

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

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Reserved on : 30.10.2019
Pronounced on : 28.11.2019

OA. 060/773/2018

**CORAM:HON'BLE MR. SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MR.PRADEEP KUMAR , MEMBER(A)**

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Jeet Kumar son of Sh. Chuni Lal age 50 years working as Head Constable (No. 22393/CP) in Security Wing, VIP Security, Statics Guard, Sector 29, Chandigarh, resident of H. No. 1228, Sector 21, Chandigarh.

.....Applicant

BY ADVOCATE: **SH. D.R. SHARMA**

VERSUS

1. Union Territory, Chandigarh through its Home Secretary, UT Secretariat, Sector 9, Chandigarh.
2. The Director General of Police, Union Territory, Chandigarh, Additional Deluxe Building, Sector 9, Chandigarh.
3. The Deputy Inspector General of Police, Union Territory, Additional Deluxe Building, Sector 9, Chandigarh.
4. The Senior Superintendent of Police (Security & Traffic), Additional Sector 9, Police Headquarters, Chandigarh.

.....Respondents

BY ADVOCATE: **SH. ASEEM RAI**

ORDER

MR. PRADEEP KUMAR, MEMBER(A):-

1. The applicant was appointed as a Constable in Chandigarh Police on 15.04.1987. He was promoted as Head

Constable on 18.02.2008. The next promotion lies to the post of Assistant Sub Inspector (ASI).

2. It is alleged that he consumed alcohol, while he was on duty from 03.45 PM to 01.00 AM, on 04.09.2013. Even though the blood and urine samples were not taken, the doctor on duty recorded "breath smell of alcohol" during medical examination. Later, the applicant was marked absent from duty at 12.33 AM. The applicant was suspended vide order dated 19.09.2013 on the basis of report dated 04.09.2013 given by DSP/South. A regular departmental inquiry was also ordered. Suspension was subsequently revoked and he was reinstated in duty vide order dated 04.10.2013.

The departmental inquiry was concluded on 28.10.2014 and he was imposed penalty of stoppage of two annual increments with temporary effect. The applicant made appeal on 07.08.2015 to the DIG who was the Appellate Authority. This was dismissed on 30.09.2015. Applicant made a revision petition dated 07.10.2015 to the Inspector General of Police wherein the punishment was reduced to stoppage of one increment with temporary effect vide order dated 18.11.2015.

3. For the Annual Confidential Report (ACR) for the period 01.04.2015 to 31.03.2016, certain adverse remarks were conveyed to the applicant which read as under:-

“S. No. (13) General Remarks including any complaints received against him	“His overall grading ‘C’ as per report, one increment stopped on 03.07.2016.”
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4. Applicant further pleads that in contravention to Dev Dutt judgement by Hon’ble Apex Court in Civil Appeal No. 7631 of 2002 decided on 12.05.2008, only the adverse remarks were communicated while it was the entire ACR that was to be communicated. However, the applicant did not request for the entire ACR and submitted his representation on 17.01.2017 as well as again on 28.07.2017, for review of these adverse entries. This was rejected vide order dated 11.01.2018.

Applicant preferred another revision petition for this adverse entry to the DGP on 31.01.2018 wherein he brought out that on 04.09.2013, he had not taken alcohol, but had taken medicine “Corex”. This was also rejected vide order dated 09.05.2018 on the plea that once an appeal was already considered and decided against adverse entries in ACR on 11.01.2018, no second appeal is permissible.

5. Some of the Head Constables including juniors to the applicants, were promoted to the post of ASI vide orders dated 06.04.2018 and 09.05.2018. However, applicant’s name is not included in these lists. Applicant is aggrieved at this exclusion and

pleads that the overall gradings in ACR for the period 01.04.2015 to 31.03.2016 is arbitrary, illegal and unsustainable.

He relied upon the Compendium of Instructions on Performance Appraisal-Volume VII. Applicant pleads that ACR for financial year 2015-16 cannot have adverse entries for an incident which took place on 04.09.2013 as ACR for this period is for the work done during financial year 2015-16. Moreover, the punishment of stoppage of one increment with temporary effect imposed on 03.07.2015 should not lead to denial of promotion to the post of ASI for which DPCs were held in 2018 and promotion orders issued on 06.04.2018 and 09.05.2018.

6. Feeling aggrieved, the applicant has filed the instant OA and sought quashing of the order dated 11.01.2018 alongwith adverse remarks in ACR for the period 2015-16 to also be quashed and set aside and applicant be held entitled to all consequential benefits including promotion to the post of ASI.

7. Per contra, the respondents oppose the OA. It was pleaded that the adverse entries in the ACR of financial year 2015-16 have been conveyed as per the extant instructions. In this connection, attention was drawn to the explanatory notes in para 10 of Compendium of Instructions on Performance Appraisal - Volume VII which covers "communication of adverse remarks" and the same

reads as under:-

“It is not the intention that even those adverse remarks which have been washed out by the remarks of some superior authority including Minister should be conveyed. The correct position is that only the adverse remarks recorded or endorsed by the Highest authority reporting on an officer should be communicated. Where, however, an adverse remark has not been specifically denied by a higher authority, it should be conveyed. It is however open to that authority to decide that any adverse remarks need not be communicated. Where it is so decided, a specific order to this effect should be recorded. The criterion for such a decision should be based on paragraph 7 (c) of Punjab Government Consolidated Circular No. 1 reproduced above.”

Thus, only adverse entries were required to be communicated and not the entire ACR. However, even the applicant also did not request for entire ACR while he submitted his representation against the adverse entries on 17.01.2017 and 28.07.2017.

8. It was further pleaded that imposition of punishment for an incident and making adverse entry in the ACR are two different aspects and one is not in lieu of the other.

9. In view of the foregoing, the OA was requested to be dismissed.

10. The matter was heard at length. Heard Sh. D.R. Sharma, learned counsel for the applicant and Sh. Aseem Rai, learned counsel for the respondents.

11. In regard to the incident of alcoholism on 04.09.2013, a regular departmental inquiry was held and the competent authority came to the conclusion that the applicant was guilty and imposed certain

punishment. The applicant exercised his right for appeal as well as revision. At the revision stage, the punishment was reduced also.

The role to be exercised by the Tribunal in disciplinary and appeal cases is very much limited and pertains to the procedural aspect only. The Tribunal does not find any fault with the process.

12. In regard to making entries in the ACR, it is the assessment of the controlling officers and when the punishment order got finalized, the respective authorities had made an entry to the ACR. Since certain adverse remarks were there, they were communicated to the applicant as per extant instructions and the applicant preferred representation which was rejected. No fault can be found with this process also.

13. It is, however, noted that the punishment imposed is withholding of one increment with temporary effect. Its effect, therefore, shall remain in force for a period of one year from the date when the next increment in respect of the applicant was due. Since the disciplinary authority had imposed the punishment on 03.07.2015, accordingly, the increment due on 01.07.2016 was to be withheld and this punishment will get completed on 30.06.2017.

Accordingly, it needs to be examined whether for the DPCs held in the year 2018, this punishment would still have been a cause for non-inclusion of the name of the applicant for consideration for promotion to ASI.

Accordingly, the respondents are directed to advise the applicant whether he was considered by the DPC and if so, the reasons for his non-inclusion in the promotion list. In case, he was not considered by the DPC, reasons for this also need to be advised to the applicant.

14. The above exercise be completed within a period of three months from the receipt of a certified copy of this order. Applicant shall have liberty to approach the Tribunal in case certain grievance still subsists. No costs.

(PRADEEP KUMAR)
MEMBER(A)

(SANJEEV KAUSHIK)
MEMBER(J)

Dated:
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