
(2009) 10 RAJ CK 0033
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2164 of 1996

Meetha Lal Jain	Vs	APPELLANT
The State of Raj. and Others		RESPONDENT

Date of Decision : 08-10-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2009) 10 RAJ CK 0033

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Tatia, J.—Heard learned Counsel for the parties.

2. The petitioner was posted as Assistant Sub-Inspector (ASI) in the Police Station, Oгна and since the Station House Officer (SHO) was on leave, therefore, the petitioner was incharge of the Police Station, Oгна. It is alleged that one Ratan Lal came to the said police station on 15.3.1994 with a complaint in regard to death of his father Bhera Patel and it is alleged that the petitioner did not accept that complaint and, therefore, did not register the FIR. The complainant alleged that he approached the Deputy Superintendent of Police but he also did not help. However, again on 16.3.2009, the complainant went to the police station where the same ASI (the petitioner) was holding the charge of the SHO and he though recorded the information given by the petitioner on 16.3.1994 and recorded the statements of the complainant Ratan Lal and the witness Bheru Lal, yet did not further investigate the matter nor he recorded the FIR. Then the petitioner recorded the statements of witnesses Sava, Gulab, Laxman Singh and Bherulal Patel on 17.3.1994 and the statement of Smt. Jamna was also recorded on 18.3.1994. Statements of other witnesses were also recorded on 18.3.1994, however, yet no FIR was registered. The petitioner was served with the charge-sheet and preliminary enquiry was conducted. The petitioner submitted his reply on 25.7.1994. In the preliminary enquiry, the petitioner was found guilty. In the

enquiry, eight witnesses were examined and 25 documents were also produced. After the enquiry report, the petitioner was served with show cause notice and ultimately, he was punished by the disciplinary authority vide order dated 28.11.1995 with punishment of reversion to the post of Head Constable for a period of four years. Copy of this order is placed on record as Annex.22. The petitioner preferred appeal before the Inspector General of Police, Head Quarters, Rajasthan, Jaipur, which was also dismissed on 3.5.1996. Copy of this order is placed on record as Annex. 24. The order of reversion was given effect to and the petitioner already reverted to the post of Head Constable. The petitioner being aggrieved against the above two orders of punishment dated 28.11.1995 and rejection of appeal dated 3.5.1996, has preferred this writ petition.

3. The learned Counsel for the petitioner submitted that there was no proof on record in support of the allegation that the complainant came to the police station to the petitioner on 15.3.1994. On 16.3.1994, looking to the allegations, the report was registered and from the statement of the complainant, it is clear that it was a case of death of a person but he also had no knowledge about the manner in which the incident might have occurred. It is submitted that the petitioner was since holding the charge for a short period of about 9 days only, as the SHO was already engaged and went to investigate another matter, therefore, in this short period, the petitioner did what he could have done. It is submitted that the petitioner recorded the statements of the witnesses, is not in dispute. The learned Counsel for the petitioner also submitted that the rules had not been complied with and the disciplinary authority relied upon the statements of the witnesses recorded during preliminary enquiry which were recorded in the back of the petitioner. It is also submitted that the petitioner handed over the charge of the case to the SHO after 9 days and he was also charged for not taking action in time for a very long period than the period for which the investigation was with the petitioner. Said SHO was punished with reversion for two years, whereas the petitioner has been awarded punishment of reversion for four years. The learned Counsel for the petitioner also submitted that the petitioner took voluntary retirement and looking to the fact that there is no allegation of malafide or ill-motive or of extraneous consideration, then the punishment is harsh one and may be reduced proportionately to the extent that the petitioner may get all such pentionary benefits for future by reducing his punishment to the time of his retirement.

4. I considered the submissions of the learned Counsel for the parties and perused the record as well as the report (Annex.1) which has been recorded by the petitioner on 16.3.1994 as well as the statements of the complainant Ratan Lal and Bheru Lal which were recorded on 16.3.1994 as well as the reasons given by the disciplinary authority and the statements which were considered by the disciplinary authority as well as the appellate authority.

5. It is settled law that the High Court, while exercising writ jurisdiction under

Article 226/227 of the Constitution of India is neither the appellate authority nor can interfere in the finding of fact recorded by the disciplinary authority, unless that finding of fact vitiates for any valid lawful reason, like violation of principles of natural justice or of not giving opportunity to contest the matter and where the finding of fact is based on the evidence which is not admissible in evidence or is based on the evidence which could not have been considered by the authority. In the departmental enquiry, it appears that a fair treatment has been given to the officer and, thereafter, the entire facts have been considered by the authority before passing any order holding the petitioner guilty. In this case, the facts depends upon the documents rather than the statements of the parties. Admittedly, the complainant's father died on 13.3.1994 and the complainant was not in the village. He alleges that he approached the petitioner on 15.3.1994 and the FIR was not registered. It is clear from report (Annex.1) itself that even on 16.3.1994, no case was registered, but an entry was made in the register about lodging of complaint by the complainant. When the petitioner recorded the statements of the witnesses, even the petitioner did not register the case that too of heinous nature of murder, which was registered in the month of April, 1994 when directions were given by the higher authorities. It may be true that the petitioner had 9 days" time to function as SHO. In such a matter, 9 days are too much and in such a matter, the FIR should have been registered forthwith. The disciplinary authority has considered the statements recorded in the departmental enquiry and mere recording one of the statement of the witness, whose statement was recorded during preliminary enquiry, has not effected the finding recorded by the disciplinary authority in any manner. The disciplinary authority clearly relied upon the statements of the witnesses whose statements were recorded in the disciplinary enquiry and considered the documents Ex.8, Ex.12, Ex.19, Ex.10, Ex.21, Ex.22 and Ex.25. In this case, accused Shanti was also arrested and remand was also obtained.

6. In view of the above reasons, it cannot be said that the disciplinary authority has committed any wrong or the appellate authority has committed any mistake in rejecting the appeal. So far as allegation of violation of rules are concerned, it was not the point raised even in the appeal and, therefore, it cannot be allowed to be raised in this writ petition.

7. Therefore, I do not find any merit in this writ petition and the same is hereby dismissed.