

Before Rajiv Narain Raina, J.
RAJESH KUMAR—Petitioner

versus

STATE OF HARYANA AND OTHERS—Respondents

CWP No.14447 of 2011

August 8, 2013

Constitution of India, 1950 - Art. 227- Punjab Police Rules, 1934 - Rl.16.21 - Petitioner filed present writ petition for expunging adverse remarks recorded in his ACR for the period 1.4.2008 to 31.3.2009, during which period he was posted at Haryana Police Academy under the control of IG Police - Petitioner suspended on 6.6.2008 on account of an incident and was awarded punishment of censure- Contention of petitioner that till the date of suspension, he had worked for less than 3 months under the IG Police, and therefore, as per instructions and circulars, the IG Police could not

have written his ACR repelled - As per RL.16.21, PPR, a suspended police official cannot exercise powers of a police officer with respect to maintenance of law & order and investigation - The petitioner was assigned the task of taking indoor classes of trainees and was subject to discipline under the Punjab Police Act and the IG Police had the occasion to see the work and conduct of the petitioner even after his suspension, though in a different role - Impugned order upheld, writ petition dismissed.

Held, that the status of the suspended policeman under the Punjab Police Rules, 1934 as applicable to Haryana is different from civil employees. A suspended police officer does not cease to be a police officer and he remains subject to the same responsibilities, discipline and penalties as if he were not suspended. He relies on Rule 16.21 of PPR which provides that the suspended policeman continues subject to same responsibilities, discipline and conduct as though he was not suspended. It is only that during suspension he cannot exercise duties and powers as a police officer in the maintenance of law and order and in the investigation of crime.

(Para 4)

Further held, that in these circumstances, I am not prepared to give the benefit of executive instructions reproduced supra and would hold that in the present case in one form or the other the petitioner's work and conduct was watched for well over three months, and in any case such instructions are more or less directory in nature and not part of statutory rules prescribed under Punjab Police Rules, 1934 as applicable to Haryana. Even assuming that the view of the IG/Personnel is believed that the remarks should be expunged even then I think that the decision of the final authority i.e. ADGP/Administration is neither perverse nor arbitrary that in his opinion the adverse remarks should stay only on account of the fact that the petitioner was punished in the departmental enquiry after misconduct stood proved.

(Para 8)

Naveen S. Bhardwaj, Advocate, or the petitioner.

Harish Rathee, Sr. DAG, Haryana.

RAJIV NARAIN RAINA, J.

(1) The petitioner, a Sub Inspector in Haryana Police worked under the control and command of the then Commissioner of Police, Gurgaon and has approached this Court for expunging adverse remarks recorded in his ACR for the period 01.04.2008 to 31.03.2009. During the aforesaid period of assessment, the petitioner was posted at Haryana Police Academy, Madhuban under the control of the Inspector General of Police. The petitioner had worked from 01.04.2008 to 06.06.2008 when he was placed under suspension pending charge-sheet and enquiry in an incident in which it was alleged that on the intervening night of 24/25.05.2008 he had beaten up the owner of a dhaba, run opposite Madhuban Police Complex, in full public view. The departmental enquiry went against him and he was awarded censure which minor punishment is final.

(2) Mr. K.P. Singh, IPS the then Inspector General of Police Academy, Madhuban had seen the work of the petitioner from 01.04.2008 to 06.06.2008 i.e. for two months and six days and assessed the petitioner grading him as average. The petitioner prays that these remarks in the ACR for the year 01.04.2008-31.03.2009 are unjustified and deserve to be expunged on the short ground that instructions dated 21.04.1956 on Performance Appraisal, Volume-VII read with the Punjab Government Circular dated 03.05.1960 as applicable to Haryana and the Haryana Government Letter dated 02.03.1971 regarding recording of Confidential Reports requires a reporting officer to see the work and conduct of an officer for at least three months. These instructions have laid down as follows:-

“No Reporting Authority should record his remarks in the confidential report of an officer under him unless he has seen his work and conduct for atleast three months during the financial years.”

Explanatory Note: The period of three months referred to in this paragraph means the period for which the reporting authority has actually seen the work of the officer/official reported upon. Besides, regular leave (as distinct from casual

leave, which is treated as duty), the suspension period, when a Govt. employee does not discharge any duty, is not to be counted in calculating this period. Similarly, the period, if any, during which the reporting authority is on leave or under suspension is not to be counted."

(3) On notice of motion having been issued, the State has justified its action by filing written statement. It is submitted that the Inspector General of Police, HPA, Madhuban was the reporting authority and the accepting authority was the Additional Director General of Police, Haryana with respect to the Annual Confidential Rolls for the period 01.04.2008 to 31.03.2009 and not the Commissioner of Police, Gurgaon where he was posted during the relevant period. The charges levelled against the conduct of the petitioner at Madhuban in the incident involving the Dhaba owner and of his being beaten up in full public view stands proven in the departmental enquiry for which he has been punished with censure. It has been stated that the petitioner did not cooperate during the departmental enquiry and remained absent at his place of posting in order to delay the proceedings.

(4) Mr. Rathce urges that the status of the suspended policeman under the Punjab Police Rules, 1934 as applicable to Haryana is different from civil employees. A suspended police officer does not cease to be a police officer and he remains subject to the same responsibilities, discipline and penalties as if he were not suspended. He relies on Rule 16.21 of PPR which provides that the suspended policeman continues subject to same responsibilities, discipline and conduct as though he was not suspended. It is only that during suspension he cannot exercise duties and powers as a police officer in the maintenance of law and order and in the investigation of crime.

(5) It is averred that during suspension the petitioner was posted in the indoor staff of the Haryana Police Academy, Madhuban and was assigned duty to take indoor classes of the trainees and perform such other miscellaneous functions as were assigned to him but where there is no scope of exercise of his power as a police officer. It is, therefore, incorrect to suggest that the Inspector General of Police saw his work and conduct

only for 2 months and 6 days and not for the entire period of assessment though the role was different from 06.06.2008 onwards when the petitioner was suspended. Therefore, the remarks recorded in the ACR cannot according to Mr. Rathee be seen purely from the stand point of 2 months and 6 days or being foul of the instructions requiring minimum three months of personal contact. So long as the same Inspector General of Police remained in position throughout the period of assessment then the instructions which lay down minimum three months exposure would be directory in nature and not mandatory.

(6) To the contrary, learned counsel for the petitioner has drawn the attention of the Court to the replication filed by the petitioner in which he has relied upon noting sheets obtained under RTI which suggests that different authorities while examining the file had recommended expunging of the remarks on account of period being less than 90 days. K.Selvaraj, IPS IGP/Personnel agreed with the view expressed by the AIG/ Administration on 09.04.2010 that the remarks should be expunged. However, when the matter was put up to the ADGP/Administration, the final authority for Sub Inspectors in the matter of recording an expunction of adverse remarks in ACRs, he had put a query on 12.01.2011 asking for the fate of the departmental enquiry against the petitioner. Accordingly, the ADGP/Administration was informed that punishment of censure has been awarded and the period of suspension has been treated as spent on duty for all intents and purposes. On 13.06.2011 the competent authority took the final decision that since the petitioner has been punished in departmental enquiry the adverse remarks recorded by the IGP, Madhuban shall stay. The representation was rejected on 13.06.2011. The censure was awarded on 10.05.2010 for beating Dhan Singh, owner of hotel/dhaba situated in front of the Haryana Police Academy Gate at Madhuban known as "Chachu Ki Rasoi". The adverse remarks of average were conveyed on 17.06.2009 and the decision taken by the ADGP on 13.06.2011 was duly conveyed. The misconduct for which the petitioner has been punished lies within the period of assessment for which average remarks were recorded. The present is not a case where reporting authority had seen the work and conduct of a subordinate for 2 months and 6 days and thereafter has either been posted out or had remained

posted without any further contact or knowledge of work and conduct of the subordinate after suspension in view of duties assigned during suspension to train recruits.

(7) To the contrary, the petitioner admits in his representation against adverse remarks when he says that he has the fullest control over his subordinates posted in the Training Branch and, therefore, in a way he was discharging duties though other than in regular main line policing and, thus inversely admits that his work and conduct remained under watch of his superior, the then IGP, Madhuban.

(8) In these circumstances, I am not prepared to give the benefit of executive instructions reproduced supra and would hold that in the present case in one form or the other the petitioner's work and conduct was watched for well over three months, and in any case such instructions are more or less directory in nature and not part of statutory rules prescribed under Punjab Police Rules, 1934 as applicable to Haryana. Even assuming that the view of the IG/Personnel is believed that the remarks should be expunged even then I think that the decision of the final authority i.e. ADGP/ Administration is neither perverse nor arbitrary that in his opinion the adverse remarks should stay only on account of the fact that the petitioner was punished in the departmental enquiry after misconduct stood proved. To my mind, the petitioner got away lightly with censure and deserved harder punishment. I have been through his representation dated 14.12.2009 (P-3) and find free use of words such as "ridiculous" and "fabricated grounds of giving beating to a dhaba onwer" after charges were proved "biased attitude of the reporting authority to malign my image" could have been avoided coming from his rank and office. This is not parliamentary language and there is lack of restraint in it which could be easily avoided when a Sub Inspector submits memorials to superior officers craving justice. The petitioner has not impleaded the reporting officer by name and, therefore, cannot be heard on bias and mala fides against him. No prejudice has been caused to the petitioner by the order of the ADGP/Administration.

(9) No ground for expunging adverse ACRs for the period in question is made out.

(10) The petition is devoid of merit and is dismissed.