

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

Date of Decision: 24.02.2023

1. CWP No.14912 of 2015 (O&M)

Narain ParshadPetitioner

Vs

The State of Haryana and others.....Respondents

2. CWP No.14006 of 2015 (O&M)

Narain ParshadPetitioner

Vs

**The State of Haryana and others
.....Respondents**

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

Present:Ms. Abha Rathore, Advocate
for the petitioner.

Mr. Naveen Singh Panwar, D.A.G., Haryana.

Mr. Ravi Sharma, Advocate
for the respondent No.4.

RAJ MOHAN SINGH, J. (Oral)

[1]. Vide this common order, CWP No.14912 of 2015 and
CWP No.14006 of 2015 are being decided.

[2]. In CWP No.14912 of 2015, the petitioner has prayed for

the issuance of an appropriate writ, order or direction in the nature of certiorari, quashing the entire departmental proceedings along with order dated 16.07.2015 (Anneuxre P-5) communication issued to the petitioner in the context of issuing chargesheet which was never served upon the petitioner. In the second petition i.e. CWP No.14006 of 2015, the petitioner has prayed for the issuance of an appropriate writ, order or direction in the nature of mandamus, directing the respondents to release the gratuity of the petitioner alongwith interest @ 18%. Since both the petitions have arisen out of the similar controversy, therefore, for brevity common facts are being noticed.

[3]. The petitioner was enrolled as a Constable in the Police Department, Haryana on 15.10.1979 in the District Gurugram. The petitioner had retired as an Inspector on 31.03.2013. During the service tenure of the petitioner from 18.10.1979 till 25.05.2013, it can be noticed that on 18.10.1979, the petitioner was transferred from the District Gurugram to 3rd Bn. HAP, Madhuban. On 07.07.1980, he was transferred from 3rd Bn. HAP to 5th Bn. HAP, Madhuban. Thereafter on 01.7.1981, he was deputed from 5th Bn. HAP to Finger Print Bureau, CID Special Branch, Madhuban. The petitioner was promoted as Head Constable in CID on 10.08.1982 and thereafter allotted promotion list 'C' in HAP Madhuban on 25.10.1983. The

petitioner was promoted as Head Constable in HAP Madhuban vide order dated 14.11.1983 and was confirmed as such on 31.01.1988. The State Crime Record Bureau (SCRB) Haryana came into existence as a separate cadre on 01.04.1987 and the petitioner was allowed to continue in the aforesaid SCRB. Options were invited for permanent absorption in SCRB and the petitioner submitted the same in the month of May, 1987. The instructions were issued by the Department in the month of July, 1987 not to repatriate to parent unit/department who has given their option for permanent absorption in SCRB, Haryana. The petitioner was promoted as ASI in SCRB on 26.08.1987 and was promoted to the post of Sub-Inspector in SCRB on 20.10.1989. Thereafter in the year 1996, the petitioner was transferred from Madhuban to Rohtak Range Rohtak and on 16.12.1997, he was transferred from Madhuban to Hisar Range, Hisar. The petitioner remained deputed in State Vigilance Bureau, Haryana Chandigarh from 16.06.1999 to 02.03.2003. The petitioner was allotted promotion list 'F' on 07.08.2003. From 03.03.2003 to August, 2005, the petitioner was deputed in the office of DGP, Haryana and from the month of August, 2005 to 2007, he remained Incharge MOB and CRO in SCRB. For the period 2007 to 2012, the petitioner remained Incharge, MOB, Computer, Human Identification Wing and Publicity Wing, SCRB. Additional charge of Finger Print Bureau was also given

to the petitioner in the year 2012 and thereafter, he was transferred from SCRB Madhuban to 1st IRB Bhondsi, Gurgaon on 25.05.2013.

[4]. While the petitioner was working in SCRB, Madhuban as Incharge, one woman Constable Neeru working under the petitioner, had given leave applications for making entry in the register. Due to some interpolation in the dates of the applications, her explanation was sought by the petitioner on 23.05.2013. Thereafter, the said Constable Neeru appeared before the ADGP/SCRB on 23.05.2013 and made some immoral allegations against the petitioner. An enquiry was got conducted by the ADGP through DSP, SCRB and in that enquiry report, the petitioner was exonerated and the complaint filed by the Constable Neeru was consigned. A second complaint was made by the said Constable Neeru to DGP, Haryana on 28.05.2013 and on the basis of second complaint, the sanctioned leave of the petitioner was cancelled and he was suspended and thereafter transferred from SCRB to 1st Bn. Bhondsi vide order dated 26.06.2013. Regular departmental enquiry was ordered to be conducted and the Superintendent of Police, Karnal was ordered to register FIR against the petitioner. The FIR was registered against the petitioner for the offence under Sections 354-A(i)(ii)(iv) & 354-D, 506 & 509 IPC on

28.06.2013. The petitioner was arrested in the aforesaid case and remained in judicial custody till 16.09.2013. In the meanwhile, the petitioner attained the age of superannuation on 31.07.2013 and his pension was released from August 2013 onwards. Ultimately the petitioner was acquitted by the Court of Addl. Sessions Judge vide judgment of acquittal dated 19.12.2014.

[5]. In CWP No.14006 of 2015, the petitioner has prayed for the release of the gratuity along with interest. The petitioner has pleaded that no departmental proceedings were held against the petitioner and withholding of retiral dues of the petitioner is wholly illegal. After retirement of the petitioner on 31.07.2013, the petitioner has received show cause notice dated 16.07.2015 in the context of proposed punishment of reduction of pension to the tune of 50% per month pursuant to some departmental proceedings held against the petitioner of which the petitioner was never served with any chargesheet.

[6]. In the present petition, the alleged departmental proceedings along with order dated 16.07.2015 and issuance of chargesheet allegedly served upon the petitioner are being assailed. The respondent-department has relied upon *ex parte* departmental enquiry allegedly conducted on the basis of chargesheet which according to learned State counsel was

served upon the petitioner through his son when the petitioner was in custody in the criminal case. Admittedly, the show cause notice dated 16.07.2015 was issued only after retirement of the petitioner. Evidently, the petitioner did not receive any chargesheet dated 19.08.2013 as the petitioner was in judicial custody during the period 12.08.2013 to 16.09.2013. The alleged service of chargesheet upon son of the petitioner cannot be treated to be a valid service particularly when the proceedings are penal in character. The failure to serve the chargesheet upon the petitioner would vitiate the entire departmental proceedings. Actual service of the chargesheet was required to be served upon the petitioner in order to enable the petitioner to submit his reply and thereafter to participate in the departmental proceedings. In case of issuance of show cause notice also, the employee is called upon to submit his reply to the action proposed to be taken against him. In both the situations, the employee is given an opportunity to submit his reply and the theory propounded by the respondents regarding communication of chargesheet through his son cannot be pressed into service. It cannot be presumed that the son was living with the petitioner and was having cordial relations with the petitioner. Actual service of chargesheet must be proved and established on record. Concededly, it has been found that the chargesheet was not served upon the petitioner personally

as the factum of chargesheet was allegedly communicated to the petitioner through his son as the petitioner was in custody during the period 12.08.2013 to 16.09.2013. Reference can be made to the ratio of **Union of India and others vs. Dinanath Shantaram Karekar and others, (1198) 7 Supreme Court Cases 569.**

[7]. The guidelines on the subject i.e. Guideline 5(i)(c) of Haryana Punishment and Appeal Rules requires that the service should be effected upon the delinquent both by affixation and registered post if the said service upon the delinquent is not found to be feasible on account of any contingency. In the instant case no such mechanism has been evolved by the respondent-Department. The impugned show cause notice was received without any enquiry report and was signed by the incompetent authority. The competent authority of the petitioner, who can punish the petitioner is Superintendent of Police, IRB, Bhondsi, whereas the impugned show cause notice was issued by the Director State Crime Record Bureau, Haryana Madhuban. In the preliminary enquiry conducted by the Enquiry Officer, the petitioner was fully exonerated from the charges. In the aforesaid enquiry proceedings, seven girls posted in the Computer Section (where the petitioner was also working) were examined by the Enquiry Officer besides examination of two

male officers. On the basis of material so collected by the Enquiry Officer/DSP, the petitioner was fully exonerated in the complaint filed by the Constable Neeru. It was only on the second complaint filed by the Constable Neeru, the DIG IRB ordered to conduct the departmental enquiry in which the petitioner was never associated. In the FIR registered against the petitioner, the petitioner has already been acquitted by the Court of Addl. Sessions Judge. The withholding of gratuity along with interest for the reasons as stated above in my considered opinion is wholly untenable. The entire departmental enquiry and the order of punishment are vitiated.

[8]. Resultantly, the entire departmental proceedings and all consequent action including the order dated 16.07.2015 passed by the Director State Crime Record Bureau are quashed. The consequence of notice dated 16.07.2015, if already implemented in terms of deduction of pension to the tune of 50% per month is ordered to be annulled. As a consequence thereof, the respondents are directed to release gratuity of the petitioner along with interest @ 6% per annum from the due date till final realization of the same.

[9]. In view of above, both the writ petitions are allowed with a direction to the respondents to release all permissible benefits to the petitioner as noticed above. The needful in the aforesaid

context shall be done within a period of three months from the date of receipt of certified copy of this order.

February 24, 2022	(RAJ MOHAN SINGH)
<i>Atik</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No