

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

Reserved on 06.01.2023

**CWP No.17451 of 2015(O&M)
Date of Decision: 10.01.2023**

Gulab Singh

.....Petitioner

Vs

State of Haryana and others

.....Respondents

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

Present:Mr. R.S. Mamli, Advocate
for the petitioner.

Mr. Tapan Kumar Yadav, DAG, Haryana.

RAJ MOHAN SINGH, J.

[1]. The petitioner has assailed the charge-sheet dated 19.08.2011, order of dismissal dated 18.11.2011 passed by the respondent No.4, order dated 14.03.2012 passed by the respondent No.3, rejecting the appeal of the petitioner, order dated 09.10.2012 passed by the respondent No.2, dismissing

the revision petition of the petitioner and order dated 10.04.2015 passed by the respondent No.2 after remand by the respondent No.1, dismissing the revision petition of the petitioner being not maintainable along with all consequential proceedings. The petitioner seeks issuance of necessary directions to the respondents to reinstate the petitioner into service with all consequential benefits of service, seniority, pay and salary along with full back wages with interest and any other appropriate order, which this Court deems fit in the facts and circumstances of the case.

[2]. Brief facts of the case are that the petitioner was appointed as Constable in Haryana Police on 05.09.1977. In due course, he was promoted to the rank of Sub Inspector. He had completed more than 35 years of good service including awarding of recommendation certificates and medals having participated in Indian Police (Sports Team), wherein he was declared as best athlete in Ambala Range on seven occasions. He was honoured for his performance in anti-terrorist squad and solving typical cases. The petitioner was never awarded with any major punishment except the one in question. On 17.08.2011, the then Station House Office of the Police Station, Thanesar made a report to the respondent No.4 in respect of investigation of FIR No.434 dated 10.08.2011 under Immoral Trafficking Act against one Nisha Talwar alleging that 22 police

officials were in touch with the aforesaid Nisha Talwar. The name of the petitioner was also mentioned therein. Nisha Talwar @ Manju was running a Brothel. Number of cases were registered against her which were pending in different Courts. Nisha Talwar was caught on the basis of secret information for running a Brothel in her residence along with her friends and girls. FIR No.434 was registered on 10.08.2011 under Sections 3, 4, 5, 6, 7 and 8 of the Immoral Trafficking Act and Sections 420, 473, 120-B IPC at Police Station Thanesar.

[3]. During investigation, names of 22 police officials were noticed, who were having contacts with Nisha Talwar. In view of aforesaid fact, respondent No.4 had ordered initiation of departmental proceedings against the petitioner and appointed Enquiry Officer vide order dated 19.08.2011 for the alleged gross misconduct involving immoral turpitude. Therefore, Mr. Bhupinder Singh, H.P.S., Deputy Superintendent of Police, Headquarter Kurukshetra was appointed as Enquiry Officer. The Enquiry Officer issued summary of allegations on 19.08.2011. The allegation against the petitioner was that the petitioner had maintained a relation with Nisha Talwar and being a member of disciplined force, has committed disgraceful act, thereby tarnishing the image of police department and the same was against the police rules. The departmental enquiry was initiated on the order of the respondent No.4. The petitioner filed reply to

the allegations, explaining his position. In the departmental enquiry, Constable Krishan Kumar was examined as PW-1, Constable Vinod Kumar was examined as PW-2, MHC Shamsheer Singh was examined as PW-3 and Inspector Dayal Singh was examined as PW-4.

[4]. Enquiry Officer gave his enquiry report after considering the material on record that lady Nisha Talwar was involved in immoral trafficking for many years. 6-7 cases were pending against her in various police stations. Enquiry Officer has disclosed that Dayal Singh, SHO, Police Station Thanesar, who was investigating officer of FIR No.434 dated 10.08.2011 under Sections 3, 4, 5, 6, 7, 8 of the Immoral Trafficking Act and under Sections 420, 473, 120-B IPC at Police Station City Thanesar has deposed that the lady namely Nisha Talwar knew several police officers and was having contacts with them. The petitioner was one of them. Investigating Officer has found a diary from Nisha Talwar, in which name of the petitioner was written. The photocopy of the diary was produced in the enquiry proceedings. In the departmental enquiry, nothing adverse was found against the petitioner so far as character of the petitioner was concerned. He was found guilty only on account of knowing and contacting the said Nisha Talwar. The statement of Investigating Officer/PW-4 Dayal Singh, Inspector was relied in this context.

[5]. Dayal Singh was cross-examined by the petitioner. One of the questions was asked as to what kind of contact, the petitioner had with Nisha Talwar, to which PW-4 did not give any answer, rather pleaded ignorance about the kind of contact the petitioner had with Nisha Talwar. Nisha Talwar was not examined during departmental enquiry. On the basis of aforesaid enquiry report, the respondent No.4 passed an order dated 18.11.2011, dismissing the petitioner from service by observing that the petitioner has tarnished the image of the police department by being in touch with that lady and therefore, the petitioner was not entitled to be retained in the service. As regards the pension, the respondent No.4 has observed that although the petitioner fulfills the time limit for grant of pension, but the same has to be denied because he has damaged the reputation of the police department.

[6]. The petitioner remained unsuccessful in appeal before the respondent No.3, which was dismissed vide order dated 14.03.2012. The petitioner preferred a revision before the Director General of Police/respondent No.2 against the order dated 14.03.2012 passed by the respondent No.3 and order dated 18.11.2011 passed by the respondent No.4. The respondent No.2 vide order dated 09.10.2012, dismissed the same by observing that the departmental enquiry was conducted as per the procedure laid down in Punjab Police

Rules and there was no infirmity in the enquiry proceedings. The punishment was fully justified and was commensurate with the misconduct.

[7]. Thereafter, the petitioner filed a mercy petition before the respondent No.1/Additional Chief Secretary to Government, Home Department, Haryana on the ground that the petitioner had been isolated as all other persons against whom similar charges were made and similar evidence was led, had already been exonerated by the Department and the orders of dismissal were set aside. The petitioner was wrongly discriminated against. The Additional Chief Secretary had also noticed that Rule 16.2(1) of Punjab Police Rules 1934 was not properly taken into consideration by the authorities. Apart from that, it was also observed that out of 22 officials involved, 3 officials were dismissed from service and 3 officials were exonerated on the same charges and some other officials were let off lightly. Therefore, the matter was remanded back to review the matter in the light of Rule 16.2(1) of Punjab Police Rules. On remand, the respondent No.2 again re-examined the case and dismissed the petition being not maintainable.

[8]. Learned counsel for the petitioner submitted that the lady Nisha Talwar was not examined to adduce evidence and the petitioner had no opportunity to cross-examine her. Learned counsel further submitted that on the same allegations and

identical charge of having contact with the lady Nisha Talwar, Ex-Inspector Sudhir Taneja has been exonerated by the respondent No.2 by holding that the lady Nisha Talwar was not examined as primary evidence to prove the charges leveled against the delinquent. She was not cited and examined as witness in the departmental enquiry. The copy of disclosure statement allegedly made by her before the investigating officer during investigation of the criminal case was not supplied to the delinquent, which was a important document. On the basis of material on record, the respondent No.2 had observed that the enquiry was conducted in a very casual manner, in which main witness Nisha Talwar was not examined to adduce evidence. The delinquent could not get any opportunity to cross-examine her. The order of punishment was passed in a routine manner without considering the length of service and the punishment was exceedingly harsh and not commensurate to the misconduct of the delinquent. The punishment was reduced from dismissal from service to that of stoppage of one annual future increment with temporary effect. The delinquent was reinstated in service, however, he was not paid anything for the period, for which he remained out of service on the principle of 'no work no pay'. The same relief was granted to Ex-Inspector Ram Dutt.

[9]. Learned counsel further submitted that the case of the

petitioner was identically placed with the aforesaid persons. The diary was not proved on record except a photocopy allegedly supplied by the Inspector Dayal Singh on the record of enquiry. Mere production of photocopy of enquiry, does not dispense with proof of its execution and the diary was not proved in accordance with law. The dismissal from service was not sustainable even as per requirement of Rule 16.2 of the Punjab Police Rules as the alleged misconduct of the petitioner did not fall under the category of gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. The gravest acts of misconduct in respect of police officer facing disciplinary action are:-

- (i) indulging in spying or smuggling activities;*
- (ii) disrupting the means of transport or of communication;*
- (iii) damaging public property;*
- (iv) causing indiscipline amongst fellow policemen;*
- (v) promoting feeling of enmity or hatred between different classes of citizen of India on ground of religion, race, caste, community or language;*
- (vi) going on strike or mass casual leave or resorting to mass absentation;*
- (vii) spreading disaffection against the govt. and*
- (viii) causing riots and the like.*

[10]. Learned counsel for the petitioner further submitted that the alleged act of the petitioner did not fall in any of the

aforesaid categories of misconduct and the respondent No.4 did not consider the aforesaid rule. Learned counsel for the petitioner further submitted that the alleged proximity of the petitioner with the lady Nisha Talwar, cannot be presumed as he had bona fide contested the cases against her. In FIR No.102 dated 11.03.2010 under Sections 3, 4, 5, 6, 7, 8 of Immoral Trafficking Act, Police Station Sadar Thanesar, the petitioner had himself filed report in his own handwriting and signature to oppose the bail application of that lady Nisha Talwar.

[11]. In replication, the petitioner has specifically replied to para Nos.16 and 17 of the written statement that after filing reply in FIR No.102 dated 11.03.2010, the petitioner had appeared in one more case bearing FIR No.104/2010 under Sections 381, 307, 411 IPC, Police Station Sadar Thanesar, thereby deputing one Kehar Singh, ASI to oppose the bail in FIR No.102 dated 11.03.2010 as the aforesaid Kehar Singh, ASI had full knowledge about the case.

[12]. By referring to Farad recovery memo of the diary, learned counsel submitted that the accused Sumit @ Sunny on police remand, had produced 8 diaries including 3 small diaries and 6 big diaries and the same were taken into police possession. On the basis of aforesaid recovery memo, learned counsel submitted that the diary was recovered on 04.10.2011, whereas enquiry had already been concluded a day prior to the

said date i.e. on 03.10.2011.

[13]. *Per contra*, learned State counsel vehemently opposed the writ petition on the ground that the statement of PW-4 is sufficient to record punishment of dismissal from service. The petitioner being a member of discipline affairs was not expected to have any contact with any such lady and the same has tarnished the image of the police department. The name of the petitioner was disclosed to the investigating officer by Nisha Talwar besides other police officials. The factum of exoneration of some of the officials with same misconduct on record, could not be denied. Learned State counsel by highlighting para Nos.16 and 17 of the written statement submitted that the petitioner did not appear for opposing the bail application of ill reputed lady Nisha Talwar.

[14]. Taken into consideration the totality of facts and circumstances of the case, I find that the diary of the lady Nisha Talwar was not proved in accordance with law. Nisha Talwar was never examined as witness. The petitioner had no opportunity to cross-examine her. Only a photocopy of the diary was produced during enquiry proceedings by the investigating officer. Even in the statement of Dayal Singh as PW-4, nature and kind of contact of the petitioner with that of lady Nisha Talwar, could not be established. The investigating officer had only said that during investigation, Nisha Talwar disclosed about

knowing the petitioner as she had contacted him. The petitioner being a police officer of the area, must be known to that lady as she was facing number of cases, in which, the petitioner had appeared as police officer to oppose her bail. Out of total 22 police officials, the petitioner was dismissed from service. SI Balbir Singh was punished with stoppage of 5 annual increments with permanent effect, however, in appeal/revision/mercy petition, punishment was set aside by the respondent No.1 on 30.09.2020. Constable Dharam Singh was punished with stoppage of 5 annual increments with permanent effect and in mercy petition, the punishment was reduced to stoppage of 5 annual increments with temporary effect vide order dated 18.06.2019. A civil suit is pending in this regard. EHC Jaipal was exonerated in departmental enquiry on 27.02.2012. ASI Daljeet Singh was awarded punishment of stoppage of 5 annual increments with permanent effect and in revision petition, the same was maintained and a civil suit is pending. ASI Kuldeep Singh had expired on 21.11.2014 and he was awarded punishment of stoppage of 5 annual increments with permanent effect. EHC Jaspal was exonerated during enquiry proceedings on 27.02.2012. EHC Satyawan was awarded punishment of stoppage of 5 annual increments with permanent effect. His appeal was rejected and the punishment was quashed by the Civil Court vide judgment dated

29.10.2018. SI Jhangeer Singh was awarded punishment of stoppage of 5 annual increments with permanent effect and his appeal was rejected and he had retired. Inspector Sudhir Taneja was dismissed from service, however, in mercy appeal, he was reinstated in service w.e.f. 31.12.2014 on the principle of 'no work no pay'. Inspector Ram Dutt was dismissed from service and was reinstated in service in mercy appeal w.e.f 31.12.2014 on the same principle of 'no work no pay'. EASI Sahab Singh was let of in departmental enquiry after warning. Case No.434 of 2011 was registered against him, in which, he was acquitted. EHC Gurbachan Singh was awarded punishment of stoppage of 5 annual increments with permanent effect and in appeal/revision petition, the punishment was reduced to stoppage of 2 annual increments with temporary effect vide order dated 21.06.2016. Inspector Manbir Singh was exonerated in departmental enquiry. SI Ramparkash was awarded punishment of stoppage of 3 annual increments with permanent effect. His appeal was rejected and he had retired. Inspector Shamsheer Singh had retired from service. He was dismissed from service on 17.08.2011 in another departmental enquiry and was taken back in service under the orders of the respondent No.2 in appeal on 22.10.2012. EASI Yashpal had retired and he was awarded punishment of stoppage of 5 annual increments with permanent effect and his

appeal/revision petition was rejected. Sukhdev Singh had retired. The punishment of reversion from the post of SI to ASI was awarded and his revision petition was dismissed. CWP No.65 of 2020 is pending. Constable Karnail Singh was awarded punishment of stoppage of 5 annual increments with permanent effect. In revision petition, the punishment was reduced to stoppage of 3 annual increments with permanent effect vide order dated 27.05.2016. HC Mahender Singh was awarded punishment of stoppage of 5 annual increments with permanent effect. His appeal/revision petition was rejected. A civil suit is pending. Constable Lalit Kumar was awarded punishment of stoppage of 5 annual increments with permanent effect. His appeal/revision was rejected. Constable Sushil Kumar was awarded punishment of stoppage of 5 annual increments with permanent effect. His appeal/revision petition was rejected. CWP No.17402 of 2017 is pending.

[15]. The misconduct of the petitioner is not such, which would warrant his dismissal from service. In my considered opinion, the case of the petitioner ought to have been considered at par with Ex-inspector Sudhir Taneja and Ex-Inspector Ram Dutt on the ground that the lady Nisha Talwar was not examined. Delinquent had no opportunity to cross-examine her. The alleged act did not fall under any of the acts of gravest misconduct under Rule 16.2 of the Punjab Police Rules.

The alleged diary was not proved in accordance with law. Only a photocopy of the same was placed on record. Mere exhibition of a document is not sufficient to dispense with proof of its execution, more particularly when the author of diary has not been examined.

[16]. In view of above, impugned orders are set aside. This writ petition is allowed. The case is remanded back to the respondent No.4 to pass a fresh order after considering the case of the petitioner at par with that of Ex-Inspector Sudhir Taneja No.A/134 and Ex-Inspector Ram Dutt No.A/121 against whom, similar punishments were awarded by the feeder authority. Since the petitioner had already attained his superannuation, therefore, the respondent No.4 shall pass an appropriate order in respect of retiral benefits of the petitioner in accordance with law.

10.01.2023

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No