
(2010) 12 SHI CK 0238
In the High Court Of Himachal Pradesh
Case No : C.W.P. (T) No. 8761 of 2008

Brahma Nand

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 30-12-2010

Acts Referred:

Punjab Excise Act, 1914 — Section 61(1)(14)

Citation : (2010) 12 SHI CK 0238

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—Material facts, necessary for adjudication of this petition are that the Petitioner was entrusted among Shri Mehar Singh Thakur, Constable to escort Kamal Bahadur to Sub Jail, Kaithu, Shimla. Shri Kamal Bahadur was arrested in F.I.R. No. 41 of 1997, dated 16.2.1997. The Petitioner alongwith Shri Mehar Singh Thakur, Constable were deputed at 5.15 p.m. to escort Shri Kamal Bahadur to Sub Jail, Kaithu, Shimla. They were provided with Gypsy. The Gypsy went out of order at Khara Pathar and it was brought by toeing upto Jubbal Kainchee. Accused, Kamal Bahadur, taking advantage of darkness escaped from the custody of Petitioner and Shri Mehar Singh Thakur. He was searched by the Petitioner as well as by the officials of police station, Jubbal, but he could not be found. The departmental inquiry was initiated against the Petitioner on 20.2.1997. Petitioner was also put under suspension on 20.2.1997. Departmental inquiry was conducted by Shri Devinder Thakur, Sub-Divisional Police Officer, Rohru. Show cause notice was issued to the Petitioner on 31.12.1997 proposing the penalty of forfeiture of five years" service. He filed reply to the same on 14.1.1998. The disciplinary authority vide order dated 23.1.1998 imposed the penalty of two years" forfeiture of service on permanent basis upon the Petitioner. The suspension period with effect from 19.2.1997 to 14.3.1997 was regularised, but nothing in addition to the amount already paid to them was

directed to be paid. The Petitioner filed an appeal to the Deputy Inspector General of Police against the same. Same was rejected vide order dated 28.9.2001. He preferred an appeal to the Director General of Police. The same was rejected on 31.5.2002.

2. Mr. Hamender Chandel, learned Counsel for the Petitioner has strenuously argued that the findings recorded by the Inquiry Officer are perverse and evasive. He also argued that all the charges were not duly proved. Mr. P.M. Negi, learned Deputy Advocate General has supported the orders passed by the disciplinary authority and also by the appellate authority.

3. I have heard the learned Counsel for the parties and gone through the pleadings carefully.

4. Petitioner alongwith Shri Mehar Singh Thakur was deputed to escort Kamal Bahadur, who was arrested in F.I.R. No. 41 of 1997, dated 16.2.1997 u/s 61(1) (14) of the Punjab Excise Act and was remanded by the Court to judicial custody. They were also provided with Gypsy. The Gypsy, according to the Petitioner went out of order and taking advantage of darkness, Kamal Bahadur escaped at 8.30 p.m. Petitioner alongwith Constable Mehar Singh Thakur searched for him, however, he could not be found. It is in these circumstances that the departmental proceedings were initiated against the Petitioner and Constable Mehar Singh Thakur. The Petitioner was given full opportunity to defend himself. The Inquiry Officer has come to the definite conclusion that the Petitioner was negligent in the discharge of his duty, which had led to the escape of accused Kamal Bahadur. Mr. Hamender Chandel has strenuously argued that the Petitioner was deputed at 5.15 p.m. to escort the accused to Sub Jail, Kaithu. According to him, the Petitioner could not be directed to escort him in the evening since the Sub Jail, Kaithu could not accept the prisoners after sun-set. He has relied upon the conclusion drawn by the Inquiry Officer whereby he has also indicted on Sub Inspector Dev Raj and Clerk. The Inquiry Officer has, in fact, discussed the dereliction of duty by the Sub Inspector, Dev Raj and Assistant Clerk for providing defective Gypsy to the Petitioner and Constable Mehar Singh Thakur and further directing them to escort the accused in the evening to sub Jail, Kaithu, Shimla. However, the fact of the matter is that once the Petitioner and Constable Mehar Singh Thakur were asked to escort the accused to Sub Jail, Kaithu, it was their duty to escort him by taking all due precautions and diligence. It was the duty of Petitioner and Shri Mehar Singh Thakur to escort the accused by taking necessary care and precaution and the plea that the jeep was defective and it had broken down near Jubbal will not absolve the Petitioner. The escape of accused is a serious offence. Even though the Petitioner has been directed to escort the accused at evening hours, it could not absolve the responsibility of escorting him by taking necessary precautions. The Petitioner was not alone at the time when Kamal Bahadur made escape. Petitioner was accompanied by Constable Mehar Singh Thakur and driver of the Gypsy, who was also a constable. The Inquiry Officer after discussing the oral and documentary

evidence has come to the just and fair conclusion that the Petitioner alongwith Mehar Singh Thakur was negligent in the discharge of his duties. The order passed by the disciplinary authority is self speaking. The Petitioner had been served with a show cause notice to which he had filed reply. The penalty of forfeiture of two years" service permanently has been imposed by taking into consideration the reply filed by the Petitioner to the show cause notice. The appellate authorities have also passed the reasoned and speaking orders on 28.9.2001 and 31.5.2002, respectively. The pleas and grounds taken by the Petitioner in the memorandum of appeal have been discussed in length by both these authorities. The findings recorded by the Inquiry Officer, which have been accepted by the disciplinary authority, are neither perverse nor defective. These are based on correct appreciation of oral and documentary evidence. Moreover, it is settled law that the findings of the Inquiry Officer can only be interfered with if these are adverse and factually incorrect. The scope of judicial review in disciplinary proceedings is limited. The Court only ensures that the employee has been afforded reasonable opportunity to defend himself and mandatory provisions of law have been complied with. The penalty imposed upon the Petitioner is neither disproportionate nor excessive. The same commensurates the alleged mis-conduct.

5. Accordingly, in view of the observations made hereinabove, there is no merit in this petition and the same is dismissed, so also the pending application(s), if any. No costs.