

C.W.P. No. 20599 of 2017 (O&M)

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 20599 of 2017 (O&M)

DATE OF DECISION:07.11.2017

Ex. Constable Mohinder Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. LS Sidhu, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

C.M. No. 15668 of 2017

Application is allowed as prayed for.

C.M. No. 15669 of 2017

This application has been filed for placing on record correct translation of Annexure P-4.

Application is allowed and correct translation of Annexure P-4 is taken on record.

C.W.P. No. 20599 of 2017

The prayer in the present petition is for quashing of impugned orders dated 15.5.1995 (Annexure P-4) and 31.1.1996 (Annexure P-6), whereby, the petitioner has been dismissed from service. A further prayer has also been made by the petitioner for his reinstatement in service during

pendency of the writ petition.

Briefly, the facts of the case as made out in the present petition, are that the petitioner was appointed as Constable on 9.11.1989 and was posted as Santri on 1.9.1994. As per allegations, while the petitioner was on duty, he consumed liquor and abused other police officials. He also refused to perform the duty assigned to him. The petitioner was issued chargesheet on 29.10.1994 and thereafter regular inquiry was conducted against him by DSP (D) Majitha. The inquiry report was presented before Senior Superintendent of Police, Majitha, who even issued show cause notice to the petitioner. Reply of said show cause notice was submitted by the petitioner and finding the same to be unsatisfactory, the impugned order of dismissal from service was passed on 15.5.1995. Aggrieved by said order, the petitioner filed departmental appeal to Deputy Inspector General of Police, Border Range, Amritsar, which was also dismissed on 31.1.1996.

Orders dated 15.5.1995 and 31.1.1996 are subject matter of challenge in the present petition.

Learned counsel for the petitioner submits that the impugned orders have been passed in violation of principles of natural justice as the petitioner was not supplied copies of the documents relied upon during inquiry. Learned counsel further submits that the punishing authority while passing order of dismissal has not applied its mind, whereas, the compliance of Rule 16.38 of Punjab Police Rules is mandatory and non-compliance of said Rule makes the inquiry null and void. Learned counsel also submits that the punishment of dismissal from service is to be awarded in case of gravest Act or misconduct but this fact has not been taken into consideration. It is also the argument of learned counsel that the appellate

authority has not taken into consideration the grounds of appeal and no finding has been given. At the end, learned counsel for the petitioner submits that the punishment of dismissal from service keeping in view the charge against the petitioner is on the higher side and punishment on the lesser side could have been awarded.

Heard the arguments advanced by learned counsel for the petitioner and have also gone through the impugned orders and other documents available on the file.

The facts regarding appointment of the petitioner as Constable on 9.11.1989 and his posting at different places as well as issuance of chargesheet, filing of reply to the chargesheet, conducting of regular inquiry, ultimately dismissal of the petitioner from service, rejection of appeal as well by the appellate authority are not disputed.

The petitioner was issued chargesheet on 29.10.1994 and after considering reply of the chargesheet, regular department inquiry was conducted against the petitioner by DSP (D), Majitha. The inquiry report was presented before SSP Majitha, who issued show cause notice to the petitioner. Reply to show cause notice was submitted by the petitioner. Finding reply to the show cause notice to be unsatisfactory, the impugned order of dismissal from service was passed on 15.5.1995. Aggrieved by said order, the petitioner filed departmental appeal to Deputy Inspector General of Police, Border Range, Amritsar, which was also dismissed on 31.1.1996.

The impugned order of dismissal has been challenged only on the ground that the relevant documents were not supplied and no adequate opportunity was granted to the petitioner before passing of impugned order of dismissal and as such the punishment is on the higher side keeping in

view the allegations levelled against him.

During arguments, a query was put to learned counsel for the petitioner to explain the delay as impugned order of dismissal was passed on 15.5.1995 and even the appeal was dismissed on 31.1.1996. The present petition has been filed to challenge both the aforesaid orders after a delay of more than 21 years. Learned counsel for the petitioner has not been able to give any satisfactory explanation except the only submission that the petitioner was not aware about passing of impugned orders, which is not acceptable as not only the order was given to the petitioner but he was associated in the inquiry proceedings as well. Against order of dismissal, an appeal was also filed by the petitioner. The arguments raised before the punishing authority as well as the appellate authority were also the same that adequate opportunity of hearing was not given and copies of documents were not supplied to him. A categorical finding has been recorded in the impugned order of dismissal that the copies of all the documents as asked for were delivered to the petitioner even by the inquiry officer and adequate opportunity was given to produce his defence but he failed to do so. It was held in the inquiry that the petitioner while on duty consumed liquor and abused his senior officers. The allegations levelled against him were proved from the statements of the witnesses. Similarly the appellate authority has also given a finding that the petitioner was given adequate opportunity to defend himself and he effectively cross-examined the witnesses. The petitioner was also given an opportunity to lead his defence in which he submitted list of witnesses stating that he wished to examine the witnesses mentioned in the application. He did not want to produce any witness summoned earlier. All the witnesses were examined in the presence of the

petitioner and he was also given opportunity to cross-examine the witnesses. It has also been held that the departmental inquiry was conducted strictly in accordance with Rule 16.24 of Punjab Police Rules. Moreover, serious allegations of misconduct were levelled against the petitioner as he was not only found to be in a drunken condition but abused the senior officers as well. He was posted in terrorists stricken area, which was the most vital duty but he refused to perform the same. On the asking of senior officer to perform his duty, not only he misbehaved but abused him and managed to escape by riding on a private scooter and thereafter could not be got medically examined. The impugned order of dismissal was passed on 15.5.1995 and thereafter appeal was dismissed on 31.1.1996. The present petition has been filed after a delay of more than 21 years. Neither in the averments made in the petition nor during arguments, satisfactory explanation has been given to condone the delay. The petitioner himself has accepted the order passed by the punishing authority as well as by the appellate authority and it was not challenged even within the reasonable time. The impugned orders suffers from delay and laches and no satisfactory explanation has come forward.

It has been held in various judgments that the Court has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without any adequate reason, approaches the Court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether it is at a belated stage and is to be entertained or not. The petitioner has approached this Court after a delay of more than 21 years and more so no satisfactory explanation has been given. Moreover, while exercising power under

Article 226 of the Constitution of India, the Court is to see that the discretion must be exercised judiciously and reasonably. The petitioner cannot be allowed to take unreasonably long time to challenge the impugned orders i.e. after delay of more than 21 years. When the petitioner himself is not vigilant about his rights, the discretionary relief under Article 226 of the Constitution of India cannot be granted. No doubt the powers of this Court under Article 226 of Constitution of India is discretionary but it is to be exercised in a judicious and reasonable manner.

In the present case, there is delay of more than 21 years and as such the claim of the petitioner is hopelessly time barred as he has slept over the matter for years together. No explanation, whatsoever, has been given as to how the delay of years together can be condoned. Simply by saying that the petitioner was not aware about passing of the orders is not sufficient to condone the delay as he was associated in the inquiry and was given adequate opportunities on all the occasions.

Accordingly, the present petition is dismissed on merits as well as on delay and laches.

November 07, 2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes