

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

**CWP-15610-2016 (O&M)
Date of decision : 10.05.2023**

Gurmit Singh

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. R.K. Malik, Sr. Advocate with
Mr. Sandeep Dhull, Advocate
for the petitioner.

Mr. Aman Dhir, Deputy Advocate General, Punjab.

PANKAJ JAIN, J. (ORAL)

By way of present writ petition filed under Article 226 of the Constitution of India, petitioner prays for issuance of a writ in the nature of certiorari seeking quashing of the order dated 23rd of February, 2016 (Annexure P-11) whereby the petitioner has been ordered to be dismissed from services.

2. The petitioner who joined respondent-Department as Constable in the year 1979 was dismissed from services on the allegations of willful absence from duty on 26th of October, 1991. Petitioner challenged the action of the respondents by way of Civil Suit which was decreed in his favour vide Judgment and Decree dated 11th of January, 1995. Appeal preferred by the State was allowed and the matter reached to this Court in Regular Second Appeal No.2705 of 1996 which was disposed off

vide order dated 22nd of March, 2010 in the following terms :

“In view of this position, the impugned order can not be sustained and the same is set aside. However, liberty is given to the respondent to hold inquiry afresh. The appellant would be deemed to be served with the impugned order including charge sheet. Let the appellant appear before the Senior Superintendent of Police, Kapurthala on 26.04.2010. SSP would be at liberty to detail an inquiry officer to hold an inquiry in regard to absence and thereafter pass an appropriate order in accordance with law. There is no requirement of serving any fresh notice to the appellant. In case, the appellant is not in possession of the charge sheet or other documents, he may make a request in writing to the SSP, who would then supply these documents to him before further proceeding against him.”

3. Pursuant thereto fresh inquiry was conducted which exonerated the petitioner from all the charges. Punishing Authority however without pointing out any defect in the said inquiry report ordered *de novo* inquiry vide order dated 16th of December, 2010. The petitioner challenged the same by way of CWP No.22578 of 2012 which was allowed vide order dated 26th of August, 2014 holding as under :

“The argument of learned counsel for the petitioner is that once the matter had been submitted to the Disciplinary Authority, it could have agreed with the findings recorded by the Enquiry Officer or disagreed with it by giving reasons, which could have withstood judicial scrutiny. But the de-novo enquiry could not have been ordered. In this regard, reliance has been placed upon various precedents of this Court, which have been appended by learned counsel for the petitioner as Annexures P-7

and P-8. On the other hand, the respondents have relied upon Rule 2.8 of the Punjab Police Rules, 1934 to justify their act in ordering a de-novo enquiry. A perusal of this rule indicates that power of review with the Inspector General, Deputy Inspector General and Superintendent of Police is limited to the awards made by their subordinates with further power to confirm and enhance, modify or annul the same or to make further investigation.

In the instant case, no such award has come into existence and the matter was before the Disciplinary Authority only for its approval, which it could have granted or even differed with by giving reasons.

I find that the matter is squarely covered by the ratio of the earlier precedents Annexures P-7 and P-8 and therefore, am of the considered opinion that the impugned order is unsustainable. The same is hereby quashed and the present writ petition is allowed.”

4. The petitioner was thereafter again called for personal hearing and again dismissed from service vide order dated 11th of December, 2014 (Annexure P-8) which was again subject matter of challenge in CWP No.26879 of 2014 and was also allowed observing as under :-

“23. For the reasons recorded above, this writ petition is allowed and the impugned order dated 11th December, 2014 is set aside by issuing a writ of certiorari. If points No.1 to 4 were the only reasons for disagreement and two paragraphs below points No.1 to 4, then I see no reason why fresh consideration should be permitted or liberty granted to the State and to the SSP, Kapurthala from whom justice cannot be had by the police force much less the petitioner. This Court records its displeasure and directs the Director General of Police, Punjab to endorse it on

the service dossier of the respondent SSP, Kapurthala. It is also directed that the SSP, Kapurthala be not entrusted with the work of reviewing domestic enquiry proceedings or handling quasi judicial duties and responsibilities posing a serious danger to the careers of his 'underlings' in the police department as he has not shown even a rudimentary knowledge of rules, fair procedure or legal principles applicable to dissent notes in enquiry cases. Exposure to one order of the SSP, Kapurthala as in the present case is good enough for this Court to make up its mind of the damage done to the probity of the officers of the police department. If the police department wish to take the case forward this order will not preclude it from doing so in accordance with law. In which case the SSP, Kapurthala will not be again entrusted with the file and the Director General of Police, Punjab will nominate a mature officer well acquainted with the law of domestic enquiries to re-examine the matter independently and such officer will discard the de novo enquiry keeping in view of the order passed by this Court on 26th August, 2014 in CWP No.22578 of 2012 and the present order etc. and review the matter from the stand point of the original enquiry report in accordance with applicable rules.”

5. However still the authorities without recording any dissenting note leave aside putting the same to the petitioner before passing the order of punishment again ordered his dismissal vide order dated 23rd of February, 2016.

6. Ld. Senior Counsel submits that even in the order passed in CWP No.26879 of 2014 the Writ Court observed that if the police department wishes to take the case forward they are not precluded from doing so in accordance with law. But despite repeated directions

respondents have been proceeding against the petitioner without following the due procedure. He asserts that in case where inquiry exonerates a delinquent the disciplinary authority disagrees with the recommendations of the inquiry report has to record a dissent and put the dissenting note to the delinquent, only thereafter it can proceed to award punishment. Reliance is being placed upon law laid down by Apex Court in the case of '**Punjab National Bank vs. Kunj Behari Misra**', (1998) 7 SCC 84.

7. Per contra, State Counsel has tried to justify that order of dismissal claiming that the petitioner has moved abroad without even informing the department and thus no fault can be found with the order of dismissal. However, he is not in position to dispute that after the inquiry officer exonerated the petitioner, no dissenting was recorded by the disciplinary authority leave aside putting the same to the delinquent petitioner. The petitioner was only issued notice for personal hearing in which no reasons for dissent were mentioned.

8. The law w.r.t. such situations has been well laid down by the Three Judges' Bench of the Apex Court in **Kunj Behari Misra's** case (supra), observing as under :-

“The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the

delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

8. In view of the above, impugned order (Annexure P-11) is hereby set aside.
9. Keeping in view the fact that this is the fourth round of the *lis* between the parties and despite repeated orders passed by this Court, the authorities have proven to be inert and incorrigible. They have opted not to act in accordance with the procedure known to law, the present writ petition is allowed with costs of Rs.50,000/- to be recovered from the personal pocket of the officer who passed order dated 23rd of February, 2016 (Annexure P-11).
10. Ordered accordingly.
11. Pending application(s), if any, shall also stand disposed off.

May 10, 2023
Dpr

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(Pankaj Jain)
Judge