

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

**CWP No.17008 of 2012 (O&M)
Decided on : 24.05.2016**

Kamal Gir

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Puneet Bali, Senior Advocate with
Ms. Monika Thakur, Advocate for the petitioner.

Mr. L.S. Virk, Addl. AG, Punjab.

G.S. Sandhawalia, J. (Oral)

The petitioner challenges the order dated 17.04.2009 (Annexure P-14) passed by respondent No.6, whereby his services had been terminated as a constable.

The reasoning which weighed with the respondent No.6 was that the petitioner had been discharged from service of the S.P.O w.e.f. 24.09.1995 and therefore, he was not entitled to be enlisted as a constable. The said fact was concealed with the connivance of the employees of the District Police and P.A.P., at the time of joining as constable and, therefore, the dismissal order was passed.

Challenge has also been raised to the order dated 22.01.2010 (Annexure P-10), whereby his appeal was dismissed by taking into account the abovesaid factors and by noticing that a departmental inquiry had been conducted and proper procedure had been followed. The said orders have been upheld on 01.06.2010 (Annexure P-19) by the Inspector General of Police-respondent No.4 on the ground that there was no illegality or

irregularity in the orders, apart from the fact that the said appeal was beyond limitation.

The facts which require notice is that the petitioner was initially recruited as an Special Police Officer (S.P.O) on 20.10.1992. However, on account of his absence from 24.09.1995 to 20.01.1996, he was discharged by the SSP, Khanna vide order dated 20.01.1996 (Annexure P-1). The petitioner, however, due to his long service was being considered for enlistment as constable, in view of the directions issued by the Division Bench of this Court in **CWP No.4940 of 2006 'Rajesh Kumar and others Vs. The State of Punjab and others'** decided on 07.01.1997 (Annexure P-3). The name of the petitioner was, accordingly, approved for enlistment vide communication dated 14.07.1997. The petitioner gave a declaration that he was neither discharged from any Government Service nor involved in any criminal case, as per Annexure R-8, which was contrary to the record and which the respondents found out that he had been discharged. Accordingly, charge-sheet was served upon the petitioner as to the mis-conduct and the concealment of the fact of his discharge.

Eventually, the Inquiry Officer came to the conclusion that the facts have been concealed and the cheating had been done with the department and resultantly a fraud had been committed and the same was with the connivance of Station House Office of Police Station Kurali. It was noticed that the employee had joined in the 80th Battalion PAP, Jalandhar Cantt and connived with the Sena Clerk, SI Kans Raj and the

charge stood dully proved. Resultantly, the show cause notice was issued to the petitioner on 14.02.2009 (Annexure P-12) for passing the order of dismissal and resultantly, the impugned order has been passed by noticing abovesaid facts that he had given a declaration also and it was against the record and had not informed the fact that he had been discharged.

Counsel for the State was well justified in placing reliance upon the Standing Order No.2/1997 (Annexure R-1) to contend that the petitioner was entitled for enlistment as constable from the serving eligible SPOs, providing his work and conduct has been found satisfactory by the District Superintendent of Police. The recruitment was to be on the basis of seniority and suitability. The relevant clause reads as under:-

“RECRUITMENT OF CONSTABLE FROM THE SERVING ELIGIBLE SPOs

The claims of serving eligible SPOs for recruitment as constables will be considered after the SPO has put in six months service as SPO and provided his work and conduct has been found satisfactory by the District Superintendent of Police. The recruitment shall be on the basis of seniority and suitability. The seniority as SPO will be determined wherever merit list of a particular recruitment as SPO was drawn up, on the basis of such merit and, in other cases, from the date of appointment as SPO are appointed on the same date the SPO elder in age will be treated as senior and in case date of birth is the same, person having higher educational qualification shall be considered senior. The suitability including efficiency will be determined on the basis of criteria as prescribed. The SPOs who qualify the physical events, written test and interview will be treated as fit and those fit will be absorbed on the basis of their seniority subject to the availability of posts of constables.

Provided that an SPO may be absorbed out of turn, as a constable, with the prior orders of the Director General of Police, for reasons to be recorded in writing. Subordinate units may submit

recommendations in such cases for obtaining specific orders of the Director General of Police.

Provided, further, that such recruitment would not exceed 10% of vacancies accruing in calendar year.”

It is in such circumstances, the order of dismissal has been passed. The petitioner was only entitled for recruitment, if he was in service and not otherwise. Also his work and conduct had to be satisfactory. Once he was not an SPO and already stood discharged he was not entitled for consideration for recruitment, since he had admittedly remained absent from 24.09.1995 to 20.01.1996. In such circumstances, the orders which have been passed do not suffer from any infirmity or illegality and have been passed after following proper procedure and holding an inquiry, in which the charge has been substantiated.

Resultantly, this Court does not find it is a fit case for interference under Article 226 of the Constitution of India and the same is, accordingly, dismissed.

MAY 24, 2016
Naveen

(G.S. SANDHAWALIA)
JUDGE