
(2012) 03 SHI CK 0465

In the High Court Of Himachal Pradesh

Case No : Civil Write Petition (T) No. 12677 of 2008

Joga Singh

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 01-03-2012

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2012) 2 ShimLC 633

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Subhash Sharma, for the Appellant; Vikas Rathore, D.A.G. with Mr. R.P. Singh, Assistant Advocate General, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Disciplinary proceedings were initiated against the petitioner vide Annexure A-7. The copy of the same was received by the petitioner on 28.12.1992. He filed reply to the same vide Annexure A-8. The Inquiry Officer submitted the report to the Disciplinary Authority dated 9.1.1993. Thereafter, show cause notice was issued to the petitioner by the Disciplinary Authority on 14.1.1993. Petitioner filed detailed reply to the same vide Annexure A-10. Petitioner has specifically taken the ground that in his case, Rule 16.38 of the Punjab Police Rules has not been followed. The Disciplinary Authority imposed the penalty of forfeiture of five years' service upon the petitioner permanently vide order dated 30.1.1993. Petitioner preferred an appeal before the D.I.G. Police (Northern Range). He dismissed the same on 20.10.1993. Petitioner preferred second appeal before the Appellate Authority. The same was rejected on 25.6.1994. Mr. Subhash Sharma has strenuously argued that in the instant case, it was incumbent upon the respondent to follow Rule 16.38 of Punjab Police Rules, as applicable to the State of Himachal Pradesh. He has also argued that the Disciplinary Authority, without supplying the copy of the inquiry report to the petitioner to enable him to make a representation against the same, had already

come to the conclusion that the petitioner should be dismissed from service. He has further argued that the order whereby the penalty has been imposed upon the petitioner is neither detailed nor a speaking order.

2. Mr. Vikas Rathore, learned Deputy Advocate General has vehemently argued that the inquiry has been initiated and conducted strictly in accordance with law. He has further argued that the orders passed by the Appellate Authority dated 20.10.1993 and 25.6.1994 are speaking orders.

3. I have heard the learned Counsel for the parties and have perused the pleadings meticulously.

4. The gist of the imputation against the petitioner was that he had seized 36 bottles, but has mentioned only 9 bottles in F.I.R, No. 131/92 registered on 28.4.1992. According to the charge-sheet, petitioner has only shown 9 bottles in the recovery memo instead of 36 bottles. Petitioner has filed, as noticed above, detailed reply to the charge-sheet on 14.1.1993 and has specifically taken the ground that in view of the imputation, Rule 16.38 of the Punjab Police Rules was to be followed being mandatory. The Inquiry Officer has submitted the report to the Disciplinary Authority. It is not in dispute that the copy of the inquiry report has not been furnished to the petitioner to enable him to make representation by pointing out infraction of mandatory provisions of law, including procedural error while holding the departmental inquiry. The Disciplinary Authority without supplying the copy of the inquiry report to the petitioner has come to the conclusion that the petitioner was required to be dismissed. In the instant case, petitioner has been prejudiced by non-supply of the inquiry report by the Disciplinary Authority.

5. It is settled law by now on the basis of definitive law laid down by their Lordships of the Hon"ble Supreme Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., that the copy of inquiry report has to be supplied to an employee before the disciplinary authority makes up his mind to impose penalty. The purpose of supplying the copy of inquiry report is to enable an individual to represent against the short-comings, deficiencies and violation of mandatory rules during the course of departmental inquiry. Their Lordships have held as under:--

26. The reason why the right to receive the report of the Inquiry Officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the Inquiry Officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the

documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is the negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the Inquiry Officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the Inquiry Officer along with the evidence on record. In the circumstances, the findings of the Inquiry Officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the Inquiry Officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the Inquiry Officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusion. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the Inquiry Officer's findings. The disciplinary authority is then required to consider the evidence, the report of the Inquiry Officer and the representation of the employee against it.

29. Hence it has to be held that when the Inquiry Officer is not the disciplinary authority, the delinquent employee has right to receive a copy of the inquiry Officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the Inquiry Officer's report before the disciplinary authority takes its decision on the charges is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.

6. The matter is required to be considered from another angle. Petitioner has committed criminal offence by not recording the true facts in the F.I.R. as well as in the recovery memo. It is mandatory to place before the District Magistrate the complaint received by the Superintendent of Police, which indicates the commission by a police officer of a criminal offence in connection with his official relations with the public. Thereafter, the District Magistrate is required to decide whether the investigation of the complaint shall be conducted by a police officer or made over to a selected Magistrate having 1st Class powers. The order passed by the District Magistrate is to be speaking order showing due application of mind. It is further visualized under sub-rule (2) of Rule 16.38 that when

investigation of complaint establishes a prima facie case, a judicial prosecution shall normally follow and the matter shall be disposed of departmentally only if the District Magistrate so orders, that too, after recording reasons. In case it is decided by the District Magistrate to proceed departmentally, the procedure prescribed in Rule 16.24 is to be followed. There is no tangible evidence placed on record by the respondents that the act committed by the petitioner did not deal with the sub-rule (1) of Rule 16.38. The ingredients necessary within the ambit of Rule 16.38 stood established. Petitioner has taken a specific ground in his reply to the show cause notice that sub-rule (2) of Rule 16.38 has not been followed. The Disciplinary Authority was required to pass a speaking and detailed order while imposing penalty upon him. The ground taken by the petitioner in the reply to show cause notice has been dealt with by the Disciplinary Authority in a cursory manner with regard to applicability of Rule 16.38 of the Punjab Police Rules, 1934, as applicable to the State of Himachal Pradesh, in his order dated 30.1.1993. Petitioner has also taken this ground specifically in para 6 of the appeal filed before the D.I.G. Police (Northern Zone). The same has not been properly dealt with by the Appellate Authority.

7. It will be apt at this stage to refer to sub-rules (1) and (2) of Rule 16.38 of the Punjab Police Rules, 1934, which reads thus:

16.38. Criminal offences by police officers and strictures by Courts procedure regarding.--(1) Immediate information shall be given to the District Magistrate of any complaint received by the Superintendent of Police, which indicates the commission by a police officer of a criminal offence in connection with his official relations with the public. The District Magistrate will decide whether the investigation of the complaint shall be conducted by a police officer, or made over to a selected Magistrate having 1st Class powers.

(2) When investigation of such a complaint establishes a prima facie case, a judicial prosecution shall normally follow, the matter shall be disposed of departmentally only if the District Magistrate so orders for reasons to be recorded. When it is decided to proceed departmentally the procedure prescribed in Rule 16.24 shall be followed. An officer found guilty on a charge of the nature referred to in this rule shall ordinarily be dismissed.

8. Respondent-State has not substantiated that the act committed by the petitioner did not fall within the ambit of sub-rule (1) of Rule 16.38. The ingredients of sub-rules (1) and (2) of Rule 16.38 were attracted in the instant case. The case against the petitioner was that he has not shown 36 bottles in the F.I.R. and recovery memo. He had also not obtained the signatures of the witnesses on the memo. The Disciplinary Authority has not discussed the statements of DWs and the same have been brushed aside by observing that those were concocted and have been fabricated.

9. Learned Single Judge of Punjab and Haryana High Court in Jagan Nath Vs. Senior Superintendent of Police, Ferozepore and Others, , has held that sub-rules

(1) and (2) of Rule 16.38 of Punjab Police Rules are mandatory and non-compliance of the same renders the departmental enquiry illegal. Learned Single Judge has held as under:

sub-rules (1) and (2) of Rule 16.38 must be held to be mandatory in so far as whenever any complaint is made against a police officer of a criminal offence in connection with his official relations with the public they enjoin that that the Superintendent of Police must forward the complaint to the District Magistrate who will decide whether the investigation should be conducted by a police officer or made over to a magistrate and then after examining the result of such investigation the District Magistrate has to decide and has to give reasons in his decision for proceeding against the police officer departmentally and not prosecuting him judicially if the investigation establishes a prima facie case.

10. The Apex Court in *Delhi Administration v. Chanan Singh*, 1969 (3) S.L.R. 217 has held that the inquiry held without obtaining direction from the District Magistrate is invalid. The Apex Court has held as under:

6. The provisions of sub-rules (1) and (2) of Rule 38 are attracted in cases of complaint received by the Superintendent of Police, indicating the commission by a police officer of a criminal offence in connection with his official relations with the public. In such a case, the Superintendent of Police is required to bring the complaint to the notice of the District Magistrate who is to decide whether the investigation of the complaint should be made by a selected Magistrate having first class powers or should be left to a police officer. If the investigation discloses a prima facie case, a judicial prosecution should normally follow unless for reasons to be recorded in writing the District Magistrate directs that the matter should be disposed of departmentally.

8. In *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, the Court by majority held that the provisions of paragraph 486 Rule I of the U.P. Police Regulations were mandatory and that a departmental action against the police officer in disregard thereof was invalid. The minority held that the paragraph was directory and as there was substantial compliance with its provisions the departmental proceedings were not invalid. In *Jagan Nath Vs. Senior Superintendent of Police, Ferozepore and Others*, the Punjab High Court held that the provisions of Rule 16.38 (1) and (2) were mandatory and that a departmental inquiry held without following its provisions was illegal. It is not necessary to decide in this case whether the provisions of Rule 16.38 of the Punjab Police Rules are mandatory or directory. Even assuming that the rule is directory we find that there has been no substantial compliance with its provisions. The complaint fell within Rule 16.38, and it was for the District Magistrate to decide who should investigate the case. No investigation of any kind was made under his directions. Without obtaining his directions, the Superintendent of Police held an inquiry and passed an order of censure. The order was set aside by the Deputy Inspector-General. Thereafter by D.O. letter No. 2165-C, the Superintendent of Police asked for the sanction of the District

Magistrate to proceed departmentally. Even at this stage, the District Magistrate was not informed that the Superintendent of Police held an inquiry and passed an order of censure and that, his order was set aside by the Deputy Inspector General. The inquiry held by the Superintendent of Police was not authorised by the District Magistrate nor did it receive his approval. The District Magistrate gave his sanction without recording any reasons and without applying his mind to the requirement of Rule 16.38. In the circumstances, we are constrained to hold that the departmental action taken against the respondent is invalid.

11. In Union of India (UOI) Vs. Ram Kishan, the Apex Court while following 1969 (3) S.L.R. 217 has held that as no immediate information was given to the District Magistrate in respect of the complaint received against the plaintiff nor did the District Magistrate decide whether the investigation of the complaint shall be conducted by a police officer or made over to a selected magistrate having 1st Class powers, the District Magistrate purported to give permission under sub-rule (2) of Rule 16.38 was not material as the first part of the Rule was not complied with at all, thus, the departmental inquiry was visited and the order of dismissal was illegal.

12. Learned Single Judge of Punjab and Haryana High Court in State of Haryana and another v. Surjan Singh, 1990 (2) S.L.R. 88 has held that tearing off the Rapat Rojnamcha by the police Head Constable is an offence in connection with his official relations with the public. The learned Single Judge has held that the concurrence of the District Magistrate was required to be obtained before passing the order.

8. Undisputedly, a criminal offence was committed by the plaintiff in connection with his official relations with the public inasmuch as he owed a duty to discharge his official functions which are in relation with the public. His tearing off the Rapat Rojnamcha is another offence in connection with his official relations with the public inasmuch as Rapat Rojnamcha is a public record maintained in accordance with law and a police official is not expected to tear it off. No substantial argument has been addressed to substantiate that the act committed by the plaintiff does not fall within the purview of Rule 16.38(1). All the ingredients for the applicability of the said Rule stood satisfied. It has not been stated at the bar that any of the ingredients was missing.

9. It is not disputed that concurrence of the District Magistrate had not been obtained. In view of this, the order of removal passed against the plaintiff for a criminal offence committed by him in connection with his official relation with the public was passed in violation of the said mandatory rule. The order shall thus be deemed to be a void order. I find support in the above observation of mine from Ajit Singh v. Delhi Administration and others, 1973 (1) S.L.R. 1100 and Daulat Ram v. Union of India, 1971 (2) S.L.R. 502.

13. Learned Single Judge of Punjab and Haryana High Court in Ex-Sub Inspector Mohinder Singh Cheema and others v. State of Punjab through Home Secretary,

Chandigarh and others, 1990 (5) S.L.R. 690 has held that misconduct is also a criminal offence and it was obligatory on the part of Superintendent of Police to bring the case to the notice of District Magistrate as per Rule 16.38 of the Punjab Police Rules, 1934 and thereafter it was for the District Magistrate to decide whether a departmental enquiry should be held or a criminal prosecution should be ordered. The learned Single has further held that the failure to comply with the provisions of Rule 16.38 has rendered the order of removal from service illegal. The Learned Single Judge has held as under:

11. During the course of examination, it was asked from the S.S.P. why he did not bring this case to the notice of the District Magistrate as required by Rule 16.38 of the Punjab Police Rules. He could not give any proper reason in support of this. It may be pointed out that the provisions of Rule 16.38 of the Punjab Police Rules deal with holding of departmental enquiry as envisaged by Article 311 of the Constitution of India. It was obligatory according to Rule 16.38 for the S.S.P. to bring this case to the notice of the District Magistrate and it was for the District Magistrate to decide whether a departmental enquiry should be held or a criminal prosecution should be ordered. The S.S.P. failed to perform the statutory obligation. In my opinion, the S.S.P. has violated the mandatory provisions of Rule 16.38 in dismissing the petitioner from service summarily without following the mandatory provisions of Rule 16.38. In CWP No. 2989 of 1988 decided on 24.1.1990, I had the occasion to consider the scope of Rule 16.38. In that case, I observed as follows:

It was obligatory on the Superintendent of Police to refer the matter to the District Magistrate as laid down in Rule 16.38 of the Punjab Police Rules. It was for the District Magistrate to decide as to whether the departmental enquiry should be held or criminal proceedings should be held. This provision regulates the stage prior to the holding of the departmental enquiry against a government servant. The dispensing with of the departmental enquiry under Article 311 does not automatically empower the punishing Authority not to follow the statutory provisions of Rule 16.38 of the Punjab Police Rules. Proviso to Article 311 is limited to the dispensing with of the enquiry without giving reasonable opportunity to defend himself during enquiry. If a law provides for a safeguard prior to the holding of departmental enquiry, that has to be observed. Admittedly, in the present case, the case of the petitioner was not placed before the District Magistrate and he has been dismissed from service without complying with the provisions of Rule 16.38 of the Punjab Police Rules. It has been laid down by the Supreme Court in *Delhi Administration v. Chanan Singh*, 1969 S.L.R. 217 and in *Union of India v. Ram Krishan*, 1972 (2) S.L.R. 11, that the provisions of Rule 16.38 have to be followed and failure to do so renders the order of punishment null and void. I am of the view that in the present case, it was necessary for the Superintendent of Police to have complied with the provisions of Rule 16.38 of the *ibid* Rules.

14. In the instant case, the Senior Superintendent of Police has never brought

the matter before the District Magistrate, as visualized under sub-rules (1) and (2) of Rule 16.38 of the Punjab Police Rules, 1934. Since the mandatory provisions of Rule 16.38 have not been followed, initiation of disciplinary proceedings against the petitioner vide Annexure P-7 is illegal.

15. The order passed by the Disciplinary Authority is very cryptic and laconic. It is settled law by now that Disciplinary Authority should pass a speaking and detailed order and this is true to the Appellate Authority as well. The pleas taken to the show cause notice and the grounds taken in the appeal are to be discussed and dealt with by the Disciplinary Authority as well as by the Appellate Authority. Accordingly, in view of the observations and discussions made hereinabove, the petition is allowed. Annexures A-11 dated 30.1.1993 and A-13 dated 20.10.1993 and A-14 dated 25.6.1994 are quashed and set aside. In normal circumstances, respondents ought to have been granted opportunity to proceed with the matter; however, since the petitioner is at the verge of retirement, the proceedings are closed. There shall, however, be no order as to costs.