

(2022) 10 SHI CK 0017
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 3256 Of 2019

Kuljit Singh

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 14-10-2022

Acts Referred:

Himachal Pradesh Police Act, 2007 — Section 143

Citation : (2022) 10 SHI CK 0017

Hon'ble Judges : Chander Bhusan Barowalia, J

Bench : Single Bench

Advocate : Mehar Chand Jamwal, Arvind Sharma, Kamal Kishore Sharma

Final Decision : Dismissed

Judgement

Chander Bhusan Barowalia, J

1. The petitioner joined the Police Department as a Constable on 24.04.1980 and got promotions as Head Constable and Assistant Sub-Inspector on 01.06.1990 and 23.07.2006, respectively. On 29.09.2010, the petitioner was charge sheeted by the Commandant, 1st IRBn, Bangarh for misconduct and dereliction of duties. The allegations against the petitioner were that he spent two days more time than required in discharge of duties, i.e. for making payment to one Bhim Sain, retired Cook and the recruits undergoing training at Jangal Beri and that he met one Babita Tandon, Food Inspector, who was booked in a case of corruption and was brought by the investigating team of SV & ACB before the learned Chief Judicial Magistrate, Dharamshala, H.P., in connection with her bail.

2. However, as per the petitioner, on 05.04.2009, he disbursed the salary of ex-servicemen recruits at 4th IRBn, Jangal Beri, Hamirpur and then proceeded to Village Chhatter for making payment to Bhim Sain, retired Cook. Since Bhim Sain was stated to have gone to Dharamshala in connection with his treatment, therefore, the petitioner has requested his family members to inform him to stay at Dharamshala and collect the payment there on the next day. The petitioner

also offered to give his building on rent to Himachal Pradesh Institute of Police Studies (HPIPS) and for that purpose, he was directed by the Deputy Inspector General of Police, HPIPS to visit his office to supply the relevant documents/revenue papers and also to complete the necessary formalities for renting out his building, qua which, prior permission had already been obtained by him. The petitioner had also gone to the Court at Dharamshala to meet his lawyer in connection with some pending litigation and incidentally, he met Babita Tandon there. However, some media person clicked photograph, when the petitioner was talking with his lawyer, who was also the lawyer for Babita Tandon and published the same in the newspaper.

3. Thereafter, preliminary inquiry was conducted against the petitioner, in which, Inquiry Officer came to the conclusion that there is nothing to establish that the petitioner in any way has helped Babita Tandon in getting the bail. However, the Disciplinary Authority did not agree with the findings of the Inquiry Officer and vide letter dated 31.01.2011 sought specific findings on the following points:-

"1. Whether the charges levelled against the delinquent ASI, Kuljeet Singh have been proved or not.

2. Whether the time taken by the delinquent ASI to perform the work assigned to him is excessive or otherwise.

3. Whether the visit of the said ASI to the Court at Dharamshala in the course of his duty is justified or otherwise.

4. On what basis the Inquiry Officer has ignored the statement of PW, Bhim Sain recorded on 01.04.2010 and what is the necessity to record the statement of Shri Ghanshyam, son of Shri Bhim Sain after a period of one month."

4. On 23.03.2011, respondent No. 4 issued a show cause notice to the petitioner, as he was not convinced with the findings recorded by the Inquiry Officer. The petitioner replied the said notice by filing reply on 31.03.2011. However, the submissions made by the petitioner in his reply were not appreciated and on 08.04.2011 he was served with another show cause notice, proposing the punishment of stoppage of two future increments for two years, but in the final order, passed by respondent No. 4 on 02.05.2011, the petitioner was awarded punishment of stoppage of one future increment for two years.

5. Being aggrieved by order dated 02.05.2011, the petitioner has maintained an appeal before the Appellate Authority, i.e. Armed Police & Training, Himachal Pradesh (respondent No. 3), which was dismissed vide order dated 16.07.2011. Accordingly, the petitioner raised his grievance before the Director General of Police, Himachal Pradesh, by filing a review petition against the aforesaid order, which was also dismissed vide order dated 19.11.2011. In view of awarding of penalty of stoppage of one increment for two years, the Departmental Selection Committee in its meeting held on 12.05.2011, did not include the name of the petitioner for promotion, constraining him to file the instant petition challenging

orders dated 02.05.2011 (Annexure P-11), 16.07.2011 (Annexure P-13), 19.11.2011 (Annexure P-15) and 12.05.2011 (Annexure P-17), respectively.

6. Reply to the petition has been filed and it is averred that the petitioner was deputed for making payment to Bhim Sain, at his residence at Chhatter (Andretta/Punchrukhi) and also the recruits undergoing training at Jangal Beri on 05.04.2009 around 7:15 a.m. and he returned on 08.04.2009 around 2:35 p.m., whereas the job should have been completed within two days. There was no occasion for the petitioner to go to Dharamshala and to met Babita Tandon, who was an accused in corruption case and as such, the petitioner had failed to maintain his public life scrupulously and to be truthful and honest in his working, as was required from him being a police official. The defence taken by the petitioner with respect to charge No. 1 is that he could not give payment to Bhim Sain, as he had gone to Dharamshala in connection with his treatment. However, if statement of Bhim Sain is seen, he has specifically stated that he did not go to Dharamshala, as claimed by the petitioner and payment was received by him at Chhatter. The petitioner has also stated in his defence that he obtained permission from the Commandant, 1st IRBn Bangarh to attend the office of DIG/HPIPS Sakoh in connection with renting out his building to the HP Institute of Police Studies at Dharamshala. However, no such permission had been obtained by the petitioner and letter dated 04.04.2009 (Annexure P-3), which has been produced by him is a fabricated document. It is averred that as per Section 143 of the Himachal Pradesh Police Act, 2007, the Director General of Police can issue standing orders to carry out the purpose of the various provisions of the Act and in order to frame uniform policy regarding the promotion of the candidates, who are penalized in the departmental proceedings. It is further averred that standing order No. P-11 (9)Instructions/2011-5836-66, dated 24-02- 2011, has been issued by respondent No. 2 and as per Clause 2 of the standing order, the petitioner is not eligible for further promotion during the period of penalty, i.e. for two years in instant case. Lastly, a prayer for dismissal of the petition is made.

7. In rejoinder to the reply, contents of the reply are denied and contents of the petition are reasserted.

8. I have heard the learned counsel for the parties and have gone through the records in detail.

9. The learned counsel for the petitioner has argued that Deputy Inspector General of Police has acceded the jurisdiction, as he was not competent to hold the inquiry and only Superintendent of Police could have hold the inquiry. He has further argued that the petitioner was not present at the spot on the alleged date and Deputy Inspector General of Police has taken the action against the petitioner without considering these facts. He has argued that the petitioner had gone to Dharamshala to make the payment to one Bhim Sain and for the purpose of getting his house property assessed, qua which, necessary permission was granted to him vide annexure P-3.

10. On the other hand, learned Additional Advocate General has argued that Bhim Sain, while appearing as a witness has specifically stated that he was at his residence, i.e. Chhatter and was given money there. He has further argued that the petitioner had gone to Dharamshala to help Babita Tandon to get bail and statements of two lady constables, who were accompanying Babita Tandon clearly prove that he was present in the Court on the alleged date. He has argued that father of the petitioner stood surety for Babita Tandon at Dharamshala Court and act of the petitioner was highly derogatory and punishment of stoppage of one increment for two years is just appropriate and exemplary for others, so that others may not commit such act of indiscipline and for such indiscipline in a force like police, the present punishment is very meager. Lastly, he prayed for dismissal of the petition.

11. In rebuttal, learned counsel for the petitioner has argued that the instant petition may be allowed and relief(s), as claimed for, by the petitioner, may be given to him.

12. At the very outset, the statement of Bhim Sain clinches the issue, as he had specifically stated in his statement that he was given payment at Chhatter and not at Dharamshala. Meaning thereby that the petitioner had gone to Dharamshala, without any permission and his purpose was very clear. From the statements of lady constables it is clear that the petitioner was present in the Court premises at Dharamshala to help Babita Tandon, accused in the corruption case, in getting bail, whose surety was furnished by none else, but the father of the petitioner. Even if the permission (Annexure P-3) is taken on its face value, then also the petitioner was having no permission to visit Dharamshala Court, as he took the permission only for renting out his residential house at Sakoh for accommodation to DIG, HPIPS residence and office use, which goes to show that the petitioner while on duty had gone to Dharamshala and thereafter helped the accused.

13. As far as the arguments of learned counsel for the petitioner that DIG was not having any authority to take action, the same has no value, as higher authority can always take action and the instructions cannot be interpreted in the manner that only lower authority can take disciplinary action and higher authority is barred to take disciplinary action when in the instructions the lower authority is prescribed to initiate the action against an employee.

14. Now coming to the other aspects of the case that disciplinary authority as well as appellate authority has not applied its mind, this Court finds that the authority has applied its mind and in spite of show cause notice for stoppage of two increments for a period of two years, final order was stoppage of one increment for two years, which seems proportionate to the misconduct and after due application of mind.

15. Accordingly, in view of the discussion made hereinabove, this Court finds no merit in the instant petition and the same is dismissed, leaving the parties to

bear their own costs. Pending application(s), if any, stands disposed of.