
(2011) 07 P&H CK 0176
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3273 of 1992

Ex-Constable Manjit Singh No. 1893 APPELLANT
Vs
State of Punjab and others RESPONDENT

Date of Decision : 29-07-2011

Acts Referred:

Punjab Police Rules, 1934 — Rule 16.2

Citation : (2011) 164 PLR 563

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ranjit Singh, J.—Police Constable, Manjit Singh, who was dismissed from service in the year 1988, due to allegation of having consumed liquor while on duty, has filed this writ petition to impugn the order of his dismissal.

2. The petitioner was appointed to the police service on 30.04.1986. After completing his training, the petitioner performed his duties, as per him, with devotion, dedication and diligence.

3. On 13.11.1987, the petitioner alongwith one constable Satwinder Singh was detailed on duty at liquor vend in the area of Police Station Division No. 4, Jalandhar. As per the petitioner, his companion Constable Satwinder Singh consumed liquor and lost his senses. The petitioner in order to safeguard the weapons of Constable Satwinder Singh took hold of his rifle and put the same on his shoulder and continued to perform his duty at the liquor vend.

4. The petitioner was little unwell and so he had taken some medicine as prescribed by his doctor. During this time, ASI Harbhajan Singh of Police Station Division No. 4 came for checking. On seeing the petitioner carrying two rifles on his shoulders, ASI inquired about constable Satwinder Singh. Said constable was found lying in Dhaba nearby in a drunkard condition. The petitioner apprised the ASI that he had taken the second rifle in order to safeguard the same. ASI

Harbhajan Singh suspected the petitioner also to have consumed liquor despite the fact that he was doing his duty actively. ASI took both the constables for medically examination to Civil hospital.

5. Doctor gave his opinion that both the constables were smelling of something like alcohol. The petitioner would highlight that no urine or blood samples were taken and he had also not refused to undertake any such tests. On the basis of report, the petitioner was placed under suspension 21.11.1987. The regular departmental inquiry was ordered against both the constables, which were entrusted to Sub Inspector Gurbachan Singh. A charge sheet was served and inquiry held. The inquiry officer submitted his report exonerating the petitioner of the charge. Superintendent of Police, Jalandhar, punishing authority, however, differed with the report, which according to the petitioner was without any plausible reason.

6. The Superintendent of Police served a show cause notice calling upon the petitioner to explain why he should not be dismissed from service. The petitioner submitted his reply to the show cause notice and thereafter Superintendent of Police, Jalandhar passed the order dismissing the petitioner from service on 17.08.1988. The petitioner contends that the order was passed without any application of judicious mind by ignoring the facts and evidence on record. The petitioner, accordingly, preferred an appeal against this order before the Deputy Inspector General of Police, Jalandhar Range, Jalandhar.

7. The appeal, however, was dismissed. Thereafter, the petitioner filed revision, which was also dismissed on 24.01.1989. The petitioner also filed review/mercy petition before the Director General of Police, which too was dismissed on 10.08.1990, which he followed by filing Memorial to the Governor, Punjab. Even this was rejected. Then the petitioner had approached this Court through the present writ petition.

8. The writ petition was admitted and written statement has been filed by Superintendent of Police, Jalandhar on behalf of the respondents. By way of preliminary objections, it is stated that the writ petition be dismissed only on the ground of delay and laches as the dismissal order is dated 17.08.1988 whereas the writ petition was filed almost after 3 years of the date of the impugned order.

9. Otherwise also, the stand taken by the petitioner in the writ petition is disputed. As per the respondents, ASI Harbhajan Singh had inquired about Constable Satwinder Singh from the petitioner and then found him lying in the nearby Dhaba. He, thus, suspected the petitioner also to have consumed liquor. Both the constables were taken for medical examination. The opinion given by the doctor in respect of the petitioner is as under:-

1. He smells of alcohol from the breath.
2. Pupils are slightly dilated.
3. Conjunctive are slightly conjusted.

4. Gaib is normal.

5. Speech is normal.

6. He is well oriented in space and time.

He refused to give sample of blood and urine. In my opinion, he has consumed liquor but is not under the effect of alcohol at this time.

Sd/- J.S. Bath 13.11.87.

10. On this basis, it is stated that there was enough material and evidence on record to show that the petitioner had consumed liquor whereas ignoring the same, the inquiry officer had wrongly exonerated the petitioner. The respondents, therefore, would justify the action of the punishing authority to differ with the finding of the inquiry officer and to impose the punishment as has been inflicted.

11. Counsel for the petitioner primarily has made two fold submissions before me. He would first contend that the petitioner was rightly exonerated by the inquiry officer as there was no evidence on record, for which, the petitioner could be found guilty of the allegation made. Counsel then contends that Superintendent of Police completely ignored the provisions of Rule 16.2 of the Punjab Police Rules (hereinafter referred to as "Rules") while passing the impugned order and this would be enough to vitiate the order.

12. While considering both the submissions made, the evidence recorded during the course of inquiry available with the State counsel has been perused. The clear evidence that is available would come on record is that the petitioner was detailed on duty at the liquor vend alongwith Satwinder Singh. They both were checked by ASI Harbhajan Singh. Constable Satwinder Singh was found totally under the influence of liquor and was seen lying inside Dhaba.

13. The petitioner though was found standing but was having two weapons with him. ASI suspected both the constables to have consumed liquor and took them to doctor for medical examination as that was the best possible course for him to take in view of the facts and circumstances of the case. If the petitioner, as is claimed, has not consumed liquor, he would have certainly offered himself for medical examination by giving his blood and urine samples. It is clearly recorded by the doctor that the petitioner refused to give sample of blood and urine. There is no reason to disbelieve the medical report given by the independent doctor. The bald assertion made by the petitioner that he never refused to give samples cannot be accepted. Infact, the observation as recorded by the doctor will also clearly give an indication that the petitioner had consumed some liquor. He was smelling of alcohol. The pupils were slightly dilated. The doctor also observed that conjunctive were slightly congested.

14. Though his speech and gait were found normal and he was well oriented in space and time but this was at the time of examination.

15. The action on the part of the petitioner to refuse samples of blood and urine will show the guilty mind to avoid detection. Ultimately the doctor had clearly given his opinion that the petitioner had consumed alcohol but was not under the effect of alcohol at that time. Mere fact that the petitioner had consumed liquor while on duty will be enough and serious conduct for which the petitioner was rightly dealt with. Since the petitioner had refused to give blood and urine samples, adverse inference can be drawn against the petitioner that did not give his samples only to avoid detection of his act of consuming liquor while on duty.

16. I am also not impressed with the submission made by the counsel that Superintendent of Police did not consider the requirement of Rule 16.2 of the Rules. The petitioner did have a pensionable service. The perusal of the show cause notice would show that Superintendent of Police, Jalandhar gave clear indication in the show cause notice that he was proposing dismissal on the basis of gravity of the misconduct alleged against the petitioner. The consumption of liquor while on duty, cannot be taken lightly. It has to be taken as serious misconduct when committed by person in uniform. It is, thus, clear that relevant consideration as given in Rule 16.2 of the rules were kept in view. There is no merit in the writ petition and the same is, accordingly, dismissed.