



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

(121)

**CWP-20512-2024 (O&M)
Date of Decision: 03.09.2024**

Raj Kumar Sharma

--Petitioner

Versus

State of Haryana & others

--Respondents

CORAM:- HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU.

Present:- Mr. Manish Soni, Advocate for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana.

MAHABIR SINGH SINDHU., J

Present writ petition has been filed under Article 226 of the
Constitution with the following prayers:-

- i. Issuance of a writ in the nature of certiorari for quashing of:-
 - a. the impugned charge-sheet dated 23.12.2023 (P-7) as well as Enquiry Report dated 11.01.2024 (P-8), passed by Assistant Commissioner of Police, Pataudi, Gurugram;
 - b. the impugned show cause notice dated 08.02.2024 (P-9) passed by the then Deputy Commissioner of Police, (Headquarters) {DCP}, Gurugram proposing the punishment of stoppage of 07 future annual increments with cumulative effect;
 - c. subsequent impugned show-cause notice dated 07.08.2024



(P-11) passed by the successor DCP, Gurugram proposing the extreme penalty of dismissal from service.

- ii To stay the passing of final order in the Departmental Enquiry by respondent No.3 and/or the operation of impugned Show Cause Notice dated 07.08.2024 (P-11) during the pendency of present writ petition.

2. At the outset, this Court is not inclined to interfere with the impugned charge sheet dated 23.12.2023 as well as Enquiry Report dated 11.01.2024.

3. Faced with the above predicament, learned counsel for petitioner submits that he does not press the present writ petition *qua* prayer No. i (a) (*ibid*).

4. Ordered accordingly; however, it is clarified that petitioner is at liberty to take recourse to the remedy in accordance with law to that extent.

5. With regard to the remaining prayer(s), learned counsel contends that show cause notice dated 08.02.2024 (P-9) was issued by the then DCP, Gurugram proposing to impose stoppage of 07 future annual increments of the petitioner with cumulative effect and that was duly replied by the petitioner on 15.02.2024 (P-10).

5.1 Further contends that without taking any final decision in the matter, again a show cause notice dated 07.08.2024 (P-11) has been issued by the successor officer i.e., DCP, Gurugram, proposing to impose penalty of dismissal from service without withdrawing the earlier show cause notice and contends that same is grossly erroneous and is not legally sustainable.

6. *Per contra*, learned State counsel while opposing the prayer



submits that petitioner has attained the age of about 55 years being born on 04.12.1969 and total service to his credit remains only about 3 years.

6.1 Further submits that since only three years' service of petitioner is remaining; thus, there was no occasion to impose the punishment of stoppage of 07 annual increments with cumulative effect. Hence, in these circumstances, a fresh show cause notice (P-11) was issued to the petitioner by the successor officer i.e. DCP, Gurugram while proposing to dismiss him from service.

7. Heard learned Counsel for the parties and perused the paper-book.

8. It is not in dispute that on an earlier occasion, after taking into consideration the material available on record as well as Enquiry Report (P-8), a show cause notice dated 08.02.2024 for imposing punishment of stoppage of 07 future annual increments with cumulative effect was issued to the petitioner and the same reads as under:-

Show Cause Notice

I, Deepak Gahlawat, IPS, Deputy Commissioner of Police, Headquarters, Gurugram, am to say that Sh. Harinder Kumar, HPS, Assistant Commissioner of Police, Pataudi, Gurugram, who was appointed to enquire into certain allegations against you, has submitted his findings dated 11.01.2024 holding you guilty of the misconduct alleged against you. A copy of his findings report is enclosed herewith.

*On careful consideration of the facts and circumstances available on the file, I found myself in agreement with the findings of the Enquiry Officer and, therefore, I am provisionally of the opinion as to why you should not be awarded a **PENALTY OF STOPPAGE OF SEVEN FUTURE***



ANNUAL INCREMENTS WITH PERMANENT EFFECT for your misconduct proved, as contained in the finding report. Before taking that action, I desire to give you an opportunity of showing cause against the action proposed to be taken. Any representation, which you may like to make in this regard, will be considered by me fully before taking any decision. Such representation, if any, should reach me, in writing, within 07 days of the receipt of this notice.

You are also advised to appear before me to avail of the opportunity of personal hearing within 02 days from the date of the submission of your reply. In case of your failure, it will be presumed that you have nothing to submit in writing or say in person and final orders will be passed ex-parte.

*Sd/-(Deepak Gahlawat), IPS
Deputy Commissioner of Police,
Headquarters, Gurugram
Dated 08/02/2024”*

9. It is also not in dispute that aforesaid show cause notice was duly replied by the petitioner on 15.02.2024; but no final decision had been taken by the competent authority; rather the same is still pending.

10. Despite above factual position, without taking any final decision on the show cause notice dated 08.02.2024, again fresh show cause notice dated 07.08.2024 has been issued by the successor DCP, Gurugram proposing to impose the penalty of dismissal from service and which reads as under:-

“Show Cause Notice

1. Dr. Arpit Jain, IPS, Deputy Commissioner of Police, Headquarters, Gurugram, am to say that Sh. Harinder Kumar, HPS, Assistant Commissioner of Police, Pataudi, Gurugram, who was appointed to enquire into certain



allegations against you, had submitted his findings dated 11.01.2024 holding you guilty of the misconduct alleged against you. A copy of his findings report has already been served upon you through show cause notice No. 129/Steno dated 08.02.2024 issued by Sh. Deepak Gahlawat, IPS, the then DCP HQ, Gurugram.

*On careful consideration of the facts and circumstances available on the file, I also found myself in agreement with the findings of the Enquiry Officer and, therefore, I am provisionally of the opinion as to why you should not be awarded a **PENALTY OF DISMISSAL FROM SERVICE** for your misconduct proved, as contained in the finding report. Before taking that action, I desire to give you an opportunity of showing cause against the action proposed to be taken. Any representation, which you may like to make in this regard, will be considered by me fully before taking any decision. Such representation, if any, should reach me, in writing, within 07 days of the receipt of this notice.*

You are also advised to appear before me to avail of the opportunity of personal hearing within 02 days from the date of the submission of your reply. In case of your failure, it will be presumed that you have nothing to submit in writing or say in person and final orders will be passed ex-parte.

***Sd/-(Dr. Arpit Jain)IPS,
Deputy Commissioner of Police,
Headquarters, Gurugram."***

11. In the opinion of this Court, the second show cause notice is grossly erroneous when no final decision has been taken on the basis of earlier show cause notice issued to the petitioner; nor learned State counsel is able to show any provision of law for following such a course under the Service Rules for the post in question.



12. Although learned State counsel tried to justify the action of successor officer while issuing second show cause notice dated 07.08.2024 on the premise that petitioner was having only three years of service, and as such, there was no occasion to proceed with earlier show cause notice for imposing stoppage of seven annual increments with cumulative effect; but there is not even a whisper discernible from the second/subsequent show cause notice in this regard.

13. Even otherwise, it is not permissible for the competent authority to issue fresh show cause notice without deciding the earlier show cause notice, when the reply had already been filed by petitioner; thus, the second show cause notice is on account of malice in law and which cannot be countenanced in such a scenario.

14. In view of the above, second show cause notice dated 07.08.2024 issued by the successor officer is indefensible in law; hence liable to be quashed.

15. Consequently, present writ petition is partly allowed. Impugned show cause notice dated 07.08.2024 (P-11) is quashed subject to costs of Rs.10,000/- to be paid by the officer concerned and same be deposited in the Haryana Police Welfare Fund in favour of Director General of Police (DGP), Haryana payable at Panchkula.

16. A copy of this order be sent to the Additional Chief Secretary, Ministry of Home and Administration of Justice, Government of Haryana and concerned officer be sensitized about the Service Rules.

17. Needless to say that competent authority would be at liberty to take a final decision on the basis of earlier show cause notice dated



08.02.2024 (P-9), in accordance with law.

Pending application(s), if any, shall also stand disposed off.

(MAHABIR SINGH SINDHU)
JUDGE

03.09.2024
Lucky/SN

Whether speaking/reasoned: Yes
Whether Reportable: Yes