

(2002) 09 P&H CK 0039

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 55 of 1993

T.S. Sachdeva, Excise
and Taxation Officer

APPELLANT

Vs

Punjab State and
Others

RESPONDENT

Date of Decision: Sept. 17, 2002

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 80

Citation: (2003) 133 PLR 602

Hon'ble Judges: M.L. Singhal, J

Bench: Single Bench

Advocate: Ravinder Chopra and Naresh Manchanda, for the Appellant; B.S. Sewak, A.A.G.,
for the Respondent

Final Decision: Dismissed

Judgement

M.L. Singhal, J.

Shri T.S. Sachdeva plaintiff was working as Excise & Taxation Officer at Sales Tax Barrier Kaller Khera, District Ferozepur in the year 1979-80. He was working at Ferozepur. He was conveyed adverse entry in his confidential report vide D.O. No.G-II-82-1326 dated 3.2.82 to the effect that his integrity was doubtful as adjudged by the reporting authority in the year 1979-80 and he was graded as an average officer. He represented against the adverse remarks to the Commissioner, Excise & Taxation, Punjab, Patiala vide representation dated 12.4.82. His representation was rejected by Commissioner, Excise & Taxation, Punjab on 17.5.85. His revision was also rejected by the Financial Commissioner (Taxation) & Secretary to Government Punjab, Excise & Taxation, Department, Chandigarh on 28.10.1987. He filed suit for declaration that the adverse remarks recorded in his confidential report for the year 1979-80 that his integrity was doubtful and that he was an average officer was unwarranted, illegal, unconstitutional, arbitrary and mala fide

and the rejection of his representation against the adverse confidential remarks appearing in his ACR for the year 1979-80 was illegal, arbitrary, mala fide, unconstitutional and against the government instructions and further the rejection of his revision against the said remarks was equally illegal, arbitrary, mala fide, unconstitutional, against government instructions which are to be kept in view by the reporting authorities while writing confidential reports. It was prayed that the adverse remarks in his ACR for the year 1979-80 that his integrity was doubtful and that he was an average officer would remain inoperative being against the principles of natural justice and equity. By way of consequential relief, he prayed for the expunction of the said remarks from his ACR with all benefits. It was alleged in the plaint that there has not been a single instance pointing that he was lacking in integrity. He was never conveyed either in writing or orally that he was not maintaining perfect integrity and as such should improve his integrity, Assistant Excise & Taxation Commissioner who supervised his work did not make any adverse comment so far as his integrity is concerned. He was his immediate superior "and supervisory officer" to comment upon his work and conduct. Deputy Excise & Taxation Commissioner had no basis to say that his integrity was doubtful. No such advice or warning was ever issued to the plaintiff. How could Deputy Excise & Taxation Commissioner comment upon his work and conduct when he had no occasion to supervise his working. His remarks are, therefore, conjectural. It was further alleged in the plaint that as per government instructions, every adverse remarks is required to be supported by concrete instances. No single instance has been quoted by the reporting officer in support of his observation that his integrity was doubtful and that he was an average officer. It was further alleged in the plaint that the reporting officer should base his opinion about the working of the subordinates on the materials which may be in his possession. It should also be specifically stated whether the defects of the officer were brought to his notice so that he could effect improvement in the subsequent period before the time comes up for recording ACRs. It was further alleged in the plaint that the reporting authority should not remain non-committal. He should give a definite opinion on the integrity of his subordinates while writing ACRs on them. In support of the remarks that his integrity was doubtful, no material was collected nor any material was ever brought to his notice which formed the basis of these remarks. Only the reporting officers are required to say about the integrity of the subordinates and the superior officer has no business to comment. Remarks that his integrity is doubtful, are vague, indefinite and based upon mere suppositions and conjectures and as such cannot be sustained, Authority who had initiated the ACR and who had supervised the work had nothing to report in this behalf. It was further alleged in the plaint that the reporting officer must definitely stated whether the subordinate concerned is honest or not or his honesty is doubtful. He can also state whether or not the subordinate is maintaining reputation for honesty. To say that the honesty cannot be vouched safed is not a correct way to assess the work and character of the subordinate. It as further alleged in the plaint that the report in question relates to

the year 1979-80 but was communicated on 3.2.82 after a lapse of more than 2 years which is contrary to the rules and instructions. Recording of adverse remarks should be fortified by reasons. No reasons, nor any instance has been quoted and the plaintiff has been left to make conjecture as to why his integrity was adjudged doubtful and why he was graded as "average officer". No notice can be taken of complaint, if any, without proper inquiry and thereafter by establishing a charge. He was entitled to know material on which the opinion was formed by the Deputy Excise & Taxation Commissioner that his integrity was doubtful or that he was only an average officer.

2. Defendants contested the suit of the plaintiff on grounds that the plaintiff's suit is time barred. Adverse remarks given to the plaintiff by the competent authority for the year 1979-80 could not be called in question by way of this suit instituted on 10.6.88. Remarks regarding assessment of his work and conduct were given by the reporting officer on the basis of the work done by him during the year 1979-80. Remarks about integrity were factual because these were based on regular complaint filed by M/s Aggarwal Rice Mills, Jalalabad. The said complaint was looked into and as a result of the inquiry, the reputation of the plaintiff was found doubtful and he was advised to improve his reputation vide memo No.G-II/82/11464 dated 11.2.82. As such, the remarks were based on facts. M/s Aggarwal Rice Mills in their complaint had alleged about the acceptance of illegal gratification by the plaintiff from them. Plaintiff was advised by the reporting officer i.e. the Deputy Excise & Taxation Commissioner, Ferozepur, many times verbally to improve his reputation during the year 1979-80 but to no effect. Reporting officer was definite about the remarks recorded in the ACR on facts. He was advised to improve his reputation because there were complaints against his reputation for integrity and in response to his representation dated 9.12.82, the plaintiff was informed that as advising a person to improve his reputation was not punishment under the provisions of rules and there was no need to give him personal hearing and seeking his explanation before issuing such letter. Accordingly, his representation was filed. His representation was duly considered by the government and rejected, his revision petition was also duly considered and rejected by the government. There is no provision in the rules for allowing personal hearing for adverse remarks cases. Only the satisfaction of the concerned authority is necessary.

3. On the pleadings of the parties, the following issues were framed:-

1. Whether the adverse remarks in confidential report of the plaintiff for the year 1979-80 dated 3.2.82, and rejection of his representation dated 17.5.85, revision petition dated 28.10.87 are illegal, arbitrary, mala fide, unconstitutional, against government's instructions? if so its effect? OPP

2. Whether the plaintiff is entitled for the decree of declaration as prayed in the plaint? OPP

3. Whether the suit is time barred? OPP
4. Whether the plaintiff has no cause of action? OPD
5. Whether the notice u/s 80 CPC served upon the defendants is not legal and valid? OPD
6. Whether the suit is not properly valued for the purposes of court fee? OPD
7. Whether the court has jurisdiction to hear and decide the suit? OPP
8. Relief.

4. Vide order dated 31.5.90, Additional Senior Subordinate Judge, Ferozepur dismissed the plaintiffs suit in view of his finding that there was no point in setting aside the adverse remarks recorded on the work and conduct of the plaintiff in the year 1979-80 merely because there had been delay in the recording of the adverse remarks and then the communication thereof to him. Suit was held to be within time.

5. Plaintiff went in appeal which was dismissed by District Judge, Ferozepur vide order dated 10.9.1992. Not satisfied with the decision of the learned District Judge, Ferozepur dated 10.9.1992, dejected plaintiff has come up in further appeal to this court.

6. I have heard learned counsel for the appellant and learned Deputy Advocate General for the State of Punjab and have gone through the record.

7. In this RSA, the following questions of law arise:-

1. Whether the reporting officer is bound to record ACRs within the stipulated time?
2. Whether the adverse remarks appearing in one's ACR are required to be conveyed within stipulated time or they are required to be conveyed within a reasonable time after they are recorded?
3. Whether the reviewing officer and accepting officer are required to record their remarks within a period of one month from the date of receipt of report from the reporting officer?
4. Whether the business of the recording of the ACR by each of the reporting authority, reviewing authority and accepting authority should be over by 30th September each year and if it is not done the recording of ACR is meaningless and can have no adverse affect on the career of the official commented upon?
5. Whether citing of instances in support of the adverse remarks by the reporting officer is a must or not?
8. Adverse remarks in confidential report for the year 1979-80 were conveyed to the plaintiff on 3.2.82. It was submitted that adverse remarks in the ACR for the year

1979-80 should have been conveyed to the plaintiff immediately and not after more than two years. In support of this submission, my attention was drawn to the instructions of the government contained in the Government of Punjab, Department of Personnel and Administrative Reforms under the heading "Standing Guide on Annual Confidential Reports". According to para 5 of the said instructions, the Govt. of Punjab vide instructions stressed that report should be recorded by deemed dates i.e. immediately after 31st March of the reporting year and transmitted to the reviewing/accepting authorities by the reporting authority by 31st May each year. The reviewing authority and accepting authority should record their remarks within a period of one month from the date of receipt of the report from the reporting authority. It is further stated that all the authorities shall record the date of recording their comments on the confidential report and in case the ACR in respect of any employee is not recorded by 30th September by the authorities concerned, the report written thereafter shall not be placed on his personal file but only a certificate duly signed by the competent authority should be added in the personal file of the government employee that the work and conduct of the officer/official concerned during the period in question was satisfactory.

In para 6 of the above said publication, it is stated that in the event of abnormal delay occurring in isolated cases, it shall be possible for higher authority to discount to the extent necessary, such reports as had been written after a lapse of very long period of time and is also attended with suspicious features on one ground of the other. It is further stated that the assessment of the record as a whole of the officer/official concerned would thus be not be unduly influenced by such a report.

9. In *State of Haryana v. Shri P.C. Wadhwa, I.G.P. and Anr.* 1987(2) S.L.R. 393 it was held that the whole object of the making and communication of the adverse remarks is to give to the officer concerned an opportunity to improve his performance, conduct or character as the case may be. The adverse remarks should not be understood in terms of punishment but actually it should be taken as an advice to the officer concerned so that he can act in accordance with the advice and improve his service career. The whole object of the making of adverse remarks would be lost if they are communicated to the officer concerned after inordinate delay. In the instant case, it was communicated to the respondent after 27 months. It is true that the provisions of Rules 5, 6, 6A and 7 are directory and not mandatory, but that does not mean that the directory provisions need not be complied with even substantially. Such provisions may not be complied with strictly and substantial compliance will be sufficient But, where compliance after an inordinate delay would be against the spirit and object of the directory provision, such compliance would not be substantial compliance. In the instant case, while the provisions of Rules 5, 6, 6A and 7 require that everything including the communication of the adverse remarks should be completed within a period of seven months, this period cannot be stretched to twenty seven months, simply because these Rules are directory, without serving any purpose consistent with the spirit and objectives of these Rules.

We need not, however, dilate upon the question any more and consider whether on the ground of inordinate and unreasonable delay, the adverse remarks against the respondent should be struck down or not, and suffice it to say that we do not approve of the inordinate delay made in communicating the adverse remarks to the respondent.

10. In this case, there was no prejudice to the appellant by the delay communication of the adverse remarks to him as his integrity was adjudged to be doubtful and he was assessed as an average officer. It was the subjective opinion of the reporting officer who had occasion to supervise his work and conduct all through that his integrity was doubtful and that he was an average officer.

11. It was submitted by the learned counsel for the appellant that the reporting officer was required to write ACR on his work and conduct effectively, fairly and dispassionately in a constructive manner in estimating or assessing the character, ability, integrity and responsibility displayed by the officer/employee concerned during the relevant period. He should also take into account while doing so that he does not act with malice. He should note that upon ACRs the prospect and career of the subordinate officer depend. In support of this submission, he drew my attention to State of U.P. v. Yamuna Shanker Misra and Anr. 1997(2) S.L.R. 311.

12. Recording of annual confidential report is a matter of subjective satisfaction of the officer concerned. Correctness thereof cannot be gone into by civil court. Reporting officer is required to record ACR for the relevant period soon after 31st March but these are only guide-lines which are not of binding character. In Chander Singh Negi v. State of Punjab 1990(1) R.S.J. 567, it was held that recording of annual confidential reports is in essence subjective and administrative and the making of an adverse entry is not equivalent to imposition of penalty which would necessitate an inquiry and giving of reasonable opportunity of being heard to the government servant concerned. Such recording of annual confidential report was a matter of subjective satisfaction of the officer concerned. The correctness thereof cannot be gone into by the civil Court. The appropriate remedy for the person aggrieved would be to file a representation against the adverse remarks. It was also held that the instructions contained in the manual of instructions on service matters in regard to the recording of confidential reports are in the nature of guide-lines and instructions for internal consumption by the officer for recording annual confidential reports. If they are not followed, it is a matter of the reviewing authority to consider but they cannot be enforced by the courts. It was also held that a civil servant can be prematurely retired even on the basis of a single adverse entry regarding integrity against him.

13. In [Brij Mohan Singh Chopra Vs. State of Punjab](#), it was held that a single entry in service record casting doubt on integrity of employee is sufficient to retire him compulsorily.

14. While recording the annual confidential report, commenting upon his integrity, the reporting authority did not take into account only the complaint of M/s Aggarwal Rice Mills. Had that been so, he would have written integrity doubtful because there was a case impinging upon his integrity by M/s Aggarwal Rice Mills. Reporting authority took into account his general reputation as regards integrity and then commented upon "integrity doubtful" and also that he was an average officer after constantly observing him". These remarks are not uncalled for.

15. For the reasons given above, this appeal fails and is dismissed.