

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

CWP 24480/2018

Date of decision:25.09.2018

Gurmail Singh

.....Petitioner

v.

State of Punjab and others

.....Respondents

Coram: Hon'ble Mr.Justice Jaswant Singh

Present:- Mr.Surinder Thakur,Advocate for the petitioner.

Jaswant Singh,J,

Petitioner, a Sub Inspector with Punjab Police has filed this writ petition under Articles 226/227 of the Constitution seeking a writ in the nature of certiorari, quashing the impugned orders dated 16.5.2018(P-10), order dated 6.1.2017 (P-8), order dated 4.10.2017 (P-7) as well as order dated 15.9.2016 (Annexure P-4) whereby two years of approved service of petitioner was forfeited with permanent effect for the purpose of grant of annual increments. Further prayer is to direct the respondents to release all the service benefits accrued to the petitioner.

Facts, in nut shell are that during his posting at PS Sadar,Hoshiarpur case FIR NO.44 dated 16.4.2011 under Section 392 IPC was registered on the statement of complainant Amit Jain. The petitioner was investigating officer of the said case. During investigation a person namely Narinder Kumar @ Pappi son of Balbir Singh was arrested by the police of Model Town,Hoshiarpur who made a confession that he as well as one Varinder Kumar @ Banti had committed crime qua which aforesaid FIR was registered at PS Sadar Hoshiarpur. It is averred that since said Narinder

Kumar was already in jail, he was arrested in the said FIR on 5.4.2013 and challan was presented against him before the Court concerned. However, Varinder Kumar @ Banti was not arrested and in the year 2012 the petitioner was transferred from PS Sadar Hoshiarpur. Petitioner, again in the year 2012 was posted back at PS Sadar Hoshiarpur and investigation of case FIR No.144 dated 16.4.2011 under Section 392 IPC was entrusted to him. Accused Varinder Kumar @ Banti was arrested by the petitioner in the aforesaid case on 3.8.2013. However, family members of Varinder Kumar @ Banti filed CRM M No.29416 of 2013 on 3.9.2013 before this Court for handing over investigation of the case to any independent agency or higher police officer not below the rank of IPS. During the pendency of aforesaid petition before this Court the case file remained with the petitioner and it is alleged that due to pendency of the said petition, report under Section 173 Cr.PC/supplementary challan could not be filed against Varinder Kumar @ Banti. In the month of December/January 2013 petitioner was transferred from PS Sadar and the case file was handed over to MHC Vijay Kumar of PS Sadar Hoshiarpur. It is further alleged that due to rivalry between the police officials of PS Sadar Hoshiarpur, at the behest of SHO Prem Kumar, a departmental enquiry was initiated against petitioner on the charge that petitioner did not arrest Varinder Kumar @ Banti and no supplementary challan was filed against him. The petitioner having remained Investigating Officer of the said case, he was also allegedly entangled with the accused and a disciplinary enquiry initiated. Ultimately in the said enquiry, petitioner was held guilty whereafter he was issued a show cause notice dated 1.2.2016 by SSP Hoshiarpur-respondent no.5 for imposing major penalty. Petitioner replied the show cause notice. After considering his reply

and oral submission DIG Jalandhar Range, Jalandhar-respondent no.4 vide order dated 15.9.2016 (Annexure P-4) ordered forfeiture of two years approved service of the petitioner with permanent effect for the purpose of grant of increment. Aggrieved against the punishment awarded to him, petitioner filed appeal before Inspector General of Police, Jalandhar Zone II- which was dismissed vide order dated 4.10.2017 (P-7). Simultaneously petitioner also filed appeal before the DIG, Jalandhar Range, Jalandhar which was dismissed vide order dated 6.1.2017. Finally, petitioner filed appeal before the Director General of Police which was also dismissed vide order dated 16.5.2018 (P-10) and the punishment order dated 15.9.2016 passed by SSP Hoshiarpur was upheld. Hence this petition.

Heard learned counsel for the petitioner and perused the paperbook carefully.

The impugned orders 16.5.2018(P-10), order dated 6.1.2017 (P-8), order dated 4.10.2017 (P-7) as well as order dated 15.9.2016 (Annexure P-4) have been challenged on the ground that the punishment order is totally non-speaking while the appellate orders are based on the said non-speaking order and hence liable to be quashed.

After hearing the learned counsel for the petitioner and perusing the impugned orders, I do not find any merit in this writ petition and the same is liable to be dismissed.

A perusal of punishment order dated 15.9.2016(P-4) would show that while imposing the punishment it has been noticed that petitioner kept the file with him for almost nine months and did not prepare challan without any reason and was thus found to be negligent and careless towards his official duties. While passing the said order the punishing authority has

considered the enquiry report and it is only after concurring with the finding in the said report that the said order was passed.

Further, a perusal of the impugned order dated 4.10.2017 (P-7) passed by Inspector General of Police, Zone-II, Jalandhar would reveal that while dismissing the revision of the petitioner preferred against punishment order (P-4) it has categorically been held that pendency of criminal petition under Section 482 Cr.PC before this Court and preparation of challan were two separate issues and there was no bar to present supplementary challan in court during pendency of the petition before this Court. As regards the plea of the petitioner that he was exonerated by the earlier enquiry officer, it has been noticed that said finding was only preliminary assessment of the fact finding enquiry and not final finding in the Departmental Enquiry for imposing major penalty.

It is conceded before this Court that the enquiry proceedings were held in accordance with law and there is no infirmity in the same. It is further conceded that it is settled law that power of judicial review in disciplinary cases is limited and can be exercised only where the authority held the enquiry proceedings in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence or is such that no reasonable person would have reached.

In view of the above, finding no merit in this writ petition the same is hereby dismissed.

25.09.2018
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(Jaswant Singh)
Judge