

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

Reserved on 10.05.2023

**CWP No.19718 of 2022(O&M)
Date of Decision: 16.05.2023**

Bijender Singh

.....Petitioner

Vs

State of Haryana and others

.....Respondents

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

Present: Mr. S.K. Nehra, Advocate
for the petitioner.

Mr. Tapan Kumar Yadav, D.A.G., Haryana.

RAJ MOHAN SINGH, J.

[1]. The petitioner has preferred this writ petition for the issuance of an appropriate writ in the nature mandamus or any other appropriate writ, quashing the show cause notice dated 18.08.2022 issued by the respondent No.4 and necessary direction be issued to the respondents to open the sealed cover

for the promotion to the post of Deputy Superintendent of Police.

[2]. The petitioner is working as Inspector in Haryana Police. He was appointed as Sub Inspector on 15.09.2003. Due to extraordinary gallant and indomitable courage while discharging his official duty, the petitioner was given out of turn promotion (ORP Inspector) on 14.07.2008 for tracking and arresting dreaded criminal in number of cases, the details of which have been given in para Nos.2 and 4 of the writ petition. Due to crackdown on hardcore criminals, the petitioner became an eyesore of criminals. Faced with imminent threat to his life and his family, the respondent No.4 made a request to the Additional Chief Secretary, School Education, Haryana for transfer of wife of the petitioner in an urban area vide letter dated 30.08.2019 and the request was accepted and wife of the petitioner was given relaxation in Teacher Transfer Policy vide order dated 04.02.2020 and was transferred to Government Senior Secondary School, Baliana against vacant post.

[3]. Rule 6 of the Haryana Police Service Rules, 2002 governs the appointment to the post of Deputy Superintendent of Police. The Haryana Police Service (Amendment) Rules, 2021 (hereinafter referred to as '2021 Amendment Rules') were notified on 08.10.2021 and Sub-Rule (1) of Rule 6 of 2002

Rules was substituted with new provision of 5% of the posts of Deputy Superintendent of Police in Haryana Police to be filled up by out of turn promotion.

[4]. On 09.11.2021, the respondent No.4 recommended the name of the petitioner to the respondent No.3 for out of turn promotion to the post of DSP. The particulars of the petitioner were also sent by the office of Deputy Commissioner of Police, Crime, Gurugram to the office of Deputy Commissioner of Police, Headquarter, Gurugram on 25.01.2022 for consideration of his case for promotion to the post of DSP from the post of Inspector being in the quota of out of turn promotion.

[5]. Thereafter, the petitioner was not promoted, rather Inspectors namely Sandeep Kumar, Indivar, Aman Kumar and Yashwant were promoted, but the petitioner was charge-sheeted and the respondent No.4 was directed to initiate departmental proceedings against the petitioner and to place him under suspension.

[6]. On 10.02.2022, the petitioner was served with the summary of allegations, for which, the departmental enquiry was to be conducted. On 17.02.2022, the petitioner made a representation to the respondents for adopting the sealed cover procedure pending departmental proceedings against the petitioner while considering the case of the petitioner for out of

turn promotion to the post of DSP and on exoneration in departmental proceedings, the sealed cover be opened and if the petitioner is found fit, then the promotion be given with retrospective effect from the due date of promotion.

[7]. The petitioner filed CWP No.3401 of 2022, seeking issuance of a writ in the nature of mandamus, directing the respondents to adopt sealed cover procedure pending departmental proceedings against the petitioner in view of law laid down in **Union of India Vs K.V. Jankiraman, 1991 (4) SCC 109**. Pursuant to the notice of motion issued in the said writ petition, learned State counsel has submitted that the petitioner's case would be considered in the process of outgoing promotions for out of turn promotion to the post of DSP and his result shall be kept in a sealed cover, which would be subject to final outcome of the writ petition. The Court was informed on 11.03.2022 that vide communication dated 10.03.2022 received from the office of Additional Chief Secretary to Government of Haryana, Home Department, the case of the petitioner for promotion on out of turn basis in accordance with provisions of Service Rules has been considered and the result has been kept in a sealed cover. The writ petition was disposed of in these terms and was rendered infructuous. It was directed that on completion of departmental proceedings, the sealed cover

result be declared and if the petitioner is found entitled, the promotion be granted to him on the post of DSP from the due date of promotion with all consequential benefits.

[8]. The departmental enquiry was held according to the procedure under Rules 16.24 and 16.38 of the Punjab Police Service Rules, 1934 (as applicable in the State of Haryana). After consideration of the material on record, the Enquiry Officer gave his findings, thereby exonerating the petitioner from the charges vide detailed enquiry report. It was observed that the accusation against the petitioner was based on a secret information. No written proof was available against the petitioner and in the absence of any such written complaint or submission, nobody can be held to be an accused. The Enquiry Officer fully exonerated the petitioner.

[9]. On the basis of Enquiry Report, the competent authority/Deputy Commissioner of Police, Headquarter, Gurugram agreed with the findings of the Enquiry Officer and consigned the departmental enquiry to the record. The petitioner was ordered to be reinstated from the date of his suspension and his suspension period was ordered to be treated as period spent on duty for all intents and purposes and the petitioner was held entitled to full pay and allowances for the same.

[10]. Thereafter, the petitioner made a request to the

Additional Chief Secretary, Home Department, Haryana for opening of the sealed cover as per the order dated 11.03.2022 passed in CWP No.3401 of 2022. The respondent No.1 did not take any action for 42 days of the aforesaid letter of request and thereafter, show cause notice was issued by the Commissioner of Police, Gurugram on 18.08.2022 while exercising the powers under Rule 16.28 of Punjab Police Rules, regarding disagreement note to the findings of the Enquiry Officer and orders passed by the Punishing/Competent Authority by giving tentative opinion. The Commissioner of Police has observed that the petitioner is guilty of the alleged charges and deserves to be punished, considering the gravity of misconduct, therefore, show cause notice was issued to show cause as to why punishment of stoppage of two increments with permanent effect may not be imposed.

[11]. Learned counsel for the petitioner has raised two primary submissions. Firstly, the competence of the Commissioner of Police to record disagreement note with the findings of the Enquiry Officer, particularly when the findings of the Enquiry Officer have already been accepted by the Punishing/Competent Authority, thereby consigning the enquiry proceedings to the record and secondly, the show cause notice in itself is non-speaking. The petitioner has been called upon to

file reply. The subject matter of the reply is already in favour of the petitioner on the basis of his exoneration by the Enquiry Officer, dropping the enquiry proceedings by the competent authority/punishing authority.

[12]. As regards the first submission i.e. competence of the Commissioner of Police in issuing the show cause notice, learned counsel for the petitioner does not press this ground for the time being with a liberty to rake up the issue, if need arises, in future. For the time being, he confines his arguments to the non-speaking nature of the show cause notice. The petitioner has been asked to file reply on the subject matter, which is already in his favour by virtue of his exoneration by the Enquiry Officer and acceptance of the findings of the enquiry proceedings by the competent/punishing authority.

[13]. Perusal of the show cause notice in its very nature is found to be non-speaking. The petitioner has not been called upon to give his consent on any such issue, particularly in the light of proved facts on record. At the most, the petitioner can rely upon the evidence produced by the parties during course of enquiry proceedings, which is already subject matter of record and and the Commissioner of Police, Gurugram has allegedly considered to be not sufficient for accepting the findings of the Enquiry Officer and order of the Punishing Authority. There is no

new fact/ground is available to the petitioner, except to say that the facts are proved on record with reference to the material brought by both the parties during course of enquiry.

[14]. In my considered opinion, show cause notice is wholly unsustainable being non-speaking in nature. On the strength of ratio laid down in **S.P. Malhotra Vs. Punjab National Bank and others, 2013(4) SCT 135, P.K. Prashar Vs. Union of India and others, 2008(7) SCT 736** and **Rajinder Singh Siwatch Vs. State of Haryana and another, 2013(2) SCT 589,**

it can be safely concluded that the Commissioner of Police is required to give reasons while recording disagreement note by asking the petitioner to file reply. Unreasoned/non-reasoned order is in complete violation of the principles of natural justice.

[15]. In view of facts and circumstances of the case, impugned show cause notice dated 18.08.2022 is found to be non-speaking in nature. Since the show cause notice is totally found to be evasive, therefore, the same is set aside. The competent authority would be at liberty to re-assess the situation and act in accordance with law. In the meanwhile, consequences arising out of the order dated 11.03.2022 passed in CWP No.3401 of 2022 would accrue in favour of the petitioner.

[16]. The present writ petition is accordingly disposed of.

16.05.2023
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No