

C.W.P No. 22981 of 2013

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 22981 of 2013

DATE OF DECISION: 01.08.2016

Mukteshwar Nath

.....Petitioner

Versus

State of Punjab and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Nakul Sharma, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Punjab.

DAYA CHAUDHARY, J.

The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing impugned order dated 10.7.2013 (Annexure P-38) passed by respondent No.2, vide which, the revision petition filed by the petitioner against orders dated 17.1.1994 (Annexure P-24), 18.1.1994 (Annexure P-25), 19.1.1994 (Annexure P-26), 18.6.1994 (Annexure P-27) and 21.6.1994 (Annexure P-28) has been dismissed. A further prayer has also been made for quashing of order dated 13.3.1992, whereby, the petitioner has been held guilty for not writing the case diary in five cases (Annexures P-19 to P-23) and was imposed punishment of forfeiture of his approved service of one year each in five cases and further to grant all service benefits of five years

forfeited by respondent No.4 vide aforesaid order along with all

consequential benefits.

Briefly, the facts of the case are that the petitioner was initially appointed as Constable and thereafter was promoted as ASI and SI. During formal inspection of Police Station City Kotkapura conducted by DSP (D), Faridkot, it was found that the petitioner was entrusted work with some of the FIRs under different sections. The allegation against him is that he did not record any case diary and had even not prepared the challan in those FIR cases. The departmental inquiry was marked against the petitioner and in the inquiry, he was held guilty of the charges framed against him. Agreeing with the findings of the Inquiry Officer, a show cause notice was issued to him for punishment of forfeiture of one year approved service with cumulative effect in each of the FIR cases.

Reply to the show cause notice was filed by the petitioner but the same was not found satisfactory and he was awarded punishment of forfeiture of one year approved service with cumulative effect in all the five cases.

Aggrieved by the said order, the petitioner filed five separate appeals before DIG, Ferozepur Range, Ferozepur, which were dismissed by separate orders. Meanwhile, the petitioner also filed CWP No. 9799 of 2010 for quashing of order dated 13.3.1992, vide which, the petitioner was held guilty for not writing the case diary in five cases and was imposed punishment of forfeiture of his approved service of one year each in all five cases. The aforesaid petition was disposed of to avail alternative remedy of revision before the higher authority. It was also held that in case there is any particular period of limitation for filing revision, the period spend in availing the remedy was excluded. A period of 30 days from the date of

receipt of copy of the order was given to file the revision petition. Thereafter he filed revision petition by raising various grounds like impugned order was totally non-speaking and was passed without affording any opportunity of hearing. His service record was meritorious as no adverse remarks were mentioned in the ACRs and his work was also appreciated from time to time but even then the revision petition filed by the petitioner was dismissed vide order dated 10.7.2013 (Annexure P-38).

Learned counsel for the petitioner contends that the order passed in the revision petition is contrary to the principles of natural justice as the detailed reply filed by the petitioner has not been considered and no finding whatsoever has been recorded while dismissing the revision petition. Learned counsel further submits that the petitioner was always praised for his work by earlier officers as is clear from his ACRs of the last many years. The petitioner remained posted in the Election Cell for two months on oral orders and this fact has been affirmed by the statement of HC Surjit Singh. Mr. Sawaran Singh, the then SSP Faridkot has also categorically deposed that in the year 1991, he remained posted as Incharge District Police, Faridkot and in the month of April, 1991, during mid term elections of the Punjab State Assembly, the petitioner was posted as Additional SHO, Police Station Kotkapura through verbal orders and a wireless message was directed to hold the charge of election Cell in the third week of April, 1991. He remained there till 2nd July, 1991. The inquiry officer has not considered the affidavit of senior officer, who ordered for the posting of the petitioner. Learned counsel also submits that even the FIR was registered against the petitioner and he was acquitted of the charges framed against him but still he was dismissed from service.

Against the order of dismissal, the petitioner filed an appeal and also approached the Civil Court and was ultimately reinstated but all these facts have not been considered by the revisional authority and admittedly a cryptic order has been passed.

Learned counsel for the respondent-State opposes the submissions made by learned counsel for the petitioner on the ground that the petitioner was given ample opportunity of hearing but he was not able to show any order, whereby, he was posted on the election duty. The period of posting in Election Cell is different from the period mentioned in the affidavit submitted by a retired police officer. Learned State counsel also submits that order passed by the revisional authority cannot be considered to be non-speaking as it has been passed with reasons thereof.

Heard the arguments advanced by learned counsel for the parties and have also perused the impugned order of dismissal of revision petition and other documents available on the file.

In the impugned order dated 10.7.2013, it has been mentioned that the petitioner in his appeal has stated that the departmental inquiries were not conducted as per rules, whereas, it was found that the inquiry officer while conducting inquiry found him guilty for the charges. Five years service of the petitioner has been forfeited permanently and he was held guilty twice. The revisional authority held that no new evidence/fact was placed on record and, therefore, the claim of the petitioner was rejected. No where, it has been mentioned in order dated 10.7.2013 as to what grounds were raised in the revision petition and how those grounds were considered by the authority concerned. A perusal of the revision petition would show that the revision petition was filed with detailed grounds but

the same have not been considered. The petitioner filed C.W.P. No. 9799 of 2010, which was disposed of with certain directions and delay was also condoned. The petitioner was to file revision petition within a period of 30 days. In the impugned order, nowhere, it has been mentioned that the additional affidavit filed by the concerned authority was not found satisfactory, whereas, it was specifically mentioned that the petitioner was posted in Election Cell on oral orders. A specific affidavit was filed but the same has not been considered. In order dated 18.1.1994 passed by Deputy Inspector of Police, Ferozepur Range, Ferozepur, simply it has been mentioned that the misconduct of the petitioner has been proved from the evidence placed on record and the petitioner had failed to produce on record any convincing material in his defence and his appeal was rejected being devoid of any merit. The order passed by the SSP, Faridkot was maintained by Deputy Inspector General of Police, Ferozepur Range, Ferozepur.

By taking into consideration the orders passed by the concerned authorities, it appears that the impugned orders are totally non-speaking and are contrary to the facts as mentioned above. In reply to the show cause notice as well as charge-sheet, even the affidavit filed by senior officer has not been considered.

In view of the facts mentioned above, the petition is allowed and the impugned order dated 10.7.2013 passed by respondent No.2-i.e. Director General of Police, whereby, revision petition filed against order dated 17.1.1994, 18.1.1994, 19.1.1994, 18.6.1994 and 21.6.1994 has been dismissed, is set aside. Respondent No.2 is directed to reconsider the case of the petitioner within a period of two months from the date of receipt of copy of the order and to pass fresh order by taking into consideration the

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grounds of revision petition.

In case personal appearance of the petitioner is required for hearing then the same be afforded to him.

August 01, 2016
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes