

(2013) 01 P&H CK 0259
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1074 of 2013

H.C. Rajinder Kumar and Another

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 21-01-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 3 SCT 81

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : B.S. Dhull, for the Appellant;

Final Decision : Dismissed

Judgement

Tejinder Singh Dhindsa, J.—This order shall decide Civil Writ Petition No. 1074 of 2013 titled as "Head Constable Rajinder Kumar and another v. State of Haryana and others" as also Civil Writ Petition No. 1000 of 2013 titled as "Constable Ramesh Kumar v. State of Haryana and others" since both the writ petitions arise out of a common impugned order dated 30.6.2010 passed by the Superintendent of Police, Jind whereby a punishment of stoppage of three future annual increments with permanent effect has been imposed upon the petitioners. The brief factual backdrop is that in pursuance to the orders passed by this Court, a Warrant Officer, namely, Shri Suraj Bhan had been appointed in connection with the search of Smt. Sonia, wife of Ved Pal. Accordingly, on 22.7.2009, the Warrant Officer reported at Police Station Sadar Narwana and to provide police protection and assistance to him, a team of police officials including the petitioners herein was constituted. The Warrant Officer along with complainant Ved Pal as also the police protection party reached village Singhwal and proceeded towards the house of Dhan Raj father of Smt. Sonia. At that stage, a group of villagers who were armed with lathies etc. made a forcible entry and assaulted the Warrant Officer Shri Suraj Bhan as also the complainant Ved Pal. As a result of such assault, the Warrant Officer suffered injuries, whereas complainant Ved Pal

succumbed to his injuries. A regular departmental enquiry was initiated against the members of the police protection party including the present petitioners on the charge of dereliction of duty and having failed to take the necessary and requisite steps to provide protection to Shri Suraj Bhan, Warrant Officer and Shri Ved Pal deceased.

2. The Enquiry Officer i.e. the Deputy Superintendent of Police, Safidon returned findings exonerating the members of the police party. However, the competent authority i.e. the Superintendent of Police, Jind dis-agreeing with the findings recorded by the Enquiry Officer served upon the petitioners a show cause notice, dated 20.3.2010 along with a Dis-agreement Note proposing the imposition of a penalty of stoppage of five future annual increments with permanent effect. The relevant extract of the dis-agreement Note recorded by the Punishing Authority read in the following terms:

The protection team consists of above police officials, was constituted only for the purpose of providing protection/assistance to the Warrant Officer and Ved Parkash. The arms & ammunition and batons were provided to them. Each police official mentioned above was responsible for the protection of Shri Suraj Bhan, Warrant Officer and Ved Parkash. When the villagers started to assault Shri Suraj Bhan and Ved Parkash the above police officials did not take stringent efforts to protect them. They neither used force nor opened fire in the air to disperse the mob and protect Shri Suraj Bhan, Warrant Officer and Ved Pal. Their plea that the Warrant Officer and SHO PS Sadar Narwana did not give order to open fire is illogical. They did not take a stock of situation and miserably failed to perform their assigned duty.

3. The petitioners responded to the show cause notice in terms of submitting reply dated 22.3.2010. The Punishing Authority upon consideration of the reply submitted by the petitioners and after grant of an opportunity of personal hearing, passed the impugned common order dated 30.6.2010 imposing upon each of the petitioners the punishment of stoppage of three future annual increments with permanent effect. Suffice it to notice that such punishment order passed by the Superintendent of Police, Jind was thereafter affirmed by the Appellate Authority i.e. the Inspector General of Police, Hissar Range, Hissar as also the Revisional Authority i.e. the Director General of Police, Haryana. The orders passed by the Appellate and Revisional Authorities are also a subject matter of challenge in the present writ petitions.

4. Learned counsel appearing for the petitioners would vehemently contend that the action of the respondents in terms of imposition of the penalty by passing of the impugned order is unjustified as there has been a violation of the principles of natural justice. Learned counsel would further contend that no order of firing had been given to the petitioners and in the absence of such an order, the petitioners were unable to resort to using force/firing and no fault on such account could be attributable to them. Learned counsel has further referred to Rule 14.56 contained in Chapter XIV of the Punjab Police Rules on the subject of

use of force by the police against crowds. The argument raised is that firing and force could not have been used by the petitioners in contravention of such statutory provisions and, accordingly, the penalty imposed upon the petitioners was totally unwarranted.

5. I have heard learned counsel for the petitioners at length and have perused the pleadings on record.

6. It is by now well settled that judicial review in exercise of the power under Article 226 of the Constitution of India by this Court against an order whereby disciplinary action has been taken by the employer would be limited to the decision-making process and not against the decision itself. An order passed by the Punishing Authority whereby a penalty of stoppage of three annual increments with permanent effect having been passed against the petitioners would be open to interference only on ground of malafide, arbitrariness and perversity. The submission raised by the learned counsel for the petitioners to assert that there has been a violation of the principles of natural justice is without merit. Prior to passing of the impugned order dated 30.6.2010, a regular departmental enquiry was conducted. Even though it is correct that the Enquiry Officer had returned findings in favour of the petitioners, yet the Punishing Authority on cogent and relevant reasoning had recorded a Dis-agreement Note. The petitioners had been served with a show cause notice wherein a contemplated penalty of stoppage of five future annual increments with permanent effect had been proposed. Along with such show cause notice, even the Dis-agreement Note had been served upon the petitioners. The reply submitted to the show cause notice had been duly considered by the Punishing Authority and prior to passing of the impugned order, even an opportunity of personal hearing had been granted to each one of them. The impugned order itself is a well-reasoned speaking order. I find that the respondent-authorities had followed the due process of law prior to passing the impugned order dated 30.6.2010. Such order has thereafter been affirmed by the Appellate and Revisional authorities.

7. The scope of judicial review at the hands of Courts/Tribunals has come up for consideration before the Hon"ble Apex Court in a catena of judgments. In B.C. Chaturvedi Vs. Union of India and others, , it had been held in the following terms:

Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has

jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

8. I have even considered the submission raised by the learned counsel as regards reliance having been placed upon Rule 14.56 of Punjab Police Rules, Chapter XIV. A perusal of Rule which is on the subject of use of force by the police against crowds and finds a re-production in para 6 of the writ petition would delineate that the degree of force to be employed by the police is to be regulated as per the circumstances of each case. The entire objective of the use of force is to ensure and prevent a disturbance of peace as also to disperse an assembly which threatens disturbance and peace.

9. The facts of the instant case are rather glaring. The police party that had been constituted of which the petitioners were members, was to provide protection to the Warrant Officer appointed by this Court towards search of one Smt. Sonia wife of complainant - Ved Pal. It has gone undisputed that a group of villagers assaulted the Warrant Officer as also the complainant - Ved Pal in the presence of the police party including the petitioners and in which the Warrant Officer suffered serious injuries and complainant Ved Pal lost his life. The petitioners being members of the Police Party were clearly expected to take the necessary steps and to use force as also open fire if necessary to ensure that such unruly group of villagers is dispersed. It does not lie in the mouth of the petitioners to adopt a line of defence that there was no order to resort to firing in the air and to use force, by the superior authorities. No infirmity can be found with the view taken by the Punishing Authority in finding the petitioners being guilty of having failed to perform their assigned duty.

10. Even the punishment of stoppage of three future annual increments with permanent effect cannot be construed as shockingly disproportionate to the charge levelled against the petitioners. There is no scope for interference even as regards the quantum of punishment.

11. For the reasons recorded above, I find no basis that would warrant interference with the impugned order dated 30.6.2010 passed by the

Superintendent of Police, Jind and thereafter affirmed by the Appellate and Revisional authorities.

12. In Civil Writ Petition No. 1074 of 2013, an additional challenge has been raised to the orders dated 14.6.2010, 2.6.2010, Annexures P 8 and P 9, as also orders of even date i.e. 13.10.2010 at Annexures P10 and P11 whereby adverse remarks had been conveyed to the petitioners and the representation against such adverse remarks has been rejected. Insofar as the challenge to such adverse remarks and rejection of the representation submitted against the same are concerned, liberty is granted to the petitioners to approach the Court afresh by raising all such grounds that may be available to the petitioners strictly in accordance with law. Both the writ petitions are, accordingly, dismissed.