

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRWP No.425 of 2014
Date of decision : 20.08.2015

Major Singh

...Petitioner

Versus

State of Punjab and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. A. S Trikha, Advocate for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab

JITENDRA CHAUHAN, J. (Oral)

This is a petition under Article 226 of the Constitution of India praying that impugned order of jail punishment of deducting the remission of 10 days may be set aside.

The facts of the case are that the petitioner was convicted and sentenced to undergo for life imprisonment and fine of Rs.1500/- ID RI for three months in case FIR No.3 dated 27.01.1997 under Section 302/364/34 of IPC, PS Ghuman District Gurdaspur by the learned Court of Sh. Gurdev Singh, District and Sessions Judge, Gurdaspur on 31.03.1998. He had filed Criminal Appeal No.D-199-DB-1998 in this Court, which was dismissed

The allegation against the petitioner are that the petitioner received an amount of Rs.200/- in the name of an officer of the Jail for not

sending him to Sub Jail, Patti. The statement of the complainant was recorded. After inquiry the competent authority ordered to deduct the 10 days of earned remission and separate confinement of 30 days under Para No.548(a) of Punjab Jail Manual. The proposed punishment was sent to the learned District and Sessions Judge, Amritsar for judicial appraisal. The learned District and Sessions Judge confirmed the punishment vide order dated 28.10.2013 which is under challenge in this writ petition.

The learned counsel for the petitioner assailed the impugned order on the following grounds:-

1. That neither any inquiry was conducted nor any witness was examined to prove the guilt of the petitioner.
2. That principal of natural justice were not complied with, the learned District and Sessions Judge did not give any personal hearing to the petitioner before affirming the sentence.
3. That the Superintendent Jail did not adopt the proper procedure as prescribed under Sections 45 and 46 of the Prison Act 1894 for allowing to cross-examine the witnesses.

On the other hand, the learned State counsel fairly conceded that no personal hearing was given to the petitioner by the learned District and Sessions Judge, Amritsar.

From the pleadings of the parties, it emerges that no opportunity of hearing was afforded to the petitioner by the learned District and Sessions Judge, Amritsar before passing the impugned order dated

28.10.2013. This order has no legal entity and sanctity in the eyes of law. The petitioner has a right to be heard at the time of appraisal of punishment case.

Keeping in view the above circumstances, the impugned order dated 28.10.2013 passed by the learned District and Sessions Judge, Amritsar is set aside, the case is remitted back to the learned District and Sessions Judge, Amritsar to pass a speaking order, in accordance with law, after giving an opportunity of hearing to the petitioner.

20.08.2015

ashok

**(JITENDRA CHAUHAN)
JUDGE**