

C.W.P No. 13224 of 2016

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 13224 of 2016

DATE OF DECISION:07.10.2016

Satnam Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. RK Arya, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

C.M. No. 11166 of 2016

This application has been filed for placing on record Annexure
P-3

Application is allowed and Annexure P-3 is taken on record.

C.W.P. No. 13224 of 2016

The prayer in the present petition is for quashing of order dated 19.10.2015 (Annexure P-1) passed by respondent No.5, whereby, two years approved service of the petitioner has been forfeited as well as order dated 23.12.2015 (Annexure P-2) passed by respondent No.4, which is contrary to mandate of law provided under Rule 16.5 of Punjab Police Rules, 1934 (hereinafter referred to as 'the Rules, 1934').

Briefly, the facts of the case, as made out in the present petition, are that the petitioner was posted to Police Team Naushehra Pattan

Mukerian. A preliminary inquiry was got conducted about the damage caused to barrel of SLR Butt No. 97 by fire from SLR Butt No. 352, which was issued to the petitioner. The petitioner was associated in the inquiry and it was found that the petitioner was negligent in handling of the arm. A show cause notice was issued to the petitioner on 5.10.2015 by the punishing authority and his two years service was forfeited with permanent effect vide order dated 19.10.2015 (Annexure P-1). Aggrieved by the said order, the petitioner preferred an appeal before the Appellate Authority but the same was also rejected vide order dated 23.12.2015 (Annexure P-2). Orders passed by the punishing authority as well as appellate authority are subject matter of challenge in the present petition.

Learned counsel for the petitioner contends that while imposing punishment, the punishing authority has taken into consideration the past service record of the petitioner that too without affording any reasonable opportunity. Both the punishing authority as well as the appellate authority have passed these orders without application of mind. Learned counsel further contends that the order of punishment is violative to provisions of Rule 16.5 of the Rules, 1934 and also contrary to ratio of judgment in the case of **Harinder Singh Vs. State of Punjab and others** 2014 (1) SCT 16.

Heard the arguments advanced by learned counsel for the petitioner and have also perused the orders passed by the punishing as well as appellate authority.

The petitioner while being posted at Naushehra Pattan Mukerian fired shot with his rifle SLR Butt No. 352, which was allotted to him and caused loss to the barrel of SLR Butt No. 97. An inquiry was

conducted and it was found that not only loss to the barrel of the rifle was caused but there was every possibility of causing loss to life as well. Opening of shot fire was admitted by the petitioner and his statement was also corroborated by statements of other employees, who were present at the spot. It was also proved in the inquiry that there was no order by the superior officer for cleaning of the arms and ammunition and while cleaning the shot was fired by the petitioner negligently. The petitioner was issued show cause notice and reply to the same was also submitted by him. The allegations levelled against the petitioner were proved during inquiry and the reply to the show cause notice submitted by the petitioner was not found satisfactory. The punishing authority while agreeing with the findings recorded by the inquiry officer forfeited two years of his service with stoppage of two annual increments with cumulative effect. It was also mentioned in the punishment order that earlier his absence period was 362 days and it was treated as non-duty period and punishment of censure was also awarded on four occasions. It has been argued by learned counsel for the petitioner that past conduct cannot be taken into consideration while imposing punishment as the petitioner was not given reasonable opportunity while holding him guilty. Not only the show cause notice was issued to the petitioner but he was also handed over copy of the inquiry report, which was duly received by him. He was even heard personally as is mentioned in the impugned order. Therefore, it cannot be said in any manner that the petitioner was not given reasonable opportunity during departmental inquiry. Similarly, the appellate authority has passed a detailed order, whereby, the order passed by the punishing authority has been upheld. The appellate authority has specifically mentioned that the petitioner himself had

admitted his negligence. The allegations levelled in show cause notice were also proved not only from the statement of the petitioner but that too from the statements of other co-employees as well. The negligence on the part of the petitioner has been proved as due to shot fire the life of any person could have been in danger but it was escaped. It cannot be said that past conduct of the petitioner has been considered while awarding punishment as only reference has been given, which shows that earlier also he remained absent for a longer period and was awarded punishment of censure on four occasions. The judgment relied upon by learned counsel for the petitioner is not applicable in the case in hand. Keeping in view the facts and circumstances of the case as well as past conduct of the petitioner, it cannot be said that the punishment awarded is on the excessive side.

In view of the facts and circumstances as mentioned above, it is clear that the petitioner was given proper opportunity of hearing and reply to the show cause notice was considered. The impugned order cannot be said to be violative to principles of natural justice as neither any malafide has been shown nor addressed in the arguments. Accordingly, no interference is required with the impugned orders and the petition being devoid of any merit is hereby dismissed.

October 07, 2016
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No