

(2013) 07 P&H CK 0194
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 12027 of 2012

Head Constable Raj Singh	Vs	APPELLANT
The State of Haryana and Others		RESPONDENT

Date of Decision : 24-07-2013

Acts Referred:

Citation : (2013) 172 PLR 344

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : Sat Narain, for the Appellant; Sunil Nehra, D.A.G., Haryana, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Narain Raina, J.—FIR No. 6 dated 06.02.2003 was registered against the petitioner, a Head Constable in the Commando Wing of District Police Panipat u/s 7 read with Section 13 of the Prevention of Corruption Act, 1988 at Police Station A.C. Branch, Delhi. The parent department started parallel disciplinary proceedings against the petitioner by initiating a departmental inquiry. In the inquiry, the charges were proven and the punishing authority inflicted award of punishment of stoppage of five increments with cumulative effect on the petitioner. On 29.03.2011 the petitioner was convicted of committing criminal offences under the Prevention of Corruption Act, 1988. Against the order of conviction and sentence, the petitioner filed an appeal before the Delhi High Court. On 07.04.2011 the appeal was admitted and the interim bail granted by the Special Judge, Delhi has been confirmed in appeal. The petitioner is on bail.

2. In terms of the conviction recorded by the trial Court, the petitioner has been dismissed from service on 07.06.2012 in terms of Standing Order No. 114 of 2006 (P-4) issued by the Director General of Police, Haryana.

3. Aggrieved by the order of dismissal from service on account of conviction in a criminal case, the petitioner is before this Court under Article 226/227 of the

Constitution of India impugning the order dated 07.06.2012.

4. I have heard Mr. Sat Narain Yadav, learned counsel for the petitioner and Mr. Sunil Nehra, learned Sr. DAG, Haryana for the State.

5. Learned counsel for the petitioner relies on Rule 16.2(2) of the Punjab Police Rules as applicable to Haryana and a decision of the Delhi High Court in Writ Petition (Civil) No. 1044 of 2008, Commissioner of Police, Police Headquarter, ITO, New Delhi v. Sh. Brij Pal Singh.

6. Rule 11(1) of the Delhi Police (Punishment and Appeal) Rules, 1980 (for short "the Delhi Rules") was considered by the Division Bench of the Delhi High Court in the above case. Rule 11(1) of the Delhi Rules specifically lays down that an order dismissing or removing a police officer from service, as a result of his conviction, shall not be passed till such time "the result of the first appeal that may have been filed by such police officer is known". The Court on a plain reading of proviso to Rule 11(1) of the Delhi Rules found the provision quite clear that it puts a fetter, for the benefit of a convicted police officer on the exercise of constitutional power of dismissal or removal without inquiry postulated by Article 311(2)(a) of the Constitution which permits dismissal or removal in the manner laid down in the Constitution. In the presence of a specific statutory rule carving out an exception to the main section it was held that the punishing authority would have to await the decision in first appeal before precipitating action.

7. However, the statutory framework available in the Punjab Police Rules, as applicable to Haryana and especially Rule 16.2(2) cannot tilt in favour of a convicted police official under the jurisdiction of this Court. Rule 16.2(2) of the Punjab Police Rules, 1934 lay down as follows:--

16.2(2). Punjab Police Rules, 1934 for Haryana

An enrolled police officer sentenced judicially to rigorous imprisonment exceeding one month or to any other punishment not less severe, shall, if such sentence is not quashed on appeal or revision, be dismissed. An enrolled police officer sentenced by a criminal court to a punishment of fine or simple imprisonment, or both, or to rigorous imprisonment not exceeding one month, or who, having been proclaimed u/s 87 of the Code of Criminal Procedure fails to appear within the statutory period of thirty days may be dismissed or otherwise dealt with at the discretion of the officer empowered to appoint him. Final departmental orders in such cases shall be postponed until the appeal or revision proceedings have been decided, or until the period allowed for filing an appeal has lapsed without appellate or revisionary proceedings having been instituted. Departmental punishments under this rule shall be awarded in accordance with the powers conferred by rule 16.1.

8. The question which requires determination is whether the aforesaid rule protects the petitioner who stands convicted by the trial Court and the appeal against conviction is pending in which conviction has not been stay pending

appeal. Therefore, the sting of conviction remains and is not obliterated which would ultimately depend on the result of the appeal.

9. In the written statement filed by the State in response to the petition, it is pleaded that the petitioner has been dismissed from service invoking Article 311(2)(a) of the Constitution read with Rule 16.2(2) of the PPR, 1934. The action is also justified in terms of Standing Order No. 114 of 2006 issued by the DGP, Haryana instructing subordinate officers not to wait for the final decision of appeal/revision when a person is convicted. In the present case a full fledged inquiry was held after the petitioner was informed of the case to be met. Nine prosecution witnesses and four defence witnesses were examined. The departmental inquiry led to imposition of stoppage of five future annual increments with permanent effect and a speaking order dated 06.08.2008 was passed on proof of allegations of acceptance of bribe. After the conviction, resort was had to Article 311(2)(a) and Rule 16.2(2).

10. In support of his argument, Mr. Nehra has relied upon the decisions of the Supreme Court in Hari Pada Khan Vs. Union of India and others, , Union of India (UOI) Vs. V.K. Bhaskar, Deputy Director of Collegiate Education (Administration), Madras Vs. S. Nagoor Meera, and Union of India and others Vs. Ramesh Kum, and the Division Bench decision of this Court in Tehal Singh v. D.H.B.V.N.L. & others, 2007 (5) SLR 294, LPA No. 386 of 2013 titled Ram Niwas v. State of Haryana and others decided on 14.03.2013 and the Single Bench decision of this Court in CWP No. 22169 of 2012 titled Ram Niwas v. State of Haryana and others decided on 07.11.2012.

11. Today there are two orders of punishment. One pre and one post conviction. The first punishment order stands dissolved with the order of dismissal based on conduct which led to the conviction. The result is, in case the petitioner is ultimately acquitted, the order under Article 311(2)(a) read with 16.2 would no longer hold and the petitioner would in that event be entitled to make a claim for reinstatement and consequential benefits. If such a situation arises then the pre-dismissal punishment would come into operation unless it is set aside on judicial review or for any reason is revoked, rescinded or varied by the Administrator himself.

12. However, the claim based and confined to Rule 16.2(2) would not serve the petitioner's purpose for the present. Neither would the decision of the Delhi High Court in Commissioner of Police, Police Headquarter, ITO, New Delhi v. Sh. Brij Pal Singh come in aid of the petitioner, the rules being widely different rather poles apart. For the foregoing reasons, I find no merit in this petition which fails and is dismissed.