

114.

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

CWP-28072-2022

Date of Decision: 07.12.2022

SUSHIL KUMAR

.... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Rajesh Khandelwal, Advocate,
for the petitioner.

JAISHREE THAKUR.J (Oral)

The present writ petition has been filed under Article 226 of the Constitution of India for issuance of appropriate writ, order or direction especially a writ in the nature of certiorari for quashing the impugned show cause notice dated 25.11.2022, Annexure P-11, being issued in a pre-determined and pre-decided manner besides the inquiry report, Annexure P-9.

In brief, the facts of the case are that the petitioner is working as a Sub Inspector in Punjab Police. An FIR bearing No.4, dated 04.08.2017 was lodged on the basis of secret information against him and three other police officials under Sections 365, 384, 120-B, 419, 489 IPC and Sections 21, 29 of NDPS Act read with Sections 7, 8, 13(2) of the Prevention of Corruption Act, at Police Station STF, Phase-IV, SAS Nagar, Mohali. The petitioner was dismissed from service vide order dated 17.08.2017 by the

Inspector General of Police, Intelligence Wing, Mohali. The charges were framed against the petitioner in criminal trial which is now pending. The petitioner along with others who have also been dismissed from service by invoking Article 311(2) of the Constitution of India, challenged the said order by filing a CWP No.19344 of 2019 before this Court. The writ petitions were disposed of as the order of dismissal was set aside with liberty to the disciplinary authority to pass a fresh order. Consequent to that, the petitioner was taken back in service vide order dated 06.04.2022 and a departmental inquiry was ordered to be initiated. The petitioner on receipt of charge-sheet has replied to the same taking various grounds therein.

The grouse of the petitioner is that the departmental proceedings would jeopardize his defence in criminal trial. Further, there is no sanction under Rule 16.38 of the Punjab Police Rules, 1934 nor there is any approval under Section 17-A of the Prevention of Corruption Act, 1988 with the department to proceed against the petitioner.

I have heard learned counsel for the petitioner.

Admittedly, the departmental inquiry initiated against the petitioner is already complete and a show cause notice proposing punishment has been issued, to which a reply has also been filed by him. The department is already seized of the issue and, therefore, it would be expected that all pleas taken in the reply to the show cause notice regarding the maintainability of the proceedings de hors sanction will be taken into account by the authorities concerned. No ground to interfere in the instant writ petition at this stage of the departmental proceedings, is made out. However, the petition is disposed of with a direction that the punishing

authority shall take into consideration the grounds taken in his reply to the show cause notice while taking the final decision in the matter.

(JAISHREE THAKUR)
JUDGE

07.12.2022

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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No