

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.5046 of 1999

Date of decision: 1st July, 2015

Charan Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Manish Dadwal, Advocate
for the petitioner.

Dr. Puneet Kaur Sekhon, Addl. Advocate General, Punjab

AMOL RATTAN SINGH, J.

The petitioner is the mother of Constable Gurinder Singh, who was enrolled in the Punjab Police, District Patiala, in February 1992.

2. As per the petition, Gurinder Singh was taken into custody by the police of Police Station, Division-4, Patiala, in connection with FIR No.42 dated 20.04.1993, but was not produced before any Court, as stated in the petition.

Despite the petitioners' husband trying his very best to trace the whereabouts of his son, he could not do so and consequently, filed

Criminal Writ Petition No.603 of 1993 before this Court, seeking a writ of habeas corpus, directing the respondents therein, i.e. the Punjab Police and the State of Punjab, to produce Gurinder Singh, alongwith his brother, Balwinder Singh (the other son of the petitioner), in Court.

3. Prior to Constable Gurinder Singh having been allegedly “made to disappear”, it is also alleged that Balwinder Singh was earlier taken into custody by the police, though the date that Balwinder Singh was taken into custody, is not given in the petition.

Since the sons of the petitioner were not produced in Court even after the habeas corpus petition was filed, a co-ordinate Bench hearing that petition, vide order dated 19.08.1994, directed the District & Sessions Judge, Sangrur, to inquire into the matter. The inquiry report was submitted to this Court on 31.12.1994, a copy of which has been annexed with the petition and the concluding part of which reads as follows:-

“From the resume and appreciation of fact disclosed by the witnesses in this enquiry, I, of considered opinion that Gurinder Singh and Balwinder Singh sons of Dharam Singh petitioner were once in the custody of Gurnam Singh respondent and they were involved in pseudo cases of grave nature by taking refuge under the notion of carrying investigation and they have been eliminated by him (Gurnam Singh respondent). While there is no positive evidence inculpatory against Joginder Singh respondent with regard to alleged of elimination of Gurinder Singh and Balwinder Singh sons of Dharam Singh.”

Upon receipt of the aforesaid report, this Court ordered that an FIR be registered under Section 302 IPC, against the police officials concerned, upon which FIR No.77 dated 15.07.1995 was registered. However, with no progress in the matter, the investigation was ordered to be handed over to the Central Bureau of Investigation, after which a

report under Section 173 Cr.P.C. was submitted by the CBI, to the competent Court, indicting Inspector Gurnam Singh and four other police officials, two of whom are stated to have died during pendency of the investigation/trial. The trial itself is stated to have been stayed by this Court on 08.05.2007, upon CRM No.77440 of 2006 having been filed by one Inspector Joginder Singh (also indicted in the report under Section 173 Cr.P.C.).

(The factum of a report under Section 173 Cr.P.C. having been filed and subsequent events thereafter, are given, not in the writ petition, but in an additional affidavit filed subsequently, in the present case, on behalf of the respondents).

4. With the above background, the petitioner, in the present petition, is claiming family pension and other benefits as would accrue to the family of a deceased police Constable, while he was in service, including appointment, on compassionate grounds, to her daughter, i.e. sister of Constable Gurinder Singh. The said benefits having not been given, she is stated to have filed three representations in 1997 and 1998, after which a registered legal notice is stated to have been issued on her behalf to the respondents, on 01.01.1999, which is also stated to have been not responded to, leading to the filing of the petition.

When the writ petition was initially filed on 19.04.1999, the respondents, specifically the Sr. Superintendent of Police, Patiala (respondent no.4), filed a written statement dated 02.12.1999, stating therein that the son of the petitioner, after being enlisted as a Constable on 19.05.1992, used to habitually remain absent from duty. The periods of absence, as given in the reply, are 20.10.1992 to 05.11.1992, 10.11.1992

to 30.11.1992, 15.01.1993 to 01.02.1993 and 14.02.1993 to 19.04.1993.

The reply further states that in view of his repeated absence, he was suspended from service, vide order dated 19.04.1993 passed by the SSP, Patiala, a copy of which has been annexed with the reply. A departmental enquiry is also stated to have been ordered, upon completion of which, Constable Gurinder Singh is stated to have been dismissed from service, vide order dated 28.07.1994, a copy of which is also annexed with the said reply.

In reply to the contention that Gurinder Singh was arrested in connection with FIR No.42 dated 20.04.1993, that fact is admitted and it has been further stated that the FIR was registered in Police Station, Civil Lines, Patiala (not in Police Station Division-4) and that the FIR was registered with regard to the alleged commission of an offence punishable under Section 25/54/59 Arms Act, 1959.

Importantly, the reply of the SSP further states that “Ex. Constable Gurinder Singh managed to escape from police custody as per this office record”.

Other than the above, the reply admitted the factum of Criminal Writ Petition No.603 of 1993 having been filed and the orders of this Court directing an inquiry to be held and the eventual handing over of the investigation to the CBI.

5. The reply dated 02.12.1999 also states that the absence of Gurinder Singh, since 14.02.1993, was registered vide DDR No.16, dated 01.04.1993, at Police Station, Banur, after which he was suspended and a departmental enquiry initiated.

6. Upon the above reply having been filed, an application was

filed by the petitioner, seeking to amend the writ petition, so as to challenge the order dated 28.07.1994, dismissing her son from service.

7. It is also necessary to notice that after notice was issued in the petition, by a Division Bench, on 20.04.1999, the matter was referred to the Lok Adalat to try and resolve the issue, vide order dated 01.09.1999. As a settlement before the Lok Adalat failed, the matter was referred back to the Court, after which, upon statement made by the learned State counsel on 27.11.2000, it was again referred back to the Lok Adalat. Eventually, the second round before the Lok Adalat also failed. The Lok Adalat observed that the matter could only be settled after the criminal case was decided, with regard to the alleged elimination of Gurinder Singh.

After this case came up for hearing again before the Court, it was admitted to regular hearing, vide order dated 29.08.2003, after which the application for amendment of the writ petition was filed, which was allowed by a co-ordinate Bench, vide order dated 22.03.2004. Before that, the respondents had already filed a written statement to the amended writ petition, as has been recorded in the said order.

8. Thereafter, on 22.10.2013, the following order was passed by the Court:-

“The claim in the present petition was for setting aside the order dismissing Gurinder Singh, son of the petitioner and for grant of family pension to her. As per the allegations made in the petition the said Gurinder Singh was arrested by some police officers and eliminated and to camouflage that murder it was shown that he had abandoned his service and consequently he was dismissed by order dated 28.07.1994. From the

record it transpires that whenever the notices were sent to Gurinder Singh it was always reported that he was missing and had not returned home since 23.04.1993 and even the dismissal order was passed without any hearing having been afforded to the said Gurinder Singh. It is not disputed that for the disappearance of the said Gurinder Singh a criminal case is pending.

As per the learned Additional Advocate General this case should await the decision of the criminal Court because only if the criminal Court finds the accused responsible for the disappearance/death of the son of the petitioner can further action be taken.

I put it to the learned Additional Advocate General whether de hors the cause of death of the son of the petitioner it is not a case where the Government should examine whether the son of the petitioner has died (on the basis of 7 years disappearance) and in case it is found that the son of the petitioner was not heard from within a period of 7 years w.e.f. 23.04.1993 then whether it can be deemed that he was dead without necessarily reaching a conclusion as to how he died.

Learned Additional Advocate General seeks an adjournment to first examine this case from the above mentioned angle and to file a status report before the next date of hearing.

Adjourned to 09.12.2013.

A copy of this order be given dasti to the learned Additional Advocate General under the signatures of the Court Secretary.”

9. Consequent upon the above, an additional affidavit, of the Superintendent of Police, (Headquarters) Patiala, was filed, dated 29.11.2013, in which it has been stated that no complaint/DDR has been lodged by the petitioner or any other family member regarding the

disappearance of Ex. Constable Gurinder Singh who, as a matter of fact, had been declared to be a proclaimed offender by the Court of the Additional Sessions Judge, Nabha, in case FIR No.42 dated 20.04.1993, vide order dated 30.09.1995.

The affidavit further states that the possibility of Gurinder Singh having disappeared intentionally, cannot be ruled out, so as to evade the aforesaid criminal proceedings pending against him. In fact, as per the affidavit, the police record still treats Gurinder Singh as a person who has “gone underground” to evade the said proceedings.

10. The affidavit also refers to and has, as an Annexure with it, instructions of the Punjab Government dated 27.03.1991 and 19.04.1996, wherein it has been directed that if an employee suddenly goes missing, with his whereabouts not known for one year, then the salary, leave encashment and provident fund amount should be immediately paid to the family member nominated by the employee and after completion of one year from the date that he went missing, pensionary benefits like gratuity and family pension should be paid to the family, subject to the condition that the family has got registered a report with regard to the employee having gone missing and, further, an indemnity bond is obtained from one of the family members, that in case the employee is traced, then the claim for his remaining salary would be adjustable against all amounts paid towards pensionary benefits.

As per the affidavit, since no report was lodged by the petitioner or any other family member, with regard to Gurinder Singh having gone missing, the benefit of the said instructions could not be granted to her or any member of her family.

Other than the above, the affidavit reiterates that criminal proceedings, pursuant to investigation of the case by the CBI, have been stayed by this Court and that Gurinder Singh was dismissed from service on 28.07.1994.

11. It also needs to be noticed that when this matter now came up for hearing on 02.12.2014, learned counsel for the petitioner had referred to the written statement dated 13.01.2004, filed to the amended writ petition and it was found that the said written statement, though referred to and taken on record, vide order of this Court, dated 22.03.2004, was not available either on the case file or even with the learned Additional Advocate General, Punjab. Therefore, the Senior Superintendent of Police, Patiala had been directed to ensure that the same was filed by the present incumbent on the post of Superintendent of Police, i.e. the post held by the officer who had originally filed the aforesaid written statement dated 13.01.2004.

Pursuant to the said order, an affidavit dated 03.12.2004, of Sh. Sharanjit Singh, Superintendent of Police (Headquarters), Patiala, was filed in Court on 04.12.2014, annexing therewith the written statement of Sh. L.K. Yadav, IPS, dated 13.01.2004, along with which the order of suspension of Constable Gurinder Singh, dated 19.04.1993, as also the order of his dismissal from service on 28.07.1994 were annexed. The said affidavit also sought to place on record a 'conclusion report' stated to have been submitted by the Deputy Superintendent of Police, Circle Derabassi, who is stated to have been appointed as the enquiry officer in the departmental proceedings leading to the dismissal order dated 28.07.1994.

12. This enquiry report/conclusion report is shown to be undated and, as recorded in the order of this Court dated 04.12.2014, upon query from the learned State counsel, she, upon instructions from the official assisting her and from a perusal of the departmental enquiry file, stated that even the original version of the said report, as is available at page No.97 of the said departmental enquiry file, does not carry any date on it and is hand written, which fact, of course, has been verified by this Court upon perusal of the said file.

13. On the basis of the said enquiry/conclusion report, a show cause notice is stated to have been issued to the petitioners' son, by the Senior Superintendent of Police, Patiala, as to why he should not be dismissed from service. Again the said show cause notice is not on the record of the case file of the writ petition before this Court but is available at page No.117 of the departmental enquiry file. The said show cause notice is typed in Gurumukhi/Punjabi and though again undated, is seen to be signed by the Senior Superintendent of Police, Patiala. At the bottom of the noting is a hand written noting of some official, also in 'Gurumukhi', stating that Constable Gurinder Singh had not submitted his written reply within the stipulated time.

This noting, of the official, is dated 15.06.1994.

14. Coming back to the written statement dated 13.01.2004, as annexed with the affidavit dated 03.12.2014 filed by the Superintendent of Police (Headquarters), Patiala.

The said written statement also again reiterates what was stated in the statement originally filed; that the petitioners' son after having been suspended from service on 19.04.1993, on account of his

absence from duty during various periods (as already given earlier), was dismissed from service after a departmental enquiry was “conducted as per Rules” and as such, the writ petition should be dismissed.

The factum of the arrest of Constable Gurinder Singh on 20.04.1993 and his alleged escape from police custody “as per this office record” have also been reiterated, along with the other facts, of CRWP No.603 of 1993 having been filed by the petitioners' husband and the subsequent orders of this Court, etc.

15. As recorded in its order dated 04.12.2014, this Court had put it to the learned Additional Advocate General, appearing for the respondents, as to how, despite the fact that both the replies filed on behalf of the respondents, to the original as well as amended writ petition, stating that Constable Gurinder Singh had been arrested on 20.04.1993, the said fact does not find any mention in any part of the disciplinary proceedings, including the order of his dismissal. The learned State counsel, upon this query being put to her, had sought a days' adjournment to seek instructions and argue the matter.

The matter had, therefore, been adjourned to the next date, i.e. 05.12.2014, when arguments were heard and the judgment reserved.

16. Mr. Dadwal, learned counsel appearing for the petitioner, had submitted that in view of what is very clear from the record of the departmental enquiry file submitted to the Court by the respondents themselves, as also from a perusal of the inquiry report of the learned District and Sessions Judge, Sangrur (Annexure P-2), actually Constable Gurinder Singh and his brother, Balwinder Singh, had both been eliminated, which fact was further borne out by the investigation

conducted by the Central Bureau of Investigation, which had also filed its report under Section 173 Cr.P.C. to that effect, before the competent Court.

Thus, Mr. Dadwal submitted, that there was no room for doubt that the entire file produced by the Government with regard to departmental/disciplinary proceedings having been initiated and concluded against the petitioners' son, was a wholly fabricated set of documents. Therefore, according to learned counsel, the petitioner and her family not only deserve to be compensated for the death of Gurinder Singh and Balwinder Singh but also deserve the benefits sought in the present petition, i.e. salary and other pensionary benefits as would be available to the family of a serving employee who dies, including appointment on compassionate basis to a member of his family.

17. Dr. Puneet Kaur Sekhon, learned Additional Advocate General, Punjab, though obviously could not refute the record as submitted by the respondents through her to the Court, including the written statement dated 13.01.2004 and the departmental file pertaining to the alleged disciplinary proceedings conducted against Constable Gurinder Singh, nevertheless tried to defend the stand of the respondents by submitting that the possibility of Gurinder Singh having gone missing, in order to escape facing trial in the case arising out of FIR No.42 dated 20.04.1993. As such, with his death not proved before a competent Court, the benefits sought in this petition, cannot be granted to the petitioner or her family.

She further submitted that, in any case, Constable Gurinder Singh was a habitual absentee right since October 1992, i.e. within 8

months of his recruitment in the service and therefore, deserves no benefit of service, having been dismissed therefrom on account of such absence from time to time.

Learned State counsel, therefore, prayed that the writ petition be dismissed.

18. After considering the pleadings before this Court, the arguments of learned counsel on both sides and on a perusal of the record, as submitted before this Court, i.e. the departmental file, stated to be of the disciplinary proceedings conducted against Constable Gurinder Singh, this Court finds as is given hereinafter.

19. Whether or not Gurinder Singh was eliminated, as found in the inquiry held by the learned Sessions Judge, Sangrur, is not a matter to be gone into by this Court, that already being sub-judice before the competent Court, albeit the proceedings there having been stayed.

However, what this Court is required to go into, is as to whether or not the order dismissing Constable Gurinder Singh from service, on 28.07.1994, is a valid order, based upon disciplinary proceedings validly conducted.

If they are valid proceedings, then, naturally, the petitioner and her family would possibly not be entitled to anything beyond the amount lying in the General Provident Fund account of her son, as no family pension or appointment on compassionate basis, can be claimed by the family of a dismissed employee.

If, on the other hand, the enquiry proceedings are found to be vitiated for any reason, then the dismissal order would be wholly and completely unsustainable, with all consequences flowing thereafter, in

favour of the employee and his family.

Therefore, a perusal of the file in which proceedings have been recorded, of the departmental enquiry stated to have been held against Constable Gurinder Singh, is necessary.

20. The summary of charges, as given on page 55 of the departmental enquiry file, show the Constable to be charged with being absent first w.e.f. 20.10.1992 to 05.11.1992, then from 10.11.1992 to 30.11.1992 and thereafter, from 15.01.1993 to 01.02.1993.

His alleged absence from 14.02.1993 onwards, with him allegedly never having reported back on duty thereafter, is not a part of the said charge sheet. No other charge sheet mentioning the aforesaid period of absence, i.e. from 14.02.1993 onwards has been brought to the notice of this Court by the respondents, even though, both, the undated enquiry report of the DSP and the order of dismissal dated 28.07.1994, hold that he was absent first for the aforesaid periods between 20.10.1992 and 01.02.1993 and thereafter, w.e.f. 01.04.1993 onwards (as per the enquiry report) and 14.02.1993 onwards (as per the order of dismissal). Thus, first, the period of absence from 14.02.1993/01.04.1993 onwards is not a part of the charge-sheet issued to Constable Gurinder Singh, and as such, is not a part of any departmental enquiry initiated against him. Second, even the final period of alleged absence of Gurinder Singh, from duty, is differently described in the enquiry/conclusion report and the order of dismissal.

21. Prior to this summary of charges, at page no.55, at page No.37 of the said departmental enquiry file is another hand written, undated summary of charges, identically worded (in Punjabi) as the one

on page 55, which is shown to be signed by the DSP (Line) Patiala. Thereafter, a list of four witnesses, which is a document signed by the same officer, is present at page no.41 of the file, again with no date on it.

Then, at page no.45 of the departmental file, is a two line order signed by the Senior Superintendent of Police, Patiala, dated 18.06.1993, directing Shri Kulchhinder Singh, Deputy Superintendent of Police, Dera Bassi, Patiala, to continue the departmental enquiry “with speed” and to submit his conclusion report immediately.

22. The undated summary of charges (at page 55), is shown to have been followed by various notices issued to Gurinder Singh, to appear before the Enquiry Officer on various dates.

These notices, also available on the enquiry file, are dated 24.06.1993, 13.08.1993, 18.08.1993, 02.09.1993 and 16.09.1993. The first notice available on the file, dated 24.06.1993, is shown to have been received by the husband of the petitioner, Dharam Singh (father of Gurinder Singh) on 26.06.1993, with a hand written note by him, stating that Gurinder Singh was in police custody since 3-4-1993 and he had been told by the Superintendent of Police, City Patiala, Sham Lal Gakhar, that his son was a deserter and as such how was he (Dharam Singh) to produce him. The exact note in Punjabi (reproduced here in the *latin* alphabet) runs as follows:-

“Sada Larka Gurinder Singh no.3594, 3.4.93 Da Pulis Hirasat Vich Hai. SP City Patiala Sham Lal Gakhar Ney Dassia Hai Ki Ohh bhagaura Hai. Assi Ohnu Kithon Pesh Kariye.”

23. A further perusal of the enquiry file shows that on 21.09.1993, the Enquiry Officer made a request (again, presumably to the SSP, Patiala, since the note/letter dated 21.09.1993 on pages 77 to 80 of

the enquiry file does not show exactly as to whom it is addressed to), that he may be allowed to continue the enquiry proceedings, *ex parte*, against Constable Gurinder Singh. Such sanction is shown to have been granted by, again a hand written note dated 27.09.1993, shown to be signed by the SSP, Patiala, which is shown to be endorsed on 30.09.1993.

24. Thereafter, are seen documents which are obviously on the record of the file in reference to the periods of absence of Gurinder Singh from Police Post Brass. Though these documents would not really be relevant to the issue of whether or not the enquiry proceedings were properly conducted, in view of the circumstances as enumerated herein before and further what would be discussed herein after, however, a reference to such documents is still felt necessary, if only to place the facts on record, as culled out from the file.

First seen, is what seems to be a copy of the “roznamcha” (Daily Diary Report) dated 10.11.1992, signed by an Assistant Sub Inspector of Police, Incharge of Police Post Brass, falling under Police Station Ghagga. The signature on the report is of 11.11.1993 (probably as attestation to the authenticity of the document), and the DDR noting is to the effect that Constable Gurinder Singh was directed on 09.11.1992 to deposit the bill at Patiala for “oil” for the bullet proof tractor and to come back after depositing the same, as the said tractor could be needed in any confrontation with terrorists. It further reads to say that, however, without caring for the said direction, Gurinder Singh had still not returned even till 10.11.1992.

It is to be noted that at the top of the report, on the date mentioned, i.e. “10.11.92”, there is an over writing which seems to have

been converted the date from “9.10.92” to “10.11.92”. Further, though the date given in the beginning of the report, when directions were issued to Gurinder Singh is “9.11.92” (without any cutting/over-writing), towards the end of the report, the date given is again “9.10.92” but is referred to as “yesterday”. Again, there is no cutting/over-writing in the said date. The above is being noticed only to reflect the factual position available on the record, though it is possible that, being a hand written copy of the DDR, the over-writing on the top of it and the discrepancy in the main body of the report (9.11.92 and 9.10.92), is wholly bonafide.

After that, is recorded the testimony of the “Moharrar Munshi” of Police Station Banur, with regard to the absence of Gurinder Singh, stating that he had not come present at the Police Station (at page 89 of the enquiry file).

At page 93 thereof, there is another undated “testimony” (attested by the DSP on 20.11.1993) of one HC Balwinder Singh of Police Post Brass, stating that he is the person who “reads and writes” the “roznamcha” and that Constable Gurinder Singh is habitual of remaining absent and that on 07.01.1993 ASI Gurdev Singh, In-charge of Police Post Brass, had got entered DDR No.8 at 5:35 PM, that Gurinder Singh had been sent to Police Line Patiala, vide DDR No.22, dated 7.1.93.

25. Thereafter, the undated conclusion report of the DSP Dera Bassi, which also bears no diary number etc. on it, (though space is left for the number and the date), is available from pages 97 to 102 of the enquiry file. The said report recommends that Constable Gurinder Singh, No.3594, be dismissed from service, by invoking Rule 12.21 of the Punjab Police Rules.

The last page of the report seems to be signed, in Punjabi, by the DSP. Again, though the word “Miti” (Date) is written under the designation of the DSP, the date itself is not given.

26. Very strangely, thereafter, at page 103 of the enquiry file, is a typed order (in Punjabi), issued by the Senior Superintendent of Police, Patiala, bearing No.19054-55/B, dated 11.8.93 (in pink ink), with another (what seems to be) endorsement number at the end of the page, written in blue ink, i.e. 1548/A/D8P/DB/13.8.93.

The translated version of said order reads as under:-

“Gurinder Singh Constable No.3594/Patiala was transferred from Police Line Patiala to Police Station Banur and he set out from the Police Line vide Report no.14, dated 14.02.1993. He did not come present at Police Station Banur and he was marked absent vide report no.16, dated 01.04.1993, from 14.02.1993. He is going absent from duty continuously, without any permission. Being a member of a disciplined force, it is evidence of grave callousness and negligence, to remain voluntarily absent, which is condemnable and punishable.

After initiating a departmental enquiry against Gurinder Singh, Constable No.3594/Patiala, it is entrusted to Shri Kulchhinder Singh, Deputy Superintendent of Police, Derebassi, for completion, who will submit his final conclusion report before me after completion of this department enquiry, within one month.”

27. Thus, the order entrusting the departmental enquiry to Shri Kulchhinder Singh, Deputy Superintendent of Police, Dera Bassi, was passed on 11.8.93, by the SSP, Patiala directing that the enquiry be completed within one month. Before that, as noticed, was the order passed by the SSP on page 45, directing the DSP, Derabassi, to “continue

with the enquiry”.

As to why an order had to be passed on 11.08.1993 entrusting the enquiry to the DSP, Derabassi, when he had already been directed to continue with the enquiry, allegedly initiated by the DSP (Line), Patiala, though without any date given on either of the summary of charges, is something which is not understandable.

Seemingly, a lacunae was attempted to be filled in, in one manner or the other, leading to some confusion and consequently, the double issuance of an order in August 1993, entrusting the enquiry to an officer who had already, at least on paper, issued a summary of charges on 23.06.1993, after which he issued notices to Gurinder Singh, one of which was accepted by the Constables' father on 26.06.1993.

Though notices dated 20.08.1993 and 17.09.1993 are shown to be issued obviously after 11.08.1993, however, the one dated 24.06.1993, accepted and endorsed by Darshan Singh, father of Constable Gurinder Singh, is one and half months prior to the said date of the order of the SSP.

28. The next indicator of the fact that all is not well with the disciplinary proceedings, and the order dated 28.07.1994, is the glaring fact that, as already noticed, though both, the original written statement dated 02.12.1999 and the subsequent one dated 13.01.2004 (filed in reply to the original and the amended writ petition respectively), refer to the arrest of Gurinder Singh on 20.04.1993 and his alleged escape from custody on the night of 22/23.04.1993 and this fact is also stated in the written replies filed by Inspector Gurnam Singh and DSP Devinder Singh in the inquiry before the learned Sessions Judge, Sangrur (as discerned

from his report); however, neither the arrest, nor the alleged escape, find any mention in the enquiry/conclusion report of the DSP, Derabassi, in the departmental proceedings, nor in the order of dismissal dated 28.07.1994, passed by the SSP, Patiala.

It also needs to be noticed that, from a perusal of the inquiry report of the learned Sessions Judge (Annexure P-2 with the petition), it is seen that Inspectors Gurnam Singh and Joginder Singh, even in their depositions before the learned Sessions Judge, had stated that Constable Gurinder Singh had been arrested and had thereafter escaped, on the aforesaid dates.

Hence, the departmental enquiry report and the dismissal order, not even making a whisper of such arrest and escape, is a wholly incredulous fact, leading to the indication that the departmental proceedings were, in fact, a sham.

29. Of course, the order of suspension of the services of Gurinder Singh, is shown to have been passed on 19.04.1993 and therefore, obviously could not refer to his arrest on 20.04.1993.

Even the fact that the “roznamcha” maintained in the Police Lines, Patiala, on 20.04.1993, shows Gurinder Singh to be absent since 14.02.1993, but does not refer to his arrest, may be understandable to an extent, with the possibility that his arrest by a police officer posted elsewhere in the district, may not have immediately come to the knowledge of the person incharge of the Police Lines, on that very day itself (20.04.1993).

However, what is wholly and completely non-comprehensible, is as to how and why the entire disciplinary proceedings,

stated to have been initiated on 23.06.1993, as per the record submitted to this Court, including the charge sheet of that date (hand written) available at page No.55 of the enquiry file, makes no mention of his arrest and escape more than two months earlier.

30. Another aspect that is to be noticed is that the so called undated conclusion report of the departmental enquiry held against Constable Gurinder Singh, recommends his discharge from service under Rule 12.21 of the Punjab Police Rules, 1934. The said Rule is reproduced as follows:-

“12.21-Discharge of inefficients.- A constable who is found unlikely to prove an efficient police officer may be discharged by the Superintendent at any time within three years of enrolment. There shall be no appeal against an order of discharge under this rule.”

Thus, as per the Rule, any police officer/official, as is found unsuitable to discharge the duties as such officer/official, can be discharged, without any enquiry, from the police department.

It needs mention, though without elaborating, that the vires of this Rule has been challenged many a times and upheld, provided the order of discharge does not cast a stigma on the officer being so discharged.

In the present context, what is surprising is, that despite Constable Gurinder Singh having been enrolled as a Constable in February 1992, and he being accused of being a habitual absentee, he was not discharged by resorting to Rule 12.21, even after his admitted arrest on 20.04.1993. Therefore, it definitely raises a huge question, which the respondents have been wholly unable to answer, as to why in such circumstances, where an official remained a habitual absentee within a few months of his recruitment and was even allegedly arrested upon an

FIR being registered against him about one year and two months after his enrolment, i.e. on 20.04.1993, he was not so discharged by resorting to Rule 12.21 of the PPR, whereas this provision is undeniably resorted to in numerous cases by the police department, where it is felt that the officer/official is not suited to the job of being a police officer.

This, lends further credence to the arguments of learned counsel for the petitioner, as also is fully borne out from the record and the stand of the respondents, that actually the disciplinary proceedings stated to have been initiated against Constable Gurinder Singh were a complete after thought. This would be especially so, to repeat, in the light of the fact that both the hand written summary of charge present in the file, are undated, as is the show cause notice issued by the Senior Superintendent of Police, Patiala and no mention has been made, whatsoever, in the disciplinary proceedings with regard to Constable Gurinder Singhs' alleged arrest and escape from custody.

31. Thus, the following glaring discrepancies/faults in the departmental enquiry proceedings, stated to have been initiated against Constable Gurvinder Singh, are seen from a perusal of the enquiry file submitted to this Court by the respondents:-

- (i) The alleged absence from 14.02.1993/01.04.1993 does not form a part of the summary of charges alleged to have been issued, initiating disciplinary proceedings against Constable Gurinder Singh;
- (ii) Such summary of charges, as are available on the file, first, under the signatures of the DSP (Lines) Patiala, and then under the signatures of the DSP, Derabassi, are both undated;

- (iii) The enquiry shown to be initiated, on no given date, by the DSP (Lines) Patiala, is first shown to have been directed by the SSP Patiala, to be continued by the DSP, Derabassi, 18.06.1993 and then, on 11.08.1993, another order was issued, entrusting the enquiry to the DSP, Derabassi;
- (iv) In the meanwhile, an order summoning Constable Gurinder Singh was issued by the DSP Derabassi on 24.06.1993, which was received by constables' father on 26.06.1993;
- (v) On 22.09.1993 an endorsement was made by the SSP Patiala, on a request made by the DSP, Derabassi, to allow him to continue the disciplinary proceedings against Constable Gurinder Singh, *ex parte*;
- (vi) The conclusion report of the disciplinary proceedings stated to have been initiated, is again, undated;
- (vii) Also, the conclusion report states that Constable Gurinder Singh is absent from 01.04.1993 onwards, without the said period being a part of a summary of charges;
- (viii) A show cause notice is shown to be issued by the SSP Patiala to Constable Gurinder Singh, as to why he should not be dismissed from the service but again, the said show cause notice is undated, (though shown to be received by the Constables' father on 31.05.1994).
- (ix) The said show cause notice also includes 14.02.1993 onwards, as the period of absence of Constable Gurinder Singh, again with that period not being a part of the summary of charges;
- (x) The order of dismissal, dated 28.07.1994, issued by the SSP

Patitla, also includes the period of absence of Constable Gurinder Singh from 14.02.1993 onwards, as a ground for his dismissal;

(xi) Though both the written statements, dated 01.12.1999 and 13.01.2004, admit that Gurinder Singh was arrested in connection with FIR No. 42 dated 20.04.1993 and thereafter escaped from custody on the night of 22/23.04.1993, however, neither the summary of charges, nor the conclusion report, nor the show cause notice, nor even the order of dismissal, all of which are stated to have been issued well after 22/23.04.1993, even make a mention of Gurinder Singhs' arrest and escape, but only record that he is absent since 14.02.1993/01.04.1993, both of which are dates prior to his alleged arrest and escape.

(xii) Despite a recommendation to that effect, and obvious availability of discharge of Constable Gurinder Singh by resorting to Rule 12.21 of the Punjab Police Rules, 1934, on account of his (alleged) absence from duty from time to time, a departmental enquiry is shown to have been initiated, and concluded with an order of dismissal, with a large number of important parts of such disciplinary proceedings, including the summary of charges, the conclusion report and the show cause notice being undated.

32. Further, it also cannot, naturally, be lost sight of that all the summons stated to have been issued by the Enquiry Officer between June and September 1993, summoning Constable Gurinder Singh to appear

before him, are all summons issued after his family, i.e. the petitioner and her husband (parents) had made a complaint to the Superintendent of Police, regarding Gurinder Singh having been arrested by the police and thereafter, not having been heard of. Thus, with the factum of his arrest on 20.04.1993 actually being admitted by the respondents in their written statements dated 01.12.1999 and 13.01.2004, the enquiry proceedings conducted, are obviously not above board.

33. Hence, looking at all the above circumstances, as are discernible from both, the pleadings before this Court as also the departmental enquiry file produced before this Court by the respondents, it is held that departmental enquiry proceedings, including the order dated 22.09.1993, sanctioning *ex parte* proceedings, leading to the dismissal of Constable Gurinder Singh vide order dated 28.07.1994, are wholly vitiated and unsustainable.

34. The question then is, as to whether the petitioner can be granted the relief prayed for in this petition on that ground alone, without going into the issue of whether or not Gurinder Singh was actually eliminated.

Even though this Court cannot ignore the fact that a Constable who was enrolled in a uniformed force in February, 1992, allegedly started absenting himself within 8 to 10 months of his recruitment and as such, may not be entitled to any benefit of his service, however, such alleged absence, has not been proved by any valid enquiry held.

This Court considered summoning the daily diary reports of Police Post Brass and of Police Station Banur, as also of the Police Lines

Patiala, for the relevant periods in which the petitioners' son was shown to have absented himself, but did not do so for the simple reason that, even if such records show him to have been marked absent, they would have been no valid proof of such absence in a one sided record, in the absence of validly conducted departmental proceedings.

Consequently, the disciplinary proceedings having been held by this Court, hereinabove, to be wholly vitiated, in my opinion, there is no other option, but to treat Constable Gurinder Singh to have been in service and missing since at least 20.04.1993, thereby entitling his family to the benefit of the instructions of the Government, dated 27.03.1991 and 19.04.1996, annexed by the respondents themselves with the additional affidavit dated 29.11.2013, filed by the Superintendent of Police (Headquarters), Patiala. These instructions, in fact, allow a Government employees' family the benefits given therein, after one year of the employee going missing.

35. The stand taken in the said affidavit, that the petitioner and her family cannot be granted benefit of the said instructions as no complaint/DDR has been lodged by the petitioner or her family members, regarding the disappearance of Constable Gurinder Singh, is a wholly absurd stand to say the very least.

The petitioner and her husband have admittedly been running from pillar to post to try and get the whereabouts of their son traced out, including by filing Criminal Writ Petition No.603 of 1993, seeking a writ of habeas corpus that their son be produced in Court, as is obviously admitted by the respondents. Hence, as to how such a ridiculous stand can even be conceived, let alone be filed in Court, by an officer of the rank of

Superintendent of Police, is something which need not be commended upon further, except to say that there was obviously no application of mind at all by the officer, when he filed such a reply.

Other than the fact that the aforesaid criminal writ petition was filed by the petitioners' husband, it is, again obviously, admitted by the respondents even in the said affidavit dated 29.11.2013, that FIR No.77 dated 15.07.1995, was registered at Police Station Civil Lines, Patiala, for an offence punishable under Section 302 IPC, upon directions of this Court in the aforesaid writ petition.

Hence, “a complaint” was lodged by the petitioners' family, if the absurd need be stated.

The factum of a legal notice (Annexure P-1) having been subsequently served on the respondents is again undeniable, as is the fact that an inquiry report was submitted by the learned Sessions Judge, Sangrur, even though that inquiry report is not being relied upon to hold the departmental enquiry proceedings to be vitiated. Thus, though as to whether Gurinder Singh was eliminated or not, is a matter that is sub-judice in different proceedings, the departmental proceedings, on the other hand, have been held to be vitiated wholly on the basis of the facts narrated hereinbefore.

36. Another reason given by the respondents, for denying the benefit of the instructions to the petitioner and her family, is that Constable Gurinder Singh was dismissed from service.

Whereas that, otherwise, would very much have been a valid ground for denial of pensionary benefits etc., however, with the departmental disciplinary proceedings leading to the order of the

dismissal having been held to be wholly vitiated, in the entire set of chain of circumstances given hereinabove, that ground is no longer available to the respondents, to deny the petitioner/her family, the benefit of the said instructions.

37. The next reason taken by the respondents to deny any benefits to the petitioner and her family, is that Constable Gurinder Singh was declared to be a proclaimed offender by the trial Court, in proceedings arisen out of FIR No. 42, registered on 20.04.1993.

In my considered opinion, this ground is also not available to the respondents, in view of the fact that, upon directions of this Court, an FIR has been ordered to be registered with regard to the alleged elimination of Gurinder Singh, by those named in the FIR/ as per the report submitted under Section 173 Cr.P.C. by the Central Bureau of Investigation. Further, FIR No. 42, dated 20.04.1993, is of a date subsequent to that which was given by the petitioner and her husband, to be the date on which their other son, Balwinder Singh, was taken by the police and thereafter, Gurinder Singh, on going to try and trace out the whereabouts of his brother, also went missing.

Consequently, the preponderance of probabilities is completely in favour of the petitioner and against the respondents in that respect.

Further, if eventually, it is found in any proceedings, or as a fact in any other manner, that Gurinder Singh is actually alive and was evading arrest, then even as per the instructions dated 27.03.1991, on the basis of the indemnity bond to be obtained from the petitioner/her family members, the amounts paid to the family, in terms of the said instructions,

would be recoverable from them.

Thus, there would be no reason whatsoever, especially in the circumstances detailed hereinabove, for denial of benefits to the petitioner/her family, as are contained in the aforesaid instructions dated 27.03.1991.

38. That having been said, however, the relief sought by the petitioner, for grant of appointment as a Constable in the Punjab Police, to her daughter, on compassionate grounds, is declined, for the reason that more than 21 years having gone by since the incident and 16 years having gone by even since the filing of the writ petition, her daughter would obviously not be eligible to be appointed to such a post, at this stage.

39. In view of what has been held, the writ petition is partly allowed. The impugned order dated 28.07.1994 (Annexure P-3) is quashed and the respondents are directed to release to the petitioner/nominated family member, all the benefits payable, as contained in letters of the Finance Department, dated 27.03.1991 and 19.04.1996 (Annexure R-7 with the additional affidavit dated 29.11.2013), within three months from the date of receipt of a certified copy of this order.

Such benefits would be paid not from the date of registration of FIR No. 77 dated 15.07.95, (upon direction of this Court), but from the date of filing of CRWP 603 of 1993, by the petitioners' husband. The departure being ordered in this regard from the instructions dated 27.03.1991, is due to the fact that the petitioner and her family had obviously already run from pillar to post before filing the aforesaid writ petition in this Court and as such, it would be unfair to order payment of

benefits to the family, from the date that the FIR was ordered to be registered by this Court, 2 years after the writ petition had been filed by the petitioners' husband.

The arrears of the financial benefits accruing to the petitioner/her family, as per the said instructions, would also carry an interest @ 12% per annum, with effect from the same date. The interest would continue to be payable till the date that actual payment is made to her/nominated family member.

40. Costs of Rs.25,000/- are imposed on the Superintendent of Police (Headquarters), Patiala, who filed the affidavit dated 29.11.2013, stating therein that no complaint/DDR has been lodged by the petitioner or her family, with regard to the disappearance of Constable Gurinder Singh and, therefore, no benefits can be given to her. Such costs be paid by the officer, also within 3 months.

41. Finally, even though such an observation is not necessary in respect of criminal proceedings which are on going, pursuant to case No.RC/SIH/1998/S/0002 dated 29.07.1998 at SIU-XV-CBI, Chandigarh (FIR No.77 dated 15.07.1995, registered at Police Station Civil Lines, Patiala), it is made clear that nothing said hereinabove would be taken, in the criminal proceedings, as an observation by this Court on the manner in which Gurinder Singh has gone missing. That issue would obviously be adjudicated upon by the trial Court, as per the evidence led before it.

1st July, 2015
vcgarg/dinesh/amit rana

(Amol Rattan Singh)
Judge