

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

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Civil Writ Petition No.23696 of 2015
Date of Decision: May 16th, 2017

Kulwinder Kumar

...Petitioner

Versus

The State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Veneet Sharma, Advocate
for the petitioner.

Mr. Harkesh Manuja, Additional Advocate General, Punjab.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court assailing the order dated 16.03.2015 (Annexure P-11) by which a fresh inquiry has been ordered against the petitioner and the order dated 03.11.2014 (Annexure P-12) whereby the petitioner has been held unfit for promotion in the light of the fact that a fresh inquiry was likely to be initiated against him.

2. Learned counsel for the petitioner contends that on the basis of the report dated 02.06.2004 (Annexure P-2), petitioner was charge-sheeted and an order dated 15.09.2004 (Annexure P-3) passed imposing a punishment of stoppage of two increments without cumulative effect. Appeal against which was preferred by the petitioner which resulted in his exoneration by the Appellate Authority on 07.03.2006. Now by the impugned order dated 16.03.2015 (Annexure P-11), a fresh inquiry has been initiated against the petitioner on the basis of the same report dated 02.06.2004 (Annexure P-2) which the counsel contends is not permissible in law as the earlier proceedings which were initiated against the petitioner on the basis of this very report have attained finality upto the Appellate Authority. He invokes the principle of double jeopardy. Prayer

(Annexure P-11) initiating fresh inquiry against the petitioner and a consequence thereof, the order dated 03.11.2014 (Annexure P-12), holding the petitioner unfit for promotion.

3. The factual matrix could not be disputed by learned counsel for the State, however, he submits that the earlier inquiry which was initiated and conducted against the petitioner was for shortage of 90 trees, whereas as per report dated 02.06.2004 (Annexure P-2), there was a shortage of 1685 trees. He contends that the earlier inquiry which was initiated was proceeded on a wrong premise that there was only a shortage of 90 trees, whereas it was much higher than that. He, therefore, prays that fresh inquiry which has been initiated against the petitioner is fully justified.

4. I have considered the submissions made by the counsel for the parties and with their assistance, have gone through the record of the case.

5. The facts, as have been narrated by the counsel for the petitioner and recorded above, being not in dispute, are not being repeated here.

6. The fact remains that the basis for the fresh inquiry which is now being initiated against the petitioner is the report dated 02.06.2004 (Annexure P-2), on the basis of which initially an inquiry had been held where the petitioner was punished with stoppage of two annual increments without cumulative effect vide order dated 15.09.2004 (Annexure P-3). The said order of punishment was set aside by the Appellate Authority on 07.03.2006 exonerating the petitioner. The said order has attained finality. The fresh inquiry which has been initiated against the petitioner is again based upon the report dated 02.06.2004 (Annexure P-2), which in the light

of the earlier finalisation of the disciplinary proceedings against the petitioner, cannot sustain as it would violate the basic principle of double jeopardy having been so engraved in the Constitution of India. The impugned orders dated 16.03.2015 (Annexure P-11) and 03.11.2014 (Annexure P-12) are, therefore, hereby quashed.

7. The claim of the petitioner for promotion to the post of Deputy Ranger shall be considered by the competent authority in accordance with law within a period of three months from today.

8. The writ petition stands disposed of accordingly.

May 16th, 2017
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No