

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

CWP No.22157 of 2016 (O&M)

Date of decision: 18.09.2018

Chunni Lal

.....Petitioner

Versus

The State of Haryana and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sachin Gupta Ladwa, Advocate,
for the petitioner.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

Ritu Bahri, J.

The petitioner is seeking a writ of certiorari for quashing the orders dated 09.08.2016, 31.10.2011, 13.12.2010 & 29.09.2010 (Annexures P-8, P-4, P-3 & P-1 respectively), vide which, punishment of stoppage of two annual increments with temporary effect was imposed upon him. Petitioner is also seeking quashing of the order dated 15.11.2010 (Annexure P-2), vide which, he has been reverted from the rank of SI to ASI.

The petitioner was charge sheeted on the ground that he was posted as investigating officer at Police Station, City Thanesar with regard to the investigation of FIR No.217 dated 24.04.2010, under Sections 148, 149, 323, 452, 506 IPC. However, he was negligent while conducting the investigation and registered a case after the delay of four days. Accordingly, a regular departmental enquiry was conducted against the petitioner, wherein he was found guilty of the charge. Thereafter, the Superintendent of Police, Kurukshetra-respondent No.4, vide order dated

29.09.2010 (Annexure P-1) awarded punishment of stoppage of his two annual increments with temporary effect. Further, vide order dated 15.11.2010 (Annexure P-2), he was reverted from the rank of SI to ASI. Against the said order, petitioner filed an appeal before the Inspector General of Police, Ambala, which was dismissed vide order dated 13.12.2010 (Annexure P-3). Aggrieved by the said order, he filed a revision before the DGP, Haryana, which was dismissed vide order dated 31.10.2011 (Annexure P-4). Thereafter, he filed a mercy appeal (Annexure P-5) before respondent No.1 in June, 2012, but to no avail. Consequently, he approached this Court by filing CWP No.4948 of 2016, which was disposed of vide order dated 16.03.2016 (Annexure P-6) by giving direction to the respondents to take final decision of his mercy appeal. Pursuant to the said order, respondent No.1 remanded the mercy petition back to respondent No.2 with direction to pass a speaking order after giving fresh hearing to the petitioner. Copy of the said letter is annexed as Annexure P-7. Ultimately, respondent No.2 dismissed the mercy appeal vide order dated 09.08.2016 (Annexure P-8) by observing that the version of the petitioner that he was not given permission to record the statement of injured, could not be accepted as the injuries were simple in nature i.e. under Section 323 IPC and a person, who received only minor injuries, could not be declared **unfit for giving statement**. Hence, the present petition.

Learned counsel for the petitioner has argued that the occurrence took place on 21.04.2010 at 6.00 P.M. and the information from Government Hospital was received in the police station on 22.04.2010. Complainant/injured was unfit to make statement from 22.04.2010 till 23.04.2010. On 24.04.2010, his statement was recorded and FIR was

registered immediately. Learned counsel has referred to the statement of the doctor (Annexure P-9) to show that injured/complainant Tushar Yadav was unfit to make statement on 22.04.2010. He was declared fit to make statement on 24.04.2010. Learned counsel has further argued that in view of statement of doctor (Annexure P-9), petitioner cannot be found negligent in pursuing the matter because he had visited the hospital immediately after getting information with regard to the occurrence. After registration of the FIR, investigation was carried out. Statements of witnesses namely Atul Aggarwal and Satish were recorded under Section 161 Cr.P.C. On 01.05.2010, petitioner had gone to the LNJP Hospital, Kurukshetra for getting X-ray report regarding injuries, but the concerned doctor namely Lajja Ram had already been proceeded on leave for one month. The petitioner received the X-ray report on 10.05.2010, as per which, no bone injury was found. After receiving the medical report, the petitioner had tried to arrest accused person, namely Gaurav, but he was not present there. However, Ram Lal, Ex-Sarpanch, Village Amin and Mahipal were present there and they told that Gaurav had gone to Delhi for interview, which was fixed for 16.05.2010. On 15.05.2010, Pawan Kumar, Rajesh, Ram Lal, Ex.-Sarpanch, Jasmer, Raghbir and Ashok Kumar, who were the Member Panchayat of both the sides, came to the police station and stated that all were school going children. There was no prior enmity between the parties and they were ready to compromise. Thereafter, the investigation was handed over to another officer. Even Tushar Yadav had appeared before the trial Court as PW-5 and stated that after admission in the hospital from 21.01.2010 to 24.04.2010, the petitioner had recorded his statement, as earlier he was declared unfit to make statement. Hence, there was no delay

in registration of the FIR on the part of the petitioner. Learned counsel for the petitioner has further argued that the accused persons were acquitted by the Court of Chief Judicial Magistrate, Kurukshetra vide judgment dated 16.02.2011 (Annexure P-10) as the complainant and other witnesses had turned hostile.

Learned State counsel has argued that after being enrolled as Constable in Police Department, Haryana on 01.05.1973, the petitioner was promoted as officiating Head Constable w.e.f. 28.08.1989 and was confirmed as Head Constable w.e.f. 31.01.1995. He was promoted as officiating ASI w.e.f. 02.11.1999 and was confirmed as such w.e.f. 31.08.2004. The petitioner was further promoted as Sub Inspector on provisional basis as a stop gap arrangement w.e.f. 12.02.2010. Learned State counsel further argued that in view of the fact that FIR was registered after the delay of four days and regular departmental enquiry was ordered, the allegation against the petitioner was duly proved. After issuing show cause notice dated 10.09.2010, punishing authority has imposed punishment of stoppage of two increments with temporary effect vide order dated 29.09.2010 (Annexure P-1). Keeping in view the above said punishment, he was reverted to the post of ASI vide order (Annexure P-2), as he had been promoted to the post of Sub Inspector on provisional basis as a stop gap arrangement w.e.f. 12.02.2010. He could not be promoted as officiating Sub Inspector being under the currency of punishment. Learned counsel has further argue that appeal filed by the petitioner has been rightly dismissed. The petitioner has retired from service on 31.08.2012 and even after his retirement, a departmental enquiry was conducted against him for not conducting investigation properly in case FIR No.114 dated 13.01.2011,

under the NDPS Act, registered at Police Station, Ismilabad. He was found guilty in the said enquiry and punishment of cut of 2% in his pension was awarded vide order dated 06.09.2016 (Annexure R-1) passed by the Superintendent of Police, Kurukshetra.

After hearing learned counsel for the parties, this petition deserves to be allowed on the short ground that as per Annexure P-9, when Tushar Yadav-complainant was admitted in the hospital, the doctor on duty declared him 'unfit to make statement' on 22.04.2010 and 23.04.2010. Finally, at the time of discharge from the hospital on 24.04.2010, he was declared fit to make statement. Keeping in view the fact that it was doctor on duty, who had declared him 'unfit to make statement', the petitioner, who was Investigating Officer of the case, cannot be put to disadvantage for causing delay of four days in registering the FIR. Tushar Yadav, who was complainant/victim, while appearing as PW-5, also stated that he could not make statement before 24.04.2010, as he was unfit to make a statement. Hence, keeping in view (Annexure P-9), the Director General of Police should not have dismissed the appeal of petitioner on the ground that the injuries suffered by the complainant (Tushar Yadav) being simple in nature (under Section 323 IPC), he could not be declared 'unfit to make statement.' It is not the case of respondents/department that the doctor had not declared the complainant fit to make statement as per Annexure P-9. Hence, there was no delay in recording the FIR. After registration of the FIR on 24.10.2010, petitioner had conducted the investigation, but the same was handed over to another officer on 15.05.2010. Even this investigation shows that he had made attempts to arrest the accused person namely Gaurav, but had had gone to Delhi for interview, which was fixed for

16.05.2010.

In view of the above discussion, this petition is allowed and the impugned orders dated 09.08.2016, 31.10.2011, 13.12.2010 & 29.09.2010 (Annexures P-8, P-4, P-3 & P-1 respectively) along with order dated 15.11.2010 (Annexure P-2), vide which, petitioner has been reverted from the rank of SI to ASI, are set aside. Respondents are directed to grant two annual increments to the petitioner (which were withheld) along with all consequential benefits.

18.09.2018
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No