

CWP No. 23715 of 2016

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

**CWP No. 23715 of 2016
Date of Decision : 17.11.2016**

EHC Roshan Lal

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. R.S. Mamli, Advocate for the petitioner.

Anupinder Singh Grewal, J.(Oral)

The petitioner has prayed for issuance of a writ of certiorari for quashing the order dated 05.01.2015 (Annexure P-1), whereby he has been imposed punishment of stoppage of one future increment with temporary effect, order dated 25.06.2015 (Annexure P-2) whereby punishment has been enhanced to stoppage of three annual increments with cumulative effect and order dated 11.09.2015 (Annexure P-3), whereby his appeal there against has been rejected.

The petitioner was posted as a Constable at Gurgaon. He was proceeded against departmentally for having deposed in a criminal trial in a manner which led to acquittal of the accused. The petitioner was charge-sheeted. The charge sheet was served upon him on 08.08.2014 and he submitted his reply thereto. After consideration of his reply an Enquiry

Officer was appointed to examine the charges against the petitioner. The

Enquiry Officer after examining the departmental witnesses and affording adequate opportunity to the petitioner to present his defence, arrived at the conclusion that the charges stood proved against the petitioner. The competent authority after examining the report of the enquiry officer, furnishing a copy thereof to the petitioner and considering the reply of the petitioner, arrived at the finding that punishment of stoppage of one increment with future effect be imposed upon the petitioner. The petitioner preferred an appeal thereagainst to the Commissioner of Police, who issued notice to the petitioner as to why the punishment be not enhanced to stoppage of five annual increments with cumulative effect. The petitioner submitted his reply thereto and after consideration of the same, the appellate authority held that the petitioner be imposed punishment of stoppage of three annual grade increments with cumulative effect.

Learned counsel for the petitioner has contended that the punishment of stoppage of three annual grade increments with cumulative effect is grossly disproportionate to the misconduct and enhancement of punishment was uncalled for in the facts and circumstances of the present case. He has further contended that in view of Rule 16.28 of the Punjab Police Rules, 1934, the reviewing authority before enhancing the punishment should have reinvestigated the matter.

It is apparent from the perusal of the enquiry report that the charges against the petitioner were rather grave. It was the charge against him that while deposing in a case, wherein the police party had been attacked by liquor mafia, he had identified only one of the three accused,

namely, Anand and in his cross-examination had stated that even accused Anand did not cause any injury to the police party. Thus, all the three accused were acquitted in the trial. It was defence of the petitioner before the Enquiry Officer that he was not conversant with the English language and he could not understand the questions being posed to him in cross examination. However, his explanation has not been found worthy of acceptance by the enquiry officer.

It is well settled that interference in matters pertaining to disciplinary proceedings would be called for only in those cases, where there is manifest illegality or the punishment is grossly disproportionate to the alleged misconduct, which would shock the conscience of the Court. Judicial review is limited to the manner in which the decision is taken rather than the decision making process as such. In the instant case the findings of the Enquiry Officer as well as impugned order appear to be reasonable and have been passed after affording adequate opportunity to the petitioner and considering his defence.

Insofar as the contention of learned counsel for the petitioner that in terms of Rule 16.28 reviewing authority had to reinvestigate the matter before enhancing the punishment is concerned, the same is devoid of any merit. A perusal of Rule 16.28 reveals that the reviewing authority may call for record of the case and uphold, enhance, modify or annul the order passed or make further investigation. It is , thus, not mandatory for the reviewing authority to make further investigation if he has to enhance the punishment.

Rule 16.28(3) of the Punjab Police Rules, 1934 provides that in case the reviewing authority intends to enhance the punishment awarded by the competent authority then a show cause notice has to be served upon the petitioner. It is not the case of the petitioner that no show cause notice was served to him. The show cause notice had duly been served and reply of the petitioner was taken into consideration while passing the order enhancing the punishment.

In the light of the aforementioned facts and circumstances, the punishment of withholding three annual grade increments with cumulative effect cannot be, in any manner, said to be disproportionate to the nature of misconduct. A police officer, who deposes in the trial Court in a manner, which helps the accused to escape the rigour of punishment, should not expect any leniency.

Consequently, I do not find any merit in the present petition, which stands dismissed.

November 17, 2016.

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**(ANUPINDER SINGH GREWAL)
JUDGE**

Whether speaking/reasoned? Yes

Whether reportable? Yes/No