

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

L.P.A. No.345 of 2014 in
Civil Writ Petition No.17624 of 2006
Reserved on : July 18, 2019
Date of decision: August 13, 2019

EHC Constable Subhash Chander ...Appellant

Versus

State of Haryana and others ...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr.Sat Narain Yadav, Advocate
for the appellant.

Mr.Gagandeep Singh Wasu, Addl.AG, Haryana.

HARINDER SINGH SIDHU, J.

1. For the reasons stated in CM No.826-LPA of 2014, the delay of 99 days in filing the appeal is condoned.
2. This Letters Patent Appeal has been filed against the judgment dated 05.10.2013 in CWP No.17624 of 2006 'EHC Constable Subhash Chander vs. State of Haryana and others' whereby the writ petition filed by the appellant was dismissed.
3. The appellant was enrolled as a Constable in the Haryana Police on 03.12.1988. Departmental enquiry was conducted against him on account of his absence from 04.09.1996 to 31.12.1996 i.e. 118 days. He was dismissed from service vide order dated 08.05.1997. His appeal and revision were dismissed by the Appellate and Revisional Authorities vide

orders dated 14.12.1997 and 08.12.1998.

4. He submitted a Mercy Petition before the Director General of Police, Haryana stating that his absence was due to illness and hence for reasons beyond his control and that the punishment of dismissal, in the circumstances, was excessive and harsh. The mercy petition was accepted vide order dated 26.09.2001. Considering all facts and circumstances and taking a lenient view the punishment of dismissal from service was reduced to stoppage of three increments with permanent effect.

5. Thereafter he rejoined duty and was promoted as Exemptee Head Constable in March, 2005.

6. About five years after the previous order, the successor Director General of Police issued a show cause notice dated 08.07.2006 to the petitioner as to why the order dated 26.09.2001 should not be reviewed and the punishment of dismissal earlier awarded be restored. The show cause notice stated that there was no provision in the rules for the Director General of Police to entertain a Mercy Petition after the revision had been earlier dismissed. The petitioner submitted a reply. Vide order dated 16.10.2006 the order dated 26.09.2001 was withdrawn and punishment of dismissal from service awarded to the appellant was restored.

7. The petitioner filed the Civil Writ Petition impugning the aforesaid order. This petition was heard with two other petitions namely CWP No.15492 of 2006 'Partap Singh vs. State of Haryana', and CWP No.18607 of 2006 'Ex.Constable Rajbir Singh vs. State of Haryana and others', wherein, similar orders passed by the Director General of Police

restoring the earlier orders of dismissal were under challenge. All the three petitions were disposed of vide one common judgment dated 05.10.2013. The learned Single Judge dismissed the petitions holding that the orders passed by the DGP accepting the Mercy Petition were illegal and without jurisdiction. More so considering that the Mercy Petition had been filed about eight years after dismissal of the revision (the facts in the CWP filed by Partap Singh had been referred to by the Ld. Single Judge). As the earlier order accepting the Mercy Petition was contrary to law there was no infirmity in the impugned orders. Accordingly the petitions were dismissed.

8. The petitioner in CWP No.15492 of 2006 filed LPA No.1938 of 2013 “Partap Singh vs. State of Haryana and others”, which was allowed vide judgment dated 29.09.2015. The judgment of the learned Single Judge was set aside. The order dated 08.09.2006 of the DGP was set aside and the earlier order of the Director General of Police Haryana dated 16.6.2004 accepting the Mercy Petition and converting the punishment of dismissal to that of stoppage of five annual increments with cumulative effect was restored.

9. Special Leave to Petition (Civil) No.24528 of 2016 filed by the respondent – State was dismissed by the Supreme Court vide order dated 03.01.2017, both on the ground of delay as well as on merits.

10. The present LPA is squarely covered by the decision in LPA No.1938 of 2013.

11. Accordingly the appeal is allowed. The judgment of the Ld.

Single Judge is set aside. The order of dismissal dated 16.10.2006 passed by the Director General of Police, Haryana is set aside. The earlier order dated 26.09.2001 of the Director General of Police, Haryana converting the punishment of dismissal to that of stoppage of three increments with cumulative effect is restored.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

August 13, 2019

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No