

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

**Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Adnan-ul-Karim Memon**

C.P. No. D- 5783 of 2019

Nazir Ahmed Qazi,
Petitioner through:

Mr. R. Masood Ahmed Qazi

Date of hearing:

13.09.2019

Date of order:

13.09.2019

ORDER

ADNAN-UL-KARIM MEMON, J. By means of this petition, the Petitioner has assailed the Adverse remarks “Not Yet Fit” in his Annual Confidential Report for the year 2018 vide letter dated 24th April, 2019 issued by the Competent Authority of Pakistan Steel.

2. Petitioner has built up his case that due to non-compliance of certain direction issued by Mr. Muhammad Arif Shaikh, Chief Financial Officer (C.F.O) of Pakistan Steel (his immediate boss), directing him to initiate a case for re-hiring of one Mr. Muhammad Ibrahim Rajput for further 89 days as his term of employment had already expired on 14.6.2009. Per Petitioner, he explained his position that the Pakistan Steel Mill is in critical financial condition, therefore, the service of Muhammad Ibrahim Rajput cannot be hired, which factum annoyed Mr. Muhammad Arif Shaikh and finally adverse remarks “Not Yet Fit” in his Annual Confidential Report for the year 2018 were communicated to him. Petitioner being aggrieved by and dissatisfied with the aforesaid adverse remarks called in question by making his representations dated 7.5.2019 and 17.6.2019 to the Competent Authority.

3. We asked the learned Counsel whether adverse remarks recorded by the reporting officer, without prior counseling to the petitioner?

4. Mr. R. Masood Ahmed Qazi, learned Counsel for the Petitioner has argued that the aforesaid action of the Respondent-department is contrary to the existing instructions contained in the Estacode applicable to the case of Petitioner and is, in fact, a reflection on the reporting officer and he was expected to counsel the petitioner, if any, about his weak points and advise him how to improve; that

Adverse remarks should normally be recorded only when the officer fails to improve despite counseling; that the petitioner is retiring within 02 years and the aforesaid adverse remarks may jeopardize his unblemished career; that no material was provided to the petitioner for such justification of passing the adverse remarks; that the aforesaid remarks needs to be recalled / expunged for smooth working of the Petitioner. Learned Counsel representing the petitioner, contended that Respondent No.3 (Muhammad Arif Shaikh ACFO), Head of the Department in Pakistan Steel was inimical to the petitioner since the petitioner brought to his notice the irregularities and deficiencies in the Department as well as the administrative failures which affected the working of Pakistan Steel. Respondent No.3 being the Supervisory Officer on contract spoiled the petitioner's ACR with ulterior motive and gave such adverse remarks for which no opportunity was given to him to defend himself. He contends that the ACR is a continuous appraisal system and the petitioner should have been given opportunity to carry on the performance improvement required by issuing Advisory memo but in the present case though the petitioner was issued memo in which his shortcomings were not highlighted but shortcoming pointed out by the petitioner in the Respondent-department became the bone of contention, as a result of which, the petitioner suffered adverse remarks in the ACRs. His ground was that the adverse entry in the ACR was communicated to him in April 2019 for the year 2018 whereas it should have been communicated to him within one month of such adverse remarks; that direction may be issued to the Respondents to expunge the adverse remarks from the petitioner's ACR for the year 2018-2019. He emphasized that if the adverse entries made in the ACRs or grading given to an officer/employee on the basis of extraneous considerations then this Court has right in its jurisdiction to interfere and quash the same.

5. We have heard the learned Counsel for the Petitioner on the aforesaid issue and perused the record carefully.

6. We have gone through the Confidential Report of the petitioner for the period 2018-2019 (Annexure-A Page 21) and find that the ADGM/Incharge (A&P), has communicated to the petitioner the following adverse remarks recorded

by the Reporting Officer and agreed to by the Reviewing Officer vide his Memorandum dated 24.4.2019. An excerpt of the Office Memorandum is reproduced as under:-

MEMORANDUM

The ACR for the year 2018 of Mr. Nazir Ahmed Qazi, ADCE (P.No.816221) GCA Department contains the following Adverse remarks:-

Part-VI

D. Not Yet Fit.....Yes

2. The above remarks of adverse nature are being communicated to overcome the short comings stated above which would be in his interest.

Sd/-

(RIAZ HUSSAIN MANGI)
ADGM/Incharge (A&P)

7. In our view, the evaluation of the performance of the subordinate by Reporting Officer or the Counter-signing officer is a matter of subjective assessment and not an objective evaluation. In this view of the matter, the decision taken by the Respondents cannot be substituted by this court in Constitutional Jurisdiction, which requires detailed enquiry in the matter for which this Court has limited jurisdiction to interfere in such cases, the view recorded by the Reporting Officer or the Counter-signing officer can only be seen when the reporting officer of the counter signing officer himself does not enjoy a good reputation and malafide is alleged against him with full particulars and secondly when there has been gross violation of instructions which resulted in miscarriage of justice. The contention of the learned Counsel for the petitioner that the adverse remarks have badly affected his career for which he has short of time and within a span of two years he will retire from the service of the Respondent-Pakistan Steel. This is hardly a ground to call in question the adverse remarks passed by the competent authority and it is yet to be evaluated by another Competent Authority of Respondents for which he has already filed representation, whether the remarks “Not Yet Fit” will come in the way of the petitioner for his future promotion. This is yet to be seen and yet to be evaluated, merely endorsing “Not Yet Fit” is not sufficient to infer negative remarks until and unless concrete evidence is produced to substantiate the aforesaid factum and it is for the Competent Authority of the Respondent-department to look into the matter and pass an appropriate order. At this stage, this Court cannot substitute its findings on the

issue of purported adverse remarks of the Competent Authority of Pakistan Steel Mill and this Court is not an appellate Authority for which the petitioner has to approach the competent forum for redressal of his grievances, if he feels so aggrieved by the alleged adverse remarks of the Respondent No.3 for the year 2018.

8. In view of the above facts and circumstances of the case, we do not find any specific reason for which this Court should intervene to grant relief to the petitioner by expunging the adverse entries in his ACR for 2018-2019.

9. Finding no merits in the petition which is accordingly dismissed in *limine* along with listed application[s].

JUDGE

JUDGE

Nadir/*