

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

Sr. No.138

CWP-5423-2016

Decided on : 21.03.2016

Noor Mohd.

..... Petitioner

VERSUS

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

To be referred to Reporters or not?

Whether the judgment should be reported in the digest?

Present: Mr.Pradeep Virk, Advocate, for the petitioner.

DEEPAK SIBAL, J.

Through the present petition, the petitioner seeks quashing of order dated 06.08.2012, passed by the Superintendent of Police, Mewat at Nuh, through which on account of his conviction under the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'Act'), he has been ordered to be dismissed from service. Also under challenge are orders dated 07.11.2012 and 07.01.2015, rejecting the petitioner's appeal and revision, respectively, against the aforementioned order of dismissal.

A few facts may be noticed.

While the petitioner was serving the Haryana Police as Head Constable, FIR No.9, dated 19.02.2008, under Section 7 of the Act, was registered against him. On the registration of the aforementioned FIR,

the petitioner was subjected to a departmental inquiry and having been found guilty in the same, was ordered to be reduced in rank. Appeal preferred by the petitioner against the order of reduction in rank, was dismissed by the appellate authority. During the time the petitioner was serving on the reduced rank of Constable, vide judgment dated 18/19.01.2012, passed by the Special Judge, Nuh, he was convicted under the Act and as a result thereof, sentenced to undergo rigorous imprisonment for a period of two years along with fine. An appeal filed against the aforesaid judgment convicting the petitioner is stated to be pending before this Court with no stay on the petitioner's conviction. As a result of the above referred conviction, the petitioner, after following of due procedure, through the impugned order, has been ordered to be dismissed from service. His appeal and revision against the order of dismissal have also been rejected which are also challenged through the present petition.

Learned counsel for the petitioner submits that at an earlier point of time, the petitioner having been inflicted the punishment of reduction in rank, for the same cause could not have been later dismissed from service. It is further argued that the officer who had dismissed the appeal of the petitioner at the time when the punishment of reduction in rank had been inflicted was the same officer who had also dismissed his revision petition against the later order of his dismissal which according to learned counsel for the petitioner, was impermissible in law.

After having heard counsel for the petitioner and perusal of the record, I am of the opinion that the present petition must fail.

It is true that at an earlier point of time at the stage of lodging of FIR against the petitioner under the Act, after having been subjected to a departmental inquiry and having been found guilty therein he was inflicted the punishment of reduction in rank. However, later on being convicted for corruption charges, as per Rule 16.2(2) of the Punjab Police Rules, 1934 (Vol. II) (as applicable to the State of Haryana) (hereinafter referred to as the 'Rules'), there was no other punishment which could have been inflicted on him but dismissal from service. This was as per the mandate of a statutory Rule, which reads as follows: -

“16.2 Dismissal

(1) Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect or continued misconduct proving incorrigibility and complete unfitness for police service. In making such an award regard shall be had to the length of service of the offender and his claim to pension.

[Explanation: - For the purposes of sub-rule (1), the following shall, inter alia, be regarded as gravest acts of misconduct in respect of a police officer, facing disciplinary action:

- (i) indulging in spying or smuggling activities;
- (ii) disrupting the means of transport or of communication;
- (iii) damaging public property;
- (iv) causing indiscipline amongst fellow policemen;
- (v) promoting feeling of enmity or hatred between different classes of citizens of India on grounds of religion, race, caste, community or language;
- (vi) going on strike or mass casual leave or resorting to mass abstentions;
- (vii) spreading disaffection against the Government; and
- (viii) causing riots and the like].

(2) An enrolled police officer sentenced judicially to rigorous imprisonment exceeding one month or to any other punishment not less severe, shall, if such sentence is not quashed on appeal or revision, be dismissed. An enrolled police officer sentenced by a criminal court to a punishment of fine or simple imprisonment, or both, or to rigorous imprisonment not exceeding one month, or who, having been proclaimed under Section 87 of the Code of Criminal Procedure fails to appear within the statutory period of thirty days may be dismissed or otherwise dealt with at the discretion of the officer empowered to appoint him. Final departmental orders in such cases shall be postponed until the appeal or revision proceedings have been decided, or until the period allowed for filing an appeal has lapsed without appellate or revisionary proceedings having been instituted. Departmental punishments under this rule shall be awarded in accordance with the powers conferred by rule

16/1.

(3) When a police officer is convicted judicially and dismissed, or dismissed as a result of a departmental inquiry, in consequence of corrupt practices, the conviction and dismissal and its cause shall be published in the Police Gazette. In other cases of dismissal when it is desired to ensure that the officer dismissed shall not be re-employed elsewhere, a full description roll, with particulars of the punishments, shall be sent for publication in the Police Gazette.”

(Emphasis supplied)

Merely because on an earlier occasion, at the stage of lodging of the FIR, the petitioner had been reduced in rank, would give no weight to the argument of learned counsel for the petitioner that after his conviction, the punishment granted earlier could not be substituted with dismissal from service especially when the afore-quoted statutory Rule permits the same. In fact, a member of the disciplinary force to which the petitioner belonged has and should not have any place for persons convicted of corruption charges.

The arguments of learned counsel for the petitioner that the person who had earlier dismissed the petitioner's appeal against the order of reduction in rank, could not have passed the order in revision against the order of dismissal, also needs to be considered only to be rejected.

It is true that during the pendency of the trial which ensued against the petitioner in pursuance to the aforementioned FIR under the Act, he was earlier ordered to be reduced in rank and that Mr. Shrinivas Vashisht, who was the then Inspector General of Police, Faridabad, had dismissed the petitioner's appeal filed by him against the imposition of penalty of reduction in rank. However, in view of his conviction, as per Rule 16.2(2) of the Rules when the petitioner was ordered to be dismissed from service, there was no bar for his revision petition to be

heard and decided by Mr. Shrinivas Vashisht, who at that time, on promotion, had become Director General of Police, Haryana. Both the afore-mentioned matters had been decided by him holding the respective posts ex-officio. It would not matter that it was the same person who has decided both the matters especially in the absence of any allegation of bias or malafides against the officer. Rather the impugned order dated 07.01.2015 shows that while upholding the petitioner's dismissal, the revisional authority to avoid double jeopardy has granted relief to the petitioner by setting aside the earlier order of reduction in rank.

Dismissed.

No costs.

21.03.2016
shamsher

[DEEPAK SIBAL]
JUDGE