
(2010) 08 SHI CK 0170
In the High Court Of Himachal Pradesh

Leela Dass

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 17-08-2010

Acts Referred:

Citation : (2010) 08 SHI CK 0170

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Judgement

Deepak Gupta, J.—This case depicts a shocking state of affairs in the so called disciplined force, i.e. Himachal Pradesh Police. The petitioner, who is a Constable at the lowest rung of the ladder in the hierarchy of force, has become a victim of the internecine fight between two senior police officials.

2. Briefly stated the facts of the case are that vide order dated 7th September, 1993, the petitioner (Constable No. 1183) was adjusted in the Enforcement Department, on temporary basis. It appears that an order was issued on 16th July, 1995, directing the petitioner to join back for duty in the Police Lines, Kaithu. The petitioner contends that this order was never received by him, but for the sake of argument it is presumed that this letter was received by him.

3. On 27th October, 1995, a show cause notice was issued to the petitioner by the Superintendent of Police, Shimla, informing him that he had not obeyed the orders dated 16th July, 1995 and he had failed to join duty at Police Lines Kaithu. He was told that since he had not obeyed the orders of the higher Officer, which amounted to indiscipline, therefore penalty of censure was proposed to be imposed upon him. No reply of the petitioner is on record. It appears that the petitioner did not send any reply to the notice. On 1st November, 1995, i.e. within four days of the dispatch of the notice, the Additional Director General of Police, Department of Enforcement, sent a letter to the then Director General of Police, with copy endorsed to the Superintendent of Police, Shimla. In this letter, the Additional Director General of Police noted that three Constables had been attached with the Enforcement Department under orders of the Director General

of Police. It was also averred in this letter that there is shortage of staff in the Enforcement Department and if these three Constables are relieved, it will adversely affect the functioning of the Department. It was also mentioned that the Additional Director General of Police had already made a request for creation of 35 posts of Constables in the Enforcement Department and clearly stated that it was not possible for him to relieve the Constables attached with him unless the additional posts were created. The Additional Director General of Police also complained to the Director General of Police that the Superintendent of Police, Shimla is directly corresponding with the staff despite repeated instructions to the contrary. He took serious objection to the issuance of the show cause notice to the petitioner. He also requested that the Superintendent of Police be asked to correspond directly with the Additional Director General of Police.

4. It appears that the aforesaid letter of the Additional Director General of Police had no effect whatsoever on the Superintendent of Police and to the contrary the Superintendent of Police, either himself or under instructions from some senior Officer took umbrage to the letter and on 18th November, 1995 directed that the petitioner and the other Constables be treated to be absent from duty and their pay was ordered to be withheld. On 21st November, 1995, the penalty of censure was imposed upon the petitioner.

5. Thereafter, the Additional Director General of Police sent another letter, dated 27th November, 1995, to the Director General of Police, with copy endorsed to the Superintendent of Police, the relevant portion of which reads as follows:

Keeping in view the whole background of the issue, you will agree that there is no fault of the these constables as they have not been relieved by us. Therefore, there is absolutely no justification for punishing them and stopping their salary. This action of S.P. Shimla shows utter lack of perspective, rigidity and unreasonableness on his part. He is unnecessarily trying to create unpleasantness in official working. The copies of memos received from his office (4 pages) are being sent to you for appropriate orders. I hope you will issue suitable guidance to the officer who has a long career before him in the service.

6. Thereafter, on 31st January, 1996, a B-1 test of Constables was held. This is an eligibility test for promotion to the post of Head Constable. Only those Constables, who have passed this test, are eligible to be promoted as Head Constables, on the basis of seniority. The petitioner was not permitted to sit in the test on the ground that penalty of censure had been imposed on him. The petitioner, in the meanwhile, filed an appeal to the Director General of Police, praying that the penalty of censure imposed upon him be revoked. The penalty of censure was revoked on 20th February, 1996.

7. The petitioner, by means of the present writ petition, claims that his name be included in the B-1 list, on the basis of the test held on 31st January, 1996 with all consequential benefits.

8. The stand of the State is that the petitioner had not sent any reply to the

show cause notice. He had not joined the duty, pursuant to the orders of the Superintendent of Police and, therefore, a penalty of censure was imposed upon him, which penalty was in force at the time when the test was conducted.

9. It has been urged by Mr. Surinder Sharma, learned Counsel for the petitioner, that the test is only an eligibility test and clearing of the test does not amount to promotion and, therefore, the petitioner could not have been debarred from appearing in the test.

10. I need not to go into the aforesaid question because of the reason that the penalty of censure imposed on the petitioner was set aside in appeal by the Director General of Police. When a penalty is set aside, it means that the person was innocent and this innocence will relate back. No person can be deprived of his civil rights, if he is innocent. The Police Department should have permitted the petitioner to appear in the test and a rider could have been put that his appearing in the test would be subject to any further orders which may be passed in this behalf. This was not done. The petitioner was deprived of his valuable right to appear in the test only on the ground that penalty of censure was subsisting on that day, though admittedly such penalty was revoked a few days later.

11. The facts of the case clearly show that the petitioner was in unenviable position. One Officer was telling him to join at Kaithu and the other senior Officer was not relieving him. The orders of transfer were passed by an Officer of the rank of Superintendent of Police and the Additional Director General of Police in his letter had clearly stated that he had not relieved and was not going to relieve the petitioner. What can a poor Constable do in such circumstances, where the Superintendent of Police was defying the orders of the Additional Director General of Police. If penalty of censure could be imposed on a Constable in these circumstances, why a more serious penalty should not have been imposed on the Superintendent of Police concerned. The petitioner was facing the devil on one side and the deep sea on the other. In these circumstances, the penalty imposed upon the petitioner was illegal, which was actually set aside later.

12. Normally, this Court would not have passed an order holding that the petitioner be treated as having passed a test without actually appearing in the test. But the facts of this case, as narrated hereinabove, depict a situation which is different from the normal. Therefore, I proceed to hold that the petitioner shall be deemed to have passed the B-1 test, with effect from 31st January, 1996 or the date on which the persons, who appeared in the test, were treated to have passed the test. In case any person junior to the petitioner was appointed as Head Constable, on the basis of the test held on 31st January, 1996, then the petitioner shall also be given promotion and consequential benefits. The necessary action in this behalf be taken latest by 31st December, 2010. It is made clear that these directions have been given in the peculiar facts and the circumstances of the present case and shall not be treated as precedent in any other case.

The Writ Petition stands disposed of in the aforesaid terms. No costs.