

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

**CWP No. 26936 of 2013 (O&M)
Date of Decision: 07.04.2017**

Narinder Singh

...Petitioner

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Balram Singh, Advocate
for the petitioner.

Mr. T. N. Sarup, Additional Advocate General, Punjab.

JAISHREE THAKUR, J. (Oral)

1. By way of this writ petition, the petitioner has challenged the impugned order dated 13.09.2013 (Annexure P-19) passed by respondent No. 3 by which punishment of stoppage of one annual increment has been imposed upon the petitioner.

2. In brief, the facts are that an FIR No. 82 dated 11.09.2005 was lodged on the statement of one Sh. Bhagwan Singh regarding loss of Rs. 7,00,000/- and some documents against certain persons. The trial Court framed charges against the accused and the petitioner was summoned to appear as an official witness on 15.09.2006. The summons were returned by the Process Server with a note that the petitioner was on VIP duty and, therefore, summons could not be effected upon him. The Court tried to serve the petitioner as official witness but the summons were returned each time and eventually evidence of the prosecution was closed. Aggrieved against the closure of the evidence, the complainant filed a criminal petition

bearing CRM-M-37109-2010 contending that the investigating agency has failed to assist the Court by offering its deposition which resulted in grave miscarriage of justice. The High Court in CRM-M-37109-2010 vide order dated 31.01.2012 set aside the impugned order closing the evidence and granted one more opportunity to examine the investigating officer as a witness. While disposing of the petition, the Director, Prosecution was directed to hold an enquiry in the role of the ADA/DA incharge of the proceedings and ensure accountability for the lapse. Thereafter, an enquiry was initiated in which notice was issued to the petitioner. The Enquiry Officer found all allegations levelled against the petitioner as 'proved' by coming to a conclusion that he did not attend the Court of learned Judge despite summons being sent and being informed by Rajiv Kumar, Public Prosecutor twice to appear for the date of hearing. After the receipt of the enquiry report, the petitioner was issued a show cause notice by the Commissioner of Police who after giving opportunity of hearing to the petitioner ordered on 10.01.2012 for forfeiture of one year's approved service on temporary basis holding up yearly increment (Annexure P-15).

3. Against the said order, an appeal was preferred before the Additional Director General of Police (Law & Order) who, by order dated 13.09.2012, came to the conclusion that the petitioner herein was not at fault and set aside the order of punishment as awarded by the Commissioner of Police (Annexure P-16) . However, the aforesaid order was withdrawn by the Additional Director General of Police (Law & Order) through a letter dated 17.12.2012 (Annexure P-17) which was addressed to the Commissioner of Police under the signatures of Assistant Inspector General of Police (Law & Order). A civil writ petition bearing CWP No. 13759 of

2013 was filed challenging the impugned order dated 17.12.2012 which came to be disposed of *in limini* by this Court on 02.07.2013 with a direction to reconsider the appeal of the petitioner since initially order dated 13.09.2012 accepting the appeal of the petitioner was totally non-speaking. Thereafter, the appeal was reconsidered by the Additional Director General of Police (Law & Order) on 10.09.2013. The Appellate Authority while noting the sequence of events concluded that there was no merit in the appeal.

4. Counsel for the petitioner submits that the petitioner was never served any copy of the summoning orders issued by the trial Court to appear as witness. It is submitted that a perusal of the Annexure, which are the summoning orders and report thereon, would reflect that summons were actually never served upon the petitioner and, therefore, being unaware of the summoning orders of the Court, he was not in a position to appear and depose.

5. Per contra, counsel appearing on behalf of the respondents-State submits that the petitioner, being the Investigating Officer in the FIR that was registered in the year 2005, was an important witness and it became essential for him to depose in the matter and despite several opportunities to appear before the trial Court, he failed to do so. Furthermore, the High Court had directed the Director, Prosecution to hold enquiry in the role of ADA/DA incharge of the proceedings and to ensure accountability for the lapse in the prosecution witnesses not appearing in support of the complaint that had been filed.

6. I have heard learned counsel for the parties and have perused the record of the case.

7. The impugned order dated 13.09.2013 (Annexure P-19) has been passed after the matter was remanded back from the High Court in CWP No. 13759 of 2013. A perusal of the same shows that the authority concerned has noted the factual position pertaining to the case as well as the observations made by the learned Single Judge in CRM-M-37109-2010, wherein the learned Single Judge took a serious view on the lapse on the part of the Investigating Officer who did not offer himself as a witness despite several opportunities having been given by the trial Court to appear and depose in the said matter. The Additional Director General of Police, being influenced by the opinion formed by the learned Single Judge in CRM-M-37109-2010, dismissed the appeal without going into any of the reasons or objections as raised by the petitioner. The respondent-authority has not gone into the grounds of appeal at all and passed a non-speaking order. The learned Single Judge in CRM-M-37109-2010 had observed that the prosecution had taken note that an enquiry had been conducted against the petitioner and HC Rajiv Kumar and punishment of reduction of two years' service had been entered into their service book for failure to associate themselves with the prosecution. However, the petitioner had challenged that enquiry by taking a plea that he had never been served with the copy of the summons directing him to be present before the Court. While deciding CWP No. 13759 of 2013, learned Single Judge had remanded the matter back for a fresh decision to be taken on the appeal filed by the petitioner against the order of punishment, it had become incumbent upon the authority concerned to look into the matter afresh without being influenced by any observation that had been made by the learned Single Judge in CRM-M-37109-2010. It would be worthwhile to note that learned

Single Judge while deciding CRM-M-37109-2010 had given an opinion that the petitioner was guilty of not associating himself with the proceedings. However, the petitioner was not a party in the proceedings in CRM-M-37109-2010 so as to raise any defense whatsoever. By the order dated 02.07.2013 passed in CWP No. 13759 of 2013, the learned Single Bench had clearly given a direction to consider the appeal preferred by the petitioner against the order of punishment afresh which has not been done. Therefore, the impugned order dated 13.09.2013 (Annexure P-19), which is wholly unreasoned, passed without any consideration of the grounds of appeal, is hereby set aside with a direction to the respondents to pass fresh orders on appeal within a period of three months after giving the petitioner a reasonable opportunity of hearing.

April 07, 2017
Ansari

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No