

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

CWP No.15127 of 2015

Date of decision: 29.02.2016

Ramesh Kumar

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Randeep Singh, Advocate,
for the petitioner.

Mr. Ravi Partap Singh, AAG., Haryana.

RITU BAHRI , J.

The petitioner is seeking to quash the orders dated 25.03.2013 and 14.09.2012 (Annexure P-2 and P-1 respectively), whereby punishment of stoppage of two annual increments with permanent effect has been inflicted upon him.

Ramesh Kumar-petitioner has been working as constable in Haryana Police since 12.06.2007. In the year 2010, while he was posted at Gurgaon, he lost his son namely Mainpal in a road accident. Being mentally depressed, the petitioner made a request to the Commissioner of Police, Gurgaon-respondent No.3 for his transfer from Gurgaon to Kurukshetra. Vide letter dated 16.08.2010, the Commissioner of Police, Gurgaon, recommended his case for transfer due to family circumstances.

A departmental enquiry was initiated against the petitioner on the charges that the office of Chief Minister Haryana had received a letter dated 07.02.2010 from Under Secretary, Home Ministry, Government of India with a request to transfer the petitioner from Gurgaon to Kurukshetra. The departmental enquiry was conducted by Rajesh Duggal, HPS, Assistant Commissioner of Police and as per enquiry report dated 14.11.2011 (Annexure P-3), wherein it was found that the impugned letter had not been issued from that office. This letter was issued to cause harassment to the defaulter-petitioner, as his transfer from Gurgaon to Kurukshetra had already been accepted by the Commissioner of Police, Gurgaon. There was no occasion for the defaulter-petitioner to approach for transfer. This enquiry report was accepted by the Punishing Authority i.e. Deputy Commissioner of Police, Headquarters, Gurgaon vide order dated 04.01.2012 (Annexure P-4). However, the Commissioner of Police, Gurgaon expressed his disagreement with the findings of the Enquiry officer as well as order dated 04.01.2012 (Annexure P-4) and by reviewing the departmental proceedings, served a show cause notice dated 31.08.2012. Ultimately, vide order dated 14.09.2012 (Annexure P-1) penalty of stoppage of two annual increments with permanent effect was inflicted upon the petitioner. Against this order, petitioner preferred an appeal before the Director General of Police, Haryana, which was dismissed vide order dated 25.03.2013 (Annexure P-2).

Upon notice, written statement on behalf of respondent

Nos. 1 to 3 has been filed by Deputy Commissioner of Police,

Headquarters, Gurgaon, wherein it has been stated that under Rule 16.28 of Punjab Police Rules, 1934, the Inspector General of Police, Deputy Inspector General and Superintendent of Police has power to call for the records of awards made by their subordinates and confirm, enhance, modify or annul the same, or make further investigation or direct such to be made before passing order. The petitioner was afforded an opportunity of personal hearing on 12.09.2012 and thereafter, the proposed punishment has been awarded vide order dated 14.09.2012 (Annexure P-1), which has been affirmed by the Director General of Police, Haryana, vide his order dated 25.03.2013 (Annexure P-2).

Learned counsel for the petitioner has referred to the enquiry report dated 14.11.2011 (Annexure P-3) and has argued that as per prosecution witness No.4A namely Nitesh Kumar, Clerk, transfer of Ramesh Kumar-petitioner was sent by Commissioner of Police to Inspector General of Police, Ambala Range on 16.08.2010. Thereafter, one letter dated 03.12.2010 was sent to the office of Director General of Police, Vigilance Department of Haryana. The Enquiry Officer has observed that once the Commissioner of Police had accepted the request of petitioner for transfer to Kurukshetra and had recommended the same on 16.08.2010, there was no occasion for the petitioner to again got a request made from the Home Ministry for his transfer. After acceptance of the request by the Police of Commissioner, there was no occasion for the defaulter-petitioner to approach for his transfer. He further argued that once, the Commissioner of Police, Gurgaon, has made recommendation on 16.08.2010, the letter in question, even if, it was not issued from

the Ministry of Home Affairs, could not be made a ground to impose a major punishment on the petitioner.

After hearing learned counsel for the parties and going through the records and official file, which has been produced by the respondents, it transpires that the letter dated 07.10.2010 was received in the office of the respondents on 28.10.2010. By that time, the recommendation made by the Commissioner of Police, Gurgaon, dated 16.08.2010 had already been accepted and the petitioner stood transferred from Gurgaon to Kurukshetra. After 28.10.2010, the petitioner could not get any benefit from the above said letter. Moreover, a perusal of the enquiry report (Annexure P-3) shows that prosecution witness No.4A namely Nitesh Kumar has deposed that letter No.278832/A-3 dated 16.08.2010 had been sent by the Commissioner of Police, Gurgaon to the Inspector General, Ambala Range, for transfer of Ramesh Kumar-petitioner from Gurgaon to Kurukshetra. The Enquiry Officer has returned a finding that the letter issued from the Home Ministry was actually had not been issued by that office as per deposition of prosecution witness-Constable Sanjiv Kumar. It was further found that the letter dated 07.10.2010 issued by Under Secretary, Home Ministry, Government of India, Section-G, was not found to have been issued from that office. Moreover, as per the official file, the said letter was received on 28.10.2010 and by that time, the petitioner had been transferred from Gurgaon to Kurukshetra on the recommendation of the Commissioner of Police, Gurgaon. The impugned order 14.09.2012 (Annexure P-1) passed by the Commissioner of Police while exercising the powers under Rule 16.28 of Punjab Police

Rules, 1934, is against the finding of fact recorded by the Enquiry Officer vide his report (Annexure P-3). Once, on the recommendation of the Commissioner of Police, the transfer order has already been effected, the impugned letter dated 07.10.2010 could not be made basis for inflicting a major punishment on the petitioner. Accordingly, the impugned order being perverse are required to be set aside.

Resultantly, the present petition is allowed and impugned orders dated 14.09.2012 and 25.03.2013 (Annexure P-1 and P-2) are set aside.

29.02.2016
ajp

(RITU BAHRI)
JUDGE