

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

CWP No.10390 of 2013 (O&M)

Date of decision: 28.08.2018

Sukhwinder Singh

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. R.K. Arora, Advocate for the petitioner(s).

Ms. Harsimrat Rai, DAG, Punjab.

Jitendra Chauhan, J. (Oral)

Through the present petition, the petitioner seeks quashing of impugned order dated 05.04.2013 (Annexure P-9) whereby respondent No.2 without issuing any notice or granting an opportunity of hearing has suto moto cancelled the order dated 15.09.2011 (Annexure P-8) passed by respondent No.3 vide which the petitioner was earlier reinstated into service by forfeiting his five years future service for increments etc., which has now resulted again in dismissal of the petitioner after his reinstatement.

On behalf of the petitioner, it is asserted that the impugned order dated 05.04.2013 (Annexure P-9) passed by respondent No.2 is totally illegal and arbitrary and in violation of principle of natural justice as the same had been passed at the back of the petitioner without giving any notice or affording opportunity of hearing to him. No reason has been

assigned as to how the order dated 15.09.2011 (Annexure P-8) is not in accordance with law. The order dated 15.09.2011 (Annexure P-8) was passed by respondent No.3 being competent authority as head of Armed Police, on a mercy petition of the petitioner, whereby the future increments for the next five years were stopped with cumulative effect. However, respondent No.2 taking *suo motu* cognizance of the matter again passed the impugned order resulting into fresh dismissal of the petitioner causing great prejudice to the petitioner.

On the other hand, learned State counsel submits that once the appeal of the petitioner was dismissed upto the level of respondent No.2-Director General of Police, Punjab, then, respondent No.3-Director General of Police, Armed Battalion, Jalandhar had no authority to entertain the mercy appeal filed by the petitioner. However, she fairly accedes that no notice or opportunity of hearing was afforded to the petitioner by respondent No.2 while setting aside the order dated 15.09.2011 (Annexure P-8), passed by respondent No.3. In support of her contention, learned State counsel cites **Avtar Singh Constable Vs. State of Punjab and others**, 2003(4) SCT 564.

Heard.

The petitioner was dismissed from service due to absence of 98 days on account of illness. While dismissing the petitioner, the punishing authority had also considered his conduct regarding involvement in FIR No.124 dated 23.04.2002, registered under Sections 506, 336 read with Section 34 IPC, which was pending trial at the time, later on, the petitioner was acquitted of the charges. The appeal against

the order of dismissal was also dismissed by respondent No.2, however, the petitioner was reinstated into service on a mercy petition, vide order dated 15.09.2011 (Annexure P-8) passed by respondent No.3. Thereafter, by virtue of impugned order dated 05.04.2013 (Annexure P-9) passed by respondent No.2, the petitioner was dismissed from service. From the record, it is emerges that while passing the impugned order dated 05.04.2013 (Annexure P-9), no notice or personal hearing was afforded to the petitioner. The order of reinstatement was passed by Director General of Police, Armed Battalion whereas, the order impugned had been passed by Director General of Police, Punjab. There is nothing on record to suggest that after reinstatement in service, the petitioner was again charge-sheeted. Once the petitioner who was a regular employee was reinstated into service while setting aside the order of dismissal, then, the impugned order passed by respondent No.2 without affording an opportunity of hearing is not sustainable in the eyes of law. Accordingly, the impugned order dated 05.04.2013 (Annexure P-9) is set aside. The ratio of law laid down in Avtar Singh's case (supra) is distinguishable on facts of the present case.

Disposed of.

However, respondent No.2-Director General of Police, Punjab is free to charge-sheet the petitioner and lead afresh enquiry.

28.08.2018

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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :

Yes

No

Whether Reportable :

Yes

No