

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

CWP No.14456 of 2016

Date of Decision: 23.07.2016

HC Sukhwinder Singh and anotherPetitioners

Versus

State of Punjab and othersRespondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. G.S. Bal, Sr. Advocate
with Ms. Sunita Gupta, Advocate
for the petitioners.

DAYA CHAUDHARY, J. (ORAL)

Petitioners have approached this Court by way of filing the present writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* quashing impugned Show Cause Notices dated 16.07.2010 (Annexures P-9 and P-10) issued by respondent No.3 to petitioners as to why they should not be reverted to their initial parent cadre of India Reserve Battalion.

Learned counsel for the petitioners submits that the petitioners earlier approached this Court by way of filing **CWP No.11378 of 2011** and the following order was passed :-

“ Accordingly, the present writ petition is allowed.
The impugned order dated 01.07.2011 is set aside.
However, liberty is granted to the respondents to take action, if necessary, against the petitioners by resorting to proper procedure after issuing show cause notice to them.
Needless to say that if such action is to be taken, respondents would take into consideration sympathetically

the fact that the petitioners were already appointed with the Indian Reserve Battalion since 2006 and had necessary experience and had applied through proper channel.”

The case of the petitioners was considered and thereafter, by issuing Show Cause Notice, their claim has been declined. Learned counsel for the petitioners also submits that the issuance of Show Cause Notice is merely a formality as the authority concerned had already made up its mind to revert the petitioners.

Learned counsel for the petitioners relied upon the judgment in case **CWP No.10820 of 2014** titled as **Balkar Singh vs State of Punjab and others**, decided on **18.03.2015** in support of his contentions.

Heard the arguments of learned counsel for the petitioners and have also perused the impugned Show Cause Notice as well as other documents available on the file, including the order passed in the earlier petition filed by the petitioners. I have also perused the Order dated 12.02.2016, where the decision has been taken by the competent authority.

Admittedly, the impugned Show Cause Notice has been issued on 16.07.2016 and a period of ten days was given to submit reply to the Show Cause Notice but the same has not been submitted so far. An argument has been raised by learned counsel for the petitioners that non application of mind of the authorities concerned is clear from Show Cause Notice, which is contrary to the principles of natural justice as well as ratio of judgment passed in **CWP No.10820 of 2014**.

It cannot be said at this stage that the grievance of the petitioners is not going to be heard by the competent authority when no such reply to show cause notice has been filed. Unless the stand taken by the petitioners is not before the concerned authority, it cannot be said that they are going to take adverse view and for reaching at the right

conclusion, the reply to show cause notice by the petitioners is required to be filed but the same has not been submitted so far.

During the course of arguments, learned counsel for the petitioners submits that the petitioners would file reply to the Show Cause Notice, therefore, he may be permitted to withdraw this petition. Till any decision is taken by the competent authority, the petitioners may not be sent to their parent department.

Accordingly, the request of learned counsel for the petitioners is accepted and the present petition is dismissed as withdrawn with liberty to the petitioners to file reply to the Show Cause Notice issued to them.

However, in case, the petitioners file reply to the Show Cause Notice within the prescribed limit, respondent No.3 or any other authority competent to take decision on the Show Cause Notice, is directed to consider the reply of the petitioners and take necessary action thereupon in accordance with law. In case, the personal hearing of the petitioners is required, they be given opportunity to appear before the competent authority.

However, it is made clear that in case, the petitioners are still aggrieved by the order of the authorities, they are at liberty to challenge the same. It is also made clear that while deciding the replies of the petitioners and taking decision thereupon, any observation made in the Show Cause Notice by respondent No.2 may not come in the way of the concerned authority.

23.07.2016
gurpreet

(DAYA CHAUDHARY)
JUDGE