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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-20982-2023

Date of Decision:13.12.2023

JAGDEV SINGH

..... Petitioner

Versus

UNION OF INDIA AND OTHERS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Nikhil Anand, Advocate
for the petitioner.

Mr. Arihant Goyal, Senior Panel Counsel
for the respondents- UOI.

JAGMOHAN BANSAL, J. (Oral)

1. On 20.09.2023, the following order was passed:

*“Learned counsel for the petitioner inter alia contends that petitioner has been punished on the basis of involuntary confession made by him which is contrary to Rule 142 of BSF Rules, 1969. A two judge bench of Hon’ble Supreme Court in judgment dated 05.09.2023 in **Union of India and Others Versus Jogeshwar Swain; Civil Appeal Nos.8629-8630 of 2014** has adverted with Rule 142 of BSF Rules and held that there should be strict compliance of aforesaid rule.*

Learned counsel for the petitioner further submits that petitioner is ready to forego consequential benefits, if his quantum of sentence is reconsidered.

*Hon’ble Supreme Court in **B.S. Hari Commandant Versus Union of India and Others; 2023 Live Law (SC) 303** has held that principle of proportionality is also applicable to armed forces.*

Learned counsel for the respondents seeks time to get instructions with respect to possibility to re-consider case of the petitioner qua quantum of sentence.

Adjourned to 29.09.2023.”

2. Learned counsel for the respondents submits that petitioner at the time of alleged incident was under influence of liquor and he misbehaved with Head Constable who was superior of the petitioner. The respondent is a disciplined armed force and indiscipline cannot be tolerated. The petitioner on earlier occasions as well was awarded minor punishment.

3. Concededly, the petitioner joined respondent force on 09.06.2011. He has already completed more than 10 years of service. The petitioner is a married man having female child.

4. Considering judgment of Supreme Court in ***B.S. Hari Commandant*** (Supra) and without commenting upon merits of the case, this Court finds that punishment awarded to petitioner is disproportionate to alleged offence especially when another accused who was involved in the same incident has been awarded lesser punishment. The petitioner is ready to forego all consequential benefits. This Court is not oblivious of the fact that quantum of punishment is discretion of the disciplinary authority, however, it is settled proposition of law that punishment cannot be disproportionate to alleged offence. The armed forces are also bound to consider principles of natural justice, proportionality as well as Articles 14 and 21 of the Constitution of India.

5. In the wake of peculiar facts and circumstances of the present case, this Court is of the considered opinion that matter needs to be re-examined by Competent Authority with respect to quantum of

punishment. To cut short the litigation, the matter is not remanded to Disciplinary Authority whereas Appellate Authority is requested to re-consider quantum of punishment in the light of facts and circumstances as well as judgment of Supreme Court in *B.S. Hari Commandant* (Supra). The needful shall be done within 6 months from today.

(JAGMOHAN BANSAL)
JUDGE

13.12.2023
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>