
(1998) 02 P&H CK 0124

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 15819 of 1997

Malwinder Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 04-02-1998

Acts Referred:

Punjab Civil Services (Punishment and Appeal) Rules, 1970 — Rule 4

Citation : (1998) 119 PLR 234

Hon'ble Judges : N.C. Kichhi, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : J.S. Khehar and Sumeet Malhotra, for the Appellant; A.G. and M.C. Berry, DAG, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The petitioner, a Registrar in the office of the Chief Engineer, Public Works Department, Patiala, is aggrieved by the Order dated October 13, 1997, by which the Government has placed him under suspension. The petitioner alleges that this order is vitiated as it has been passed on the recommendation of Mr. M.K. Sain, Chief Engineer, who was not empowered to make any recommendation. He further alleges that the order is vitiated on account of malafides of respondents 2 and 3. The petitioner, consequently, prays that the impugned order as suspension be quashed.

2. A written statement has been filed on behalf of the respondents. It has been inter-alia averred that the order of suspension has been passed by the State Government which is the competent authority in the instant case. It has also been pointed out that the petitioner was "hobnobbing with the than Minister P.W. and used undue influence of the Minister in the working of the Department". He by-passed the Secretariat office and on account of his "connection with M.P.W. (Minister for Public Works) sent the note straightway to Superintending Engineer (P&D) for sending the official vehicle to his residence for attending the office of Minister which is clear cut misuse of official power/machinery". It has also been

averred that ever since "the petitioner was vested with the work of the Establishment Section II and III, he had been found to be violating/flouting all the norms of office and many irregularities have been noticed which were looked into". While holding the charge of Establishment, Section II, in the cases of Junior Engineers, the petitioner had got "the transfer cases dealt from the Superintendent E-III branch inspite of the fact that Superintendent E-II branch was very much in office, thereby flouting the procedure and decorum of the office. Moreover, the manuscripts and Noting files are also missing for which the matter is being looked into separately". It has been further alleged that the petitioner "has himself concealed the fact that his real brother Shri Balbir Singh is a Contractor in this Department operating under the name and style of M/s. B.S. Builders regarding which no information was given by the petitioner to the Department". It has been pointed out that "there were many complaints regarding working of the petitioner, which was discussed in the Meeting held among Chief Engineers, Secretary, Public Works and Minister for Public Works, Punjab..... it was decided that Chief Engineer being the competent authority, may take suitable action....." The petitioner's claim has been controverted and it has been prayed that the writ petition be dismissed.

3. Separate affidavits have been filed by respondents 2 and 3. The allegations of malafides made by the petitioner have been controverted.

4. Learned counsel for the parties have been heard.

5. Mr. Khehar, learned counsel for the petitioner, has contended that the impugned order of suspension is vitiated as it has been passed on the recommendation of a Chief Engineer who had no jurisdiction to make such a recommendation. Secondly, it has been contended that the order is vitiated by malafides and that a cursory examination of the charges would show that no order or suspension should have been passed on the basis thereof. The claim made on behalf of the petitioner has been controverted by Mr. Berry who has appeared on behalf of the respondents. He also produced before us the original files.

6. After hearing learned counsel for the parties, the two questions that arise for consideration are :-

1. Is the order of suspension vitiated by the mere fact that it was passed on the recommendation made by an authority other than the Chief Engineer (National Highway)?

2. Is the order vitiated by malafides?

Regarding 1.

7. A copy of the order of suspension is on record as Annexure P-13 with the writ petition. It has been passed by the Government. It has not been suggested that the Government did not have the jurisdiction to pass the order of suspension. It is also the admitted position that a charge sheet has already been served on the

petitioner. It has been stated by the learned counsel for the petitioner that even a reply to the charge sheet has already been filed. Thus, the impugned order has been passed by the competent authority. Mr. Khehar, however, submits that it is vitiated as- it is passed on a recommendation made by a Chief Engineer who did not have the jurisdiction to make such a recommendation.

8. We have perused the file.

9. There are a large number of complaints made by different persons against the petitioner. We are intentionally not referring to these complaints individually as we do not wish to express any opinion on the merits of the controversy at this stage. However, it appears that even the Chief Engineer (Buildings) of the Public Works Department had sent a confidential communication to the Government in which it had been pointed out that the petitioner is an "indisciplined, arrogant and undependable officer of the Department. Staff is fearful of him and they are not coming out openly for so many irregularities committed by him.....". He recommended that the petitioner "should be placed under suspension and attached to some far off place and then detailed enquiry be held". Various other facts had also been mentioned in this communication.

10. Admittedly, a Chief Engineer is a senior officer in the Department. If he had felt compelled to send a communication to the Government, it cannot be said that he acted illegally or violated any Rule or law. In fact, even the counsel for the petitioner has not suggested that the recommendation violated any rule. Still further, there is nothing before us to indicate that it is only on account of the complaint made by the Chief Engineer that the petitioner was placed under suspension. The official file indicates that (here are complaints as well as posters issued by different Unions against the petitioners. Specific allegations have been levelled against him. In such a situation, the Government clearly had the jurisdiction to place the petitioner under suspension. They have not violated any Rule or law in passing the impugned order. It is relevant to mention that the employees holding civil posts in the State of Punjab are governed by the provision of Punjab Civil Services (Punishment and Appeal) Rules, 1970. Rule 4 clearly authorises "the appointing authority or any other authority to which it is subordinate or the punishing authority....." to place "a Government employee under suspension-where a disciplinary proceeding against him is contemplated or is pending." Admittedly, the Government was the competent authority. A disciplinary proceeding was contemplated and is actually pending against the petitioner. The order of suspension was thus in conformity with the provisions of Rule 4. In passing the order, there was no violation of any rule or law.

11. In view of the above, the first question is answered against the petitioner. It is held that the order of suspension was legal and valid.

Regarding 2.

12. It was next contended by the learned counsel that the impugned order of suspension has been passed on account of extraneous considerations. It is

vitiated by malafides. We find no ground to uphold this contention. The allegations of malafides have been denied by the officers in their respective affidavits. There are definite allegations against the petitioner. If on consideration of the matter the competent authority has considered it proper that the petitioner should be placed under suspension and its action is in conformity with the Rules, it cannot be set aside merely because the affected employee has chosen to make reckless allegations against the senior officers. There was no conflict of interest between the petitioners and respondents 2 and 3. The allegations made by the petitioner are wholly irresponsible and have no foundation or basis whatsoever. Mr. Khehar submits that the mala fides are obvious from the fact that respondent No. 3 has exonerated the petitioner of the charges vide his letter dated July 16, 1997. Such an averment has not been made in the writ petition. However, in case such a communication had been sent by the third respondent to the Government in July, 1997, it would only show that whatever were his true feelings, he did not hesitate to communicate. If in July, 1997, he had recommended that no action be taken against the petitioner and subsequently on coming to know of certain matter he had made some report, it cannot be concluded that the action was malafide. In fact nothing has been indicated by the counsel for the petitioner to show that something had happened between July and November which could have compelled the third respondent to feel unhappy with the petitioner.

13. The long and short of the whole case is that there is a cloud on the petitioner. As a result of the enquiry either the cloud would be removed or the punishment would be awarded which the authority may consider proper. During the course of this enquiry the petitioner is under suspension. At this stage no occasion for interference arises. Consequently, even the second question is answered against the petitioner.

14. Mr. Khehar at the end pointed out that the charges levelled against the petitioner did not warrant suspension of the petitioner. This claim was controverted by Mr. Berry who contended that the charges were serious and that there was enough evidence to prove the charges.

15. At this stage we do not wish to comment on the matter as the interest of either side can be adversely affected. This is primarily a matter for the competent authority to consider.

16. In view of the above, we find no ground to interfere. Resultantly, the writ petition is dismissed. However, in the circumstances, there will be no order as to costs. The original files have been returned to the learned counsel for the respondents.