

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

225

CWP No.643 of 2022

Date of Decision: 26/05/2023

SHISH PAL

.....Petitioner

Vs

STATE OF HARYANA & ANR

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr.R.N.Lohan, Advocate
for the petitioner.

Ms.Svaneel Jaswal, Addl.A.G.Haryana.

RAJ MOHAN SINGH, J.(Oral)

The petitioner has filed this petition under Article 226/227 of the Constitution of India for the issuance of a writ in the nature of Certiorari quashing the order dated 14.12.2021 passed by the respondent No.2, vide which the petitioner has been compulsorily retired from the post of Head Constable, while invoking Rule 9.18(2) of the Punjab Police Rules as applicable to the State of Haryana.

The petitioner was appointed as a Constable in Haryana Police in the year 1989. He was promoted to the post of Head Constable in the year 2005. For the purpose of consideration of this case, at this stage, it is not necessary to go through the other details pleaded by the petitioner. At this stage, it can be noticed that vide show cause notice dated 22.04.2021, the petitioner was served with a notice of compulsory retirement in public interest under Rule 19.8 (2) of the Punjab Police Rules requiring the petitioner to submit his

reply/ representation within 15 days of the receipt of the said notice. The representation, if any, filed by the petitioner was to be considered before passing the final proposed order/action. In the event of non filing of reply/ representation it was to be presumed that the petitioner had nothing to say against his proposed compulsorily retirement.

In compliance of the show cause notice dated 22.04.2021, the petitioner filed detailed reply-cum-representation on 07.05.2021. Thereafter, the respondent No.2 passed the following order:-

“Whereas, it has been decided to retire Head Constable Shish Pal No.1494/HSR (now 616/Jind) compulsorily in public interest from service after getting approval of the State Government issued vide their memo No.5/51/2021-3HGI dated 24/31.08.2021.

Now, therefore, in terms of provisions contained in Rule 9.18 (2) of the Punjab Police Rules 1934 as applicable to State of Haryana the Director General of Police, Haryana hereby orders to compulsory retire Head Constable Shish Pal No.1494/HSR (now 616/Jind) with immediate effect.”

Perusal of the aforesaid order dated 14.12.2021 would show that the reply/ representation filed by the petitioner has not been considered at all.

Learned counsel for the petitioner submits that the petitioner is entitled for the grant of adequate opportunity of making representation before passing the order of compulsorily retirement and that opportunity was availed by the petitioner by way of filing detailed reply/ representation dated 07.05.2021. Thereafter, the respondent No.2 was under legal obligation to

consider the reply on merits and the reply/ representation was required to be considered in accordance with law.

In support of his contention, learned counsel for the petitioner places reliance upon the Division Bench judgement of this Court in CWP No.4155 of 1995 titled ASI Harinder Singh vs. State of Haryana and others, decided on 05.09.1995

Perusal of the impugned order would make it abundantly clear that there is no reference of receipt of reply of the petitioner and consideration thereof. On this ground the impugned order is found to be illegal and the same is hereby set aside. However, liberty is granted to the respondent No.1 to revisit the issue and consider the reply/ representation of the petitioner dated 07.05.2021 and thereafter, proceed to pass a fresh order in accordance with law.

Petition stands disposed of accordingly.

Normal consequences to follow.

(RAJ MOHAN SINGH)
JUDGE

May 26, 2023

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No