

**109 IN THE HIGH COURT OF PUNJAB & HARYANA,
CHANDIGARH**

CWP No. 12964 of 2022

Date of decision : January 17, 2023

Jagtar Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Naveen Bawa, Advocate
for the petitioner.

Pankaj Jain, J (oral).

Present petition has been filed under Article 226/227 of the Constitution of India invoking writ jurisdiction of this Court praying for issuance of writ in the nature of certiorari seeking quashing of the order dated 27.05.2021 (Annexure P-5) passed by respondent No.4 whereby the petitioner has been awarded punishment of forfeiture of three years regular service for grant of increments with permanent effect which is a major punishment and the order dated 16.09.2021 (Annexure P-7) passed by respondent No.3 whereby the departmental appeal preferred by the petitioner also stands dismissed and that dated 27.04.2022 (Annexure P-8) passed by the revisional authority affirming the order of

punishment passed by respondent No.4. The petitioner is a member of State Police Services, Punjab. He was the Investigating officer in FIR No.87 dated 29.09.2012 registered against one Simranjit Singh son of Harinder Pal Singh for the offences punishable under Sections 420,468,471 and 448 IPC.

During the course of trial, the petitioner appeared as prosecution witness and was partly examined/cross examined on 12.11.2018. The case was thereafter adjourned to 12.11.2018 for remaining cross-examination of the petitioner. For 3/4 dates the accused sought exemption from personal appearance and the cross-examination of the petitioner could not be effectuated. Lastly, on 18.2.2019 the Court noticed as under:-

“No PW has come present despite last and final opportunity. Summons of PW Harinder Pal Singh received back served but he failed to put appearance in the Court. Let he be summoned throughailable warrants in the sum of Rs.5000/- with one surety in the like amount for 12.03.2019. Summons of PW's Kulwinder Kaur, Swaranjit Singh, Matalka Dealing head red card. Dealing head rashon card and Neelam Rani received back unexecuted. Fresh summons to above-said witnesses be issued for 12.03.2019. In the interest of justice, one more last and final opportunity is hereby granted to the prosecution to conclude entire evidence, failing which, evidence of prosecution shall be closed by the order.

A separate set of summons be sent through Ld. APP. SHO and SSP. Ludhiana for expeditious compliance.”

The matter was adjourned to 12.3.2019. On the said date also none of the prosecution witness including the petitioner could be examined and the prosecution evidence was ordered to be closed by order. The trial resulted in acquittal of the accused. Fixing the responsibility of the petitioner he was charge

sheeted and proceeded against which has resulted in the impugned order of punishment whereby the petitioner has been awarded punishment for forfeiture of three years regular service for grant of increment with permanent effect. The appeal preferred by the petitioner and the revision already stand dismissed. It appears that earlier also the petitioner approached this Court by way of CWP No. 2989/2022 which was decided vide order dated 17.02.2022 which reads as under:-

“The hearing of the case is being held through video conferencing on account of restricted functioning of the Courts.

Learned counsel representing the petitioner prays for permission to withdraw the present petition with liberty to press the pending petition before respondent no.2-the Director General of Police, Punjab Police Head Quarter, Sector 9, Chandigarh.

Ordered accordingly.

All the pending miscellaneous applications, if any, are also disposed of.”

After revision of the petitioner got dismissed he has made another attempt by way of present petition. Law with respect to judicial review of the order of punishment is well settled and laid down by the Supreme Court in **State of Karnataka and another Vs. Umesh 2022 (6) SCC 563** wherein the Apex Court held as under:-

“In the exercise of judicial review, the Court does not act as an appellate forum over the findings of the disciplinary authority. The court does not re-appreciate the evidence on the basis of which the finding of misconduct has been arrived at in the course of a disciplinary enquiry. The

whether: (i) the rules of natural justice have been complied with; (ii) the finding of misconduct is based on some evidence; (iii) the statutory rules governing the conduct of the disciplinary enquiry have been observed; and (iv) whether the findings of the disciplinary authority suffer from perversity; and (vi) the penalty is disproportionate to the proven misconduct. However, none of the above tests for attracting the interference of the High Court were attracted in the present case. The Karnataka Administrative Tribunal having exercised the power of judicial review found no reason to interfere with the award of punishment of compulsory retirement. The Division Bench of the High Court exceeded its jurisdiction under Article 226 and trenched upon a domain which falls within the disciplinary jurisdiction of the employer. The enquiry was conducted in accordance with the principles of natural justice. The findings of the inquiry officer and the disciplinary authority are sustainable with reference to the evidence which was adduced during the enquiry. The acquittal of the respondent in the course of the criminal trial did not impinge upon the authority of the disciplinary authority or the finding of misconduct in the disciplinary proceeding.”

Learned counsel for the petitioner has not been able to point out any infirmity with respect to the procedure followed by the respondents which would warrant interference at the hands of this Court.

Keeping in view the misconduct of the petitioner, the punishment awarded cannot be said to be disproportionate. The petitioner being Investigating officer was saddled with the responsibility to not only investigate but also to prove the investigation before the trial court so that the trial can be taken to a logical

conclusion. The petitioner has miserably failed to do so. No fault can be found

with the punishment awarded to the petitioner.

Consequently, the present petition is dismissed.

(PANKAJ JAIN)
JUDGE

January 17, 2023
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Whether speaking/reasoned Yes
Whether Reportable Yes