

(2014) 04 P&H CK 0151
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7985 of 2014

Jitender Singh and Others

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 29-04-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 04 P&H CK 0151

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Advocate : Suresh Kumar Redhu, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Augustine George Masih, J.—Petitioners have approached this Court praying for quashing the findings recorded by the Enquiry Officer in his report dated 17.03.2010 (Annexure P-2), order dated 27.04.2010 (Annexure P-3), vide which punishment of stoppage of five annual increments with permanent effect was awarded by the Deputy Commissioner of Police, Headquarters, Gurgaon, order dated 19.10.2010 (Annexure P-5), vide which the appeal preferred by the petitioners was partly accepted and the order of punishment was modified to the extent that the punishment was reduced to stoppage of two annual increments with permanent effect and order dated 09.05.2011 (Annexure P-7) passed by the Director General of Police, Haryana-respondent No. 2 rejecting the revision petition of the petitioners.

2. It is the contention of the counsel for the petitioners that the findings recorded by the Enquiry Officer in a regular enquiry held against the petitioners are based on no evidence. In support of this contention, he contends that the witnesses, who had appeared before the Enquiry Officer, have stated that they had initially, during the preliminary enquiry, signed said statements under coercion and pressure exerted by the SHO, namely, SI Mohan Lal. He contends that none of the prosecution witnesses, except PW-3 SI Mohan Singh, has supported the case

of the prosecution and, therefore, the findings recorded by the Enquiry Officer are based on no evidence and, therefore, the enquiry report cannot sustain and consequently the orders vide which the punishment has been imposed upon the petitioners also deserve to be set-aside. In support of this contention, counsel for the petitioners has placed reliance upon the judgment of the Hon''ble Supreme Court in Roop Singh Negi Vs. Punjab National Bank and Others, and Mohd. Yunus Khan Vs. State of U.P. and Others, .

3. Another point, which has been raised by the counsel for the petitioners, is that the Enquiry Officer has not taken into consideration the fact that the witnesses were under the influence of SHO/SI Mohan Lal and, therefore, being influenced by the assertions made by SI Mohan Lal, the Enquiry Officer also had proceeded to give a finding against the petitioners, which would amount to being influenced and in support of this contention, he places reliance upon the judgment of the Hon''ble Supreme Court in P.D. Dinakaran Versus Hon''ble Judges Inquiry Committee and others, 2011(8) SCC 380.

4. On the basis of the above submissions, counsel for the petitioners states that the enquiry report and the consequential punishment orders deserve to be set-aside.

5. I have considered the submissions made by the counsel for the petitioners and with his assistance have gone through the records of the case.

6. The allegations against the petitioners, on the basis of which the departmental enquiry was initiated against them, were that they were posted on PCR-5 and 6 in the month of October, 2009. On 28.10.2009, one Lakhwinder Dass resident of Pakridayal, Police Station Pakridayal, District Motihari Bihar, tenant of Bhim Singh resident of Chakkarpur DLF Phase 1, Gurgaon, came in the police station and submitted a written complaint which was addressed to the SHO DLF, Phase I, Gurgaon. In the said complaint, it was stated that on 16.10.2009, he along with his six other friends, who were all residents of Bihar, were gambling in the quarter of Bhim Singh. First, a boy came in black clothes and thereafter four policemen on two motorcycles came therein. The nameplates indicated their names which were that of petitioners, who snatched an amount of Rs. 31,500/- forcibly, which amount was being used for gambling purposes and threatened them that if they made any complaint in this regard, they would have to face dire consequences. No case was registered against them and that money was misappropriated by the petitioners.

7. Then the enquiry was ordered. On the basis of the enquiry held against them, where various witnesses were examined, although the complainant and some other persons accompanying him did not support the prosecution case, but the official witnesses supported the same. The complainant also admitted in his evidence that he had submitted a complaint to the SHO, although ultimately he asserted that it was under influence of the SHO. The official witnesses with regard to the receipt of the complaint, recording of the same and the subsequent

action taken against the petitioners, have proved the factum that in fact, the incident had taken place. As a matter of fact, amount of Rs. 31,500/-, which was initially misappropriated by the petitioners, was subsequently deposited by them with the MHC of the Police Station, which clearly proved the fact that, in fact, such an incident of gambling had taken place where the petitioners had gone and had recovered an amount of Rs. 31,500/-. It cannot, thus, be said that it is a case of no evidence. That may be a different situation that the person, who had submitted the complaint, and the others have resiled from their earlier statements having been won over by the petitioners.

8. On going through the enquiry report, I am of the considered view that the conclusions drawn by the Enquiry Officer and not accepting the contention that the SHO has exercised his influence against the petitioners is fully justified. No allegation has been made against the SHO as to how he would have exercised his influence, particularly against the petitioners and no malafides have been alleged against him. The punishing authority has also taken into consideration the evidence which has come on record and has rightly agreed with the findings recorded by the Enquiry Officer. No flaw has been pointed out in the conduct of enquiry proceedings.

9. In the two judgments on which reliance has been placed by the counsel for the petitioners, i.e., Roop Singh Negi and Mohd. Yunun Khan's cases (*supra*), it has been held that the departmental proceeding being a quasi judicial proceeding, charges levelled against the delinquent official must be proved, but they are of no help to the petitioners as I have come to a conclusion that the charges have, in fact, been proved against the petitioners. In Mohd. Yunus Khan's case (*supra*), it was held that the enquiry should be conducted fairly and reasonably and the enquiry report must contain reasons for reaching a conclusion that the charge against the delinquent stood proved. The requirement of law, as laid down in this judgment, stands fulfilled in the report submitted by the Enquiry Officer and, therefore, the benefit as has been sought to be claimed by the counsel for the petitioners would not be available to him through this judgment in the present case.

10. In P.D. Dinakaran's case (*supra*), Hon''ble Supreme Court had primarily dealt with a situation where the Enquiry Officer itself would have been influenced or would be interested in a matter. In the present case, there are no such allegations against the Enquiry Officer that he had any interest which would be common or against the petitioners or had grudge against them. Merely because he has not accepted the stand of the petitioners in their reply to the show cause notice would not mean that he had been influenced by the deposition of the SHO to the extent that he was interested in holding the petitioners guilty. The said judgment, thus, would not be applicable to the case in hand.

11. Having come to a conclusion that there is no illegality in the findings returned by the Enquiry Officer against the petitioners and further that the punishing authority has rightly come to the conclusion that the petitioners were guilty of

the allegations levelled against them, no interference is called for. On an appeal preferred by the petitioners, their punishment has already been reduced from stoppage of five future annual increments with permanent effect to stoppage of two future annual increments with permanent effect. The appellate authority has exercised its discretionary powers in interfering with regard to the quantum of punishment which is required to be imposed against the petitioners. The appellate authority has also gone through the enquiry report as also the findings recorded by the punishing authority and has approved the same. Similar is the position with regard to the order passed by the revisional authority, i.e., Director General of Police, who also has not found any of the assertions as has been projected by the petitioners and by their counsel in Court, to be justifiable while rejecting the revision. The authorities have duly gone into facts and circumstances of the case before taking a decision which is fully justified. There being no illegality in the orders which have been passed by the competent authority on the basis of the enquiry report which has been found to be in accordance with law, no interference is called for by this Court in exercise of its extra-ordinary writ jurisdiction.

12. It may be pointed out here that the Court while exercising its jurisdiction under Article 226 of the Constitution of India is only required to see if there is some evidence before the Enquiry Officer to come to a conclusion in support of the allegations and the Court should exercise its discretion only where there is a case of no evidence during the enquiry, which evidence in the considered view of this court is very much available in the evidence produced by the prosecution.

13. Finding no merit in the present writ petition, the same stands dismissed.