and ordered to be read as 'B Plus (Good)'.

Before parting with the judgment, we are of the view that the valuable report of three Judges Committee, which was submitted on 31.01.2005 after careful examination of the law on the point, needs to be re-considered by the High Court, for the view we have taken based on recent Hon'ble the Supreme Court judgment. Hence, we earnestly recommend to the High Court to take up the matter on the administrative side and take a fresh decision on the report of the Committee and also in the light of the law as discussed in the present judgment, for laying the guidelines for recording adverse remarks/ 'C'-integrity doubtful in the ACR of the Judicial Officers, which many times have the effect of deferred premature retirement order. Let the Registry place the matter before Hon'ble the Chief Justice of this Court expeditiously for appropriate orders.