
(2005) 02 P&H CK 0045
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1360 of 1989

Head Constable Mohan Singh	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 02-02-2005

Acts Referred:

Punjab Police Rules, 1934 — Rule 13.9

Citation : (2005) 3 SLJ 127

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : None, for the Appellant; Vijay Dahiya, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—In this writ petition, the petitioner prays for quashing the orders as contained in Annexures P-1, P-2 and P-2A. Vide order dated 17.9.1988 (Annexure P-1), the Superintendent of Police, Ludhiana took into consideration a lenient view and awarded the punishment of "censure" upon the petitioner and wanted him to be careful in future. He further observed that in case the petitioner was again found absent, serious action would be taken against him. It was further ordered that the petitioner will be paid nothing more than what had already been paid to him during the period of suspension.

2. By communication dated 30.11.1988 (Annexure P-2), the Senior Superintendent of Police, Ludhiana informed, inter alia, that the representation filed by the petitioner against the aforementioned order dated 17.9.1988 had been rejected by the Deputy Inspector General of Police, Patiala Range, Patiala vide order dated 17.11.1988. The order dated 17.11.1988 is Annexure P-2/A, which has also been impugned by the petitioner in the instant writ petition. The petitioner also makes a prayer for issuance of a writ of mandamus commanding upon the respondents to promote him as Sub-Inspector of Police on the basis of records available.

3. In order to decide the issue, it is necessary to briefly delve into the facts of this case which are set out hereinafter. On 27.1.1963, the petitioner joined the department of police as a constable and after having passed the Lower School Course in 1976, he was promoted as Head Constable in the same year, whereafter he was confirmed.

4. The petitioner asserts that he passed the Intermediate Promotion course in April 1987, as a consequence of which, his name was included in list-D as per Rule 13.9 of the Punjab Police Rules, which made him eligible to be promoted to the post of Assistant Sub-Inspector. According to the petitioner, when the time for his promotion was ripe, respondent No. 3 (Deputy Superintendent of Police, Ludhiana) put the petitioner under suspension on 2.5.1988. The suspension came at the time, when the petitioner was working as a Guard Incharge, General Post Office. According to the petitioner, the suspension was malicious and it was based on a statement recorded at 10.20 P.M. on 2.5.1988. This statement is Annexure P-3. As per the statement as contained in Annexure P-3, the report against the petitioner is that he had gone to take meals and did not return till the time of the inspection. The report further stated that as per the Punjab Police Rules, an employee cannot leave the guard duty after sun set but in spite thereof the petitioner and another constable, namely Darshan Singh, had left at odd hours for meals and, therefore, had violated the Police Rules. On the basis of the aforementioned report, the petitioner was put under suspension along with the said constable, Darshan Singh.

5. According to the petitioner, he was ill and he had recorded DDR No. 3 on 2.5.1988 and had gone to a Doctor. One Dr. Raj Kumar Sharma attended and gave him treatment. The petitioner asserts that the allegation that he had left the guard duty in the night (as per the language used in Annexure P-3) is not correct because Annexure P-4 which is DDR No. 3 dated 2.5.1988, would go to show that he had actually left at 10.15 A.M. for getting medicines for loose motions and eye-problem and forgoing to the hospital. The petitioner asserts that the respondent No. 3 had a grudge against him and, therefore, he visited the place in the absence of the petitioner at 10.20 P.M. and proceeded to put him under suspension. In fact, according to the petitioner, he came exactly two minutes later and gave a statement at 10.22 P.M. vide Annexure P-5 in the presence of the Deputy Superintendent of Police and explained the circumstances which had compelled him to go.

6. For the afore-mentioned action/conduct on the part of the petitioner, he was proceeded against departmentally and a show-cause notice was issued against him, asking him to show-cause as to why his one year's service be not forfeited permanently. This show-cause notice was issued on 7.9.1988, whereafter the petitioner submitted his reply ultimately the same culminated in the passing of the impugned order dated 17.9.1988 as contained in Annexure P-1, by which the petitioner was awarded "censure" in the manner stated above. Being aggrieved by the afore-mentioned order, the petitioner preferred a representation/an

appeal before the respondent No. 1 (the Deputy Inspector General of Police), which was rejected vide order 17.11.1988 (Annexure P-2/A) and a communication to that effect was issued on 30.11.1988 (Annexure P-2).

7. The petitioner has attempted to make out a case of malice at Paragraph 5 of the writ petition against the respondent No. 3 but this Court, being not Court of facts nor having the appropriate machinery to adjudicate upon disputed questions of fact, is not inclined to go into the statements made by the petitioner in the said paragraph.

8. The petitioner has pleaded discrimination and has submitted that he had a clean service career. He was never subjected to any departmental proceeding nor were any major or minor punishment ever inflicted upon him.

9. This Court has gone through the impugned order dated 17.9.1988. Upon a perusal of the same, this Court finds that without taking into consideration the explanation that the petitioner had to offer to the effect that he had to go to a doctor on account of his being ill, the respondent acted irrationally in straightaway coming to a conclusion that the reply given by the petitioner was not suitable. In fact the allegation as against the petitioner does not appear to be so gross that he should have been made to suffer by reason of the impugned orders. In fact, the first impugned order dated 17.9.1988 proceeds on presumptions of "ifs and buts" inasmuch as it states that "if" the petitioner was ill, he "could" have sent a constable for bringing Khichri or could have gone himself before sun-set.

10. When a person is ill, and when a person is in discomfort, it is not always possible to expect that he would act in accordance with the set procedures. Sometimes, his discomfort may be so great or grave that he may be compelled to waive procedures so as to rush to the nearest person, who would give him some comfort by medical aid. In such a situation, the conduct of the petitioner was not such that it could be construed to be an act unbecoming of a member of the police force. Even from the written statement of the respondents, it is found that they have stated in Paragraph-2 that the petitioner acted "carelessly" and that he should have gone for taking meal either before sun set or should have sent another Constable for bringing his meal. The petitioner reported back for duty at 10.22 P.M. and recorded DDR No. 14 dated 2.5.1988. For the alleged absence from duty for 1-1/2 hours, the petitioner was dealt with departmentally. Thus, even in the written statement, the respondents have not been able to make out a case of such a gross misconduct on the part of the petitioner for which he should have been punished.

For the reasons aforementioned, the impugned orders dated 17.9.1988 (Annexure P-1), 17.11.1988 (Annexure P-2/A) and 30.11.1988 (Annexure P-2) are hereby set aside. As a consequence of setting aside of the impugned orders, all benefits accruing to the petitioner shall ensue. The writ petition stands allowed but in view of the facts and circumstances of the present case, there

shall be no order as to costs.