

entitled to reinstatement with 25% of the back wages. The writ petition No. 4845 of 1992 filed by the workman is, however, dismissed. The parties are left to bear their own costs.

(29) Before parting with the judgment, I would like to record my appreciation for the lucid arguments and able assistance rendered by Mr. P.K. Mutneja, learned counsel for the management and Shri Arun Palli, the learned counsel who appeared for the workman. Both the learned counsel addressed comprehensive arguments on each and every point raised in these writ petitions.

R.N.R.

Before Jawahar Lal Gupta and N.C. Khichi, JJ

NAHAR SINGH,—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

CWP No. 1322 of 1998

The 16th April, 1998

Punjab Police Rules, 1934—Rl. 14.48—Reversion on the basis of adverse remarks—Fortuitious promotion given to the petitioner in the rank of ASI but in his own rank and pay of Head Constable—Reversion not made by way of punishment—No opportunity of hearing is required to be given before passing reversion order—Adverse remarks duly communicated and represented against cannot be faulted only on the ground that the defects were not pointed out before recording A.C.R—Looking to the nature of adverse remarks not being based on any documentary evidence and based only on observation, such adverse remarks not liable to be interefered with—Petitioner can be dealt with in terms of appointment.

Held that, the remarks were based on observation during the relevant period. It was not alleged that there were complaints which were required to be conveyed to the petitioner. In the very nature of things, there would not be documentary or other material which would be in the possession of the authority and may have to be conveyed to the official concerned. It cannot be said that merely because nothing had been conveyed to the petitioner prior to the recording of the adverse remarks that the report is vitiated. Still further, the representation submitted by the petitioner against these remarks had been considered

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(Jawahar Lal Gupta, J.)

by the superior authority and it was found that there was no reason to interfere. Taking cumulatively the facts of the case, it cannot be said that the report was illegal or untenable in law.

(Para 8)

Further held, that the petitioner's work was adversely commented upon. Thereupon the rank which had been granted to him fortuitously was withdrawn. The action was in strict conformity with the terms of appointment.

(Para 14)

Further held, that the department was not proceeding to punish the petitioner for any alleged misconduct. It has only proceeded to divest the petitioner of the rank granted to him subject to the satisfactory performance of duties. Since the petitioner had failed to make the grade, the impugned order was passed. No opportunity was required to be given in this situation.

(Para 16)

S.K. Sharma, Advocate for the Petitioner

M.C. Berry, DAG, Pb. for respondent Nos. 1 and 2

Hari Singh Mann, Advocate for respondent Nos. 3 to 7

JUDGMENT

Jawahar Lal Gupta, J. (Oral)

(1) The petitioner, a Head constable, was "fortuitously promoted to the rank of Assistant Sub-Inspector" in his "own rank and pay of Head Constable"—vide order dated 14th October, 1993. On 4th August, 1995, the petitioner was conveyed adverse remarks for the period from 6th May, 1994 to 18th November, 1994. His representation against these remarks was rejected by the Deputy Inspector General of police,—vide order dated 3rd March, 1997. He submitted a representation to the Inspector General of police which was rejected,—vide order dated 26th August, 1997. On 20th January, 1998, the rank of Assistant Sub Inspector given to the petitioner was withdrawn. The petitioner alleges that the action of the respondents in recording the adverse remarks and in withdrawing the rank of Assistant Sub Inspector is illegal and untenable. He prays that the orders communicating the adverse remarks, rejecting his representations and ordering his reversion to the rank of Head Constable, be quashed.

(2) The respondents contest the petitioner's claim. A detailed

written statement has been filed on behalf of respondent Nos. 1 and 2 in which the factual position has been pointed out. A separate reply has been filed by respondent No. 4 on behalf of respondent Nos. 3 to 7.

(3) After the pleadings of the parties had been completed the petitioner had filed an application for permission to amend the writ petition. Counsel for the respondents do not object to the amended petition being taken on record. The amended petition is taken on record.

(4) Counsel for the parties have been heard.

(5) On behalf of the petitioner, it has been contended that the adverse remarks recorded against the petitioner were wholly untenable as no defects had been pointed out to him during the relevant period. The action in recording the adverse remarks was, thus, contrary to the provisions of Rule 14.48 of the Punjab Police Rules. It has been further contended that the order of reversion without the grant of any opportunity when persons junior to the petitioner had been allowed to continue is violative of Articles 14 and 16 of the Constitution. The claim made on behalf of the petitioner has been controverted by Mr. M.C. Berry who has appeared on behalf of the official respondents and by Mr. Hari Singh Mann. Advocate for respondent Nos. 3 to 7.

(6) The two questions that arise for consideration are :—

- (i) Are the adverse remarks recorded against the petitioner and the orders rejecting his representations illegal ?
- (ii) Is the action of the respondents in withdrawing the rank of Assistant Sub Inspector given to the petitioner violative of Articles 14 and 16 of the Constitution ?

(7) A copy of the communication regarding the adverse remarks recorded against the petitioner is at Annexure P.3 with the writ petition. A perusal thereof shows that the following remarks had been conveyed to the petitioner for the period from 6th May, 1994 to 18th November, 1994 :—

- | | |
|--|----------------|
| “4. Reputation for fair dealing with the public and accessibility to the public including courtesy and public manners. | Below average. |
| 7. (i) Interest in modern methods of Investigation and in modern police methods generally. | No interest. |

(ii) Keeness to improve professional competence especially in training courses attended.	Not keen.
14. Efficiency on :	
(i) Parade :	Below average
19. General remarks :	An average ASI, who needs improvement in using modern methods of investigation and knowledge of law and rules”

(8) A perusal of the above would show that the petitioner's reputation for dealing with the public and accessibility etc. was described as 'below average'. It was found that he took no interest in the modern methods of investigation and was not keen to improve his professional competence. His efficiency on parade was described as 'below average'. On the whole, the petitioner was considered to be an 'average' Assistant Sub Inspector who needed to improve in the use of modern methods of investigation, knowledge of law and the rules. These were remarks based on observation during the relevant period. It was not alleged that there were complaints which were required to be conveyed to the petitioner. In the very nature of things, there would not be documentary or other material which would be in the possession of the authority and may have to be conveyed to the official concerned. It cannot be said that merely because nothing had been conveyed to the petitioner prior to the recording of the adverse remarks that the report is vitiated. Still further, the representation submitted by the petitioner against these remarks had been considered by the superior authority and it was found that there was no reason to interfere. Taking cumulatively the facts of the case, it cannot be said that the report was illegal or untenable in law.

(9) Mr. Sharma placed reliance on the decision of a Division Bench of this Court in *Daya Nand Dalal v. State of Haryana and others*, CWP No. 11695 of 1993 decided on 30th November, 1994. He relied on this decision to contend that the failure to communicate the defects during the year or to supply the material in support of the remarks would vitiate the order regarding the annual confidential report.

(10) A perusal of the judgment shows that the factual position

was totally different. Adverse remarks had been conveyed to Mr. Dalal for the year 1987-88 for the period from 25th May, 1987 to 31st March, 1988. Remarks had also been conveyed for the year 1988-99. Still further, it was *inter alia* recorded that there were complaints about his integrity. The report was challenged on a two-fold basis. Firstly, it was contended that the officer concerned had joined duty on 21st September, 1988 and, consequently, he could not have recorded any remarks about the petitioner's work and conduct for the period from 25th May, 1987 to 20th September, 1988. Still further, it was contended that there were no written or oral complaints regarding the petitioner's integrity. On both counts, the contention raised on behalf of the petitioner was sustained. It was found as a fact that the officer had joined duty on 21st September, 1988 and, thus, he could not have recorded remarks for the earlier period. Still further, It was also found that even though, an opportunity was given, no complaint either oral or written was available with the department. In this situation, the contention raised on behalf of the petitioner was sustained. Such is not the position in the present case. It has not even been suggested that the officer who had recorded the remarks had not seen the petitioner's performance during the relevant period. It has also not been suggested that there were any extraneous considerations for the remarks which had been recorded. In such a situation, the High Court cannot, in exercise of its jurisdiction under Article 226 of the Constitution, review the remarks objectively recorded by the competent authority.

(11) Learned counsel for the petitioner has also referred to the provisions of Rule 14.48 to contend that it was incumbent upon the authority keep the petitioner informed about his defects. In particular, the counsel has pointed out that the provision contained in clause (b) requires that "as a general rule in no case should an officer be kept in total ignorance for any length of time that his 'superiors, after sufficient experience of his work, are dissatisfied with him..."

(12) There is no quarrel with this proposition. However, in the present case, it is the admitted position that the remarks recorded by the competent authority were duly conveyed to the petitioner. The petitioner was not kept in ignorance of the defects recorded by the authority. He had in fact represented against these remarks. As already noticed, the representations were rejected by the Deputy Inspector General of Police and the Inspector General of Police.

(13) In view of the above, the first question is answered against

the petitioner. It is held that the remarks recorded against the petitioner and the orders rejecting his representations are not vitiated.

Reg: (ii):

(14) Admittedly, the petitioner was granted a fortuitous promotion in his own rank and pay of Head Constable. This was subject to the specific condition that in case, his "work is not found satisfactory or any public complaint is received...he will be reverted to substantive rank without the formality of any show cause notice." This is precisely what has happened. The petitioner's work was adversely commented upon. Thereupon the rank which had been granted to him fortuitously was withdrawn. The action was in strict conformity with the terms of appointment.

(15) Mr. Sharma contended that the petitioner was entitled to the grant of an opportunity before the order regarding withdrawal of the rank could be passed.

(16) The contention is wholly misconceived. The department was not proceeding to punish the petitioner for any alleged misconduct. It had only proceeded to divest the petitioner of the rank granted to him subject to the satisfactory performance of duties. Since the petitioner had failed to make the grade, the impugned order was passed. No opportunity was required to be given in this situation.

(17) Learned counsel submitted that the action is vitiated as persons who were junior to the petitioner were still continuing to hold the rank which had been conferred on them fortuitously. On behalf of the respondents, it has been pointed out and we think rightly, that persons whose record of service is satisfactory form a separate class. If they are allowed to continue to have the higher rank while a person like the petitioner has been divested thereof. It cannot be said that the provisions of Articles 14 or 16 of the Constitution have been violated.

(18) Learned counsel for the petitioner submitted that an average report is not an adverse report. Assuming it is so, in the present case, it is clear that the petitioner's reputation was found to be 'below average'. It was further found that his efficiency on parade was 'below average'. It cannot be said that the petitioner's performance was found to be 'average'.

(19) No other point has been raised.

(20) In view of the above, we find no merit in this writ petition. It is, consequently, dismissed. The respondents shall be entitled to their costs which are assessed at Rs. 5,000.

R.N.R.

Before Sat Pal, J

RAJ KUMAR AND OTHERS,—*Petitioners*

versus

NARAIN DASS AND OTHERS,—*Respondents*

C.R. No. 1199 of 1998

29th June, 1998

*Code of Civil Procedure, 1908—S.115—Arbitration Act, 1940—
Suit pending in respect of subject matter of dispute—During pendency
of suit, dispute referred to arbitration by parties without order of Court—
Such reference not valid without order of the Court.*

Held that, it is true that it is open to the parties to refer the dispute to arbitration without the intervention of the Court but this can be done only if no suit is pending with respect to the subject matter of dispute. However, in case a suit is pending in respect of the subject matter of the dispute, there can be no valid reference during the pendency of the suit to arbitration without the order of the Court.

(Para 10)

S.P. Gupta, Sr. Advocate with K.G. Sehajpal, Advocate, *for the
Petitioner.*

C.B. Goel, Advocate with R.C. Chauhan, Advocate, *for the
Respondent.*

JUDGMENT

Sat Pal, J.

(1) This petition has been directed against the order dated 29th November, 1998 passed by Civil Judge (JD) Panipat. By this order, the learned Civil Judge has dismissed the objections filed by the petitioners-judgment debtors under section 47 of Code of Civil procedure. In this case the respondents-Decree Holders filed a suit for possession of certain land. The suit was decreed by the learned trial court.