
(2014) 05 P&H CK 0122
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9894 of 2013

Mohan Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 07-05-2014

Acts Referred:

Citation : (2014) 175 PLR 821

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Advocate : Sat Narain Yadav, Advocate for the Appellant; Harish Rathee, Sr. D.A.G, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Augustine George Masih, J.—Petitioner has approached this Court impugning the findings recorded by the Enquiry Officer in his report dated 23.05.2012 (Annexure P-2) on the ground that the findings so recorded are based on no evidence and, therefore, subsequent orders of punishment dated 22.08.2012 (Annexure P-4) passed by the Deputy Commissioner of Police, Gurgaon, vide which two increments of the petitioner have been stopped with permanent effect. Challenge has also been posed to the impugned order dated 03.01.2013 (Annexure P-6) passed by the Commissioner of Police, Gurgaon, rejecting the appeal preferred by" the petitioner as also the order dated 21.03.2013 (Annexure P-8) passed by the Director General of Police, Haryana, dismissing the revision preferred by the petitioner. It is the contention of the counsel for the petitioner that during the enquiry proceedings held against the petitioner, the star witness for the prosecution was the complainant namely Vijay Pal (PW-7), who, in his statement before the Enquiry Officer although said that he had submitted a complaint to the Joint Commissioner against Assistant Moharar Mohan Singh as the person who had taken bribe from him of Rs. 500/- and after taking money, had processed the application of the complainant which was submitted for sale and purchase of his gun but the said person who had taken

the bribe was not the petitioner and, in fact, the said person was a person of short structure and dark complexion. The money was not paid to Assistant Moharar Mohan Singh, the delinquent official, against whom the enquiry was being held and he has, under a misguidance, submitted the complaint against Mohan Singh. As a matter of fact, he reached the police station to verify about his file where he met a person who was in plain clothes and enquired from him as to where he could meet the Moharar. The said person claimed himself to be the Moharar on which the complainant had asked him about his file regarding sale of gun whether it has been sent to the office of Joint Commissioner of Police or not. The said person asked for Rs. 500/- but he did not pay him and gave an application to the Joint Commissioner of Police. On seeing the petitioner, he had stated that this was not the person who he had met when he had visited the police station.

2. As per this statement, counsel contends that the case of the prosecution falls flat on the ground and apart from this, there is nothing on the record which would suggest that petitioner had ever demanded any bribe or was paid to him. He has referred to the statement of Pardeep Kumar PW-4 who stated that the petitioner did not ask for any money from Vijay Pal in front of him. He, on this basis, contends that the findings recorded by the Enquiry Officer being based on no evidence, the Enquiry Report itself deserves to be set aside and the consequential orders imposing punishment upon the petitioner should also be quashed.

3. In support of this contention, counsel for the petitioner has placed reliance upon the judgment passed by the Hon''ble Supreme Court in Kuldeep Singh Vs. The Commissioner of Police and Others, to contend that in a departmental enquiry where the complainant was not produced by the department during the enquiry proceedings, the findings recorded by the Enquiry Officer being badly affected by bias in favour of department cannot be made the basis for punishing an official as the Enquiry Officer in such situation acted arbitrarily. The same cannot be made the basis for imposing a punishment upon an employee.

4. Reliance has also been placed upon the judgment passed by this Court in CWP No. 2413 of 2008,- titled as "Constable Kulbir Singh v. State of Haryana and others, decided on 28.09.2011 (Annexure P-9) where this Court, on going through the Enquiry Report and the statements of the witnesses came to a conclusion that the same was a case of no evidence and there being no evidence on record, the findings recorded by the Enquiry Officer could not sustain. Punishment, therefore, could not have been imposed by the punishing authority on the basis of such findings.

5. Similarly reliance has been placed upon the judgment passed by this Court in CWP No. 9369 of 2011, titled as ASI Sudhinder Kumar v. State of Haryana and others, decided on 19.09.2012 (Annexure P-10), wherein, again the Court had come to a conclusion that the findings recorded by the Enquiry Officer in its report was based on no evidence which led to setting aside the same and

quashing of the orders of punishment. He, accordingly, contends that the present writ petition deserves to be allowed in same terms.

6. Another contention which has been raised by the counsel for the petitioner is that as per Rule 16.38(a)(1) of the Punjab Police Rules, 1934 as applicable to the State of Haryana requires the concurrence of the District Magistrate before proceeding departmental enquiry against a government employee where the enquiry or investigation into a complaint indicates a criminal offence to have been committed by an official. He, therefore, contends that holding of the departmental enquiry against the petitioner without a concurrence-of the District Magistrate is ultra-vires the statutory rules and, therefore, initiation of departmental proceedings itself deserves to be set aside.

7. On the other hand, counsel for the respondents submits that during the enquiry proceedings, the factum that the complaint was submitted by the complainant Vijay Pal stands admitted. The allegations made therein with regard to having approached the police station and met one person asserting himself to be a Munshi and, thereafter, demanding bribe and payment thereof to the said person also stands admitted. Not only this, after having paid the amount, he was assured that the file has been sent, when he has visited the office of the Assistant Police Commissioner, Gurgaon, he came to know that the file has not reached, on which he came back to the police station and found the same person there who opened the almirah and took out the file and said that unless he pays Rs. 500/-, the file will not be sent to the office of Assistant Police Commissioner, Gurgaon and it is only after paying of that amount, file was sent. Reference has also been made to the statement of ASI Pardeep Kumar (PW-4 before the Enquiry Officer) to contend that the file of the application of sale/transfer of the arms licence was in possession of the petitioner who was the Munshi of the police station. He, on this basis, contends that the almirah of the Munshi where the record was kept, could only be opened by the petitioner and nobody else can take the record from the almirah as the application in question was in the possession of the petitioner as the same was handed over by ASI Pardeep Kumar to him. He, thus, contends that it is not the case where there is no evidence against the petitioner and merely because the complainant subsequently resiled, the same cannot be made the basis for concluding that there is no evidence against the petitioner and the findings recorded by the Enquiry Officer is without any basis. He further contends that the punishment as imposed upon the petitioner is only stoppage of two annual increments with permanent effect which is proportionate to the misconduct attributed to the petitioner and rather is on the lenient side. He, accordingly, states that the judgments relied upon by the counsel for the petitioner were the cases of no evidence which would not be applicable the case in hand.

8. With regard to the contention of the counsel for the petitioner that Rule 16.38(a)(1) of the Punjab Police Rules, 1934, require and mandate the sanction of the District Magistrate for holding a departmental enquiry where criminal

offence is also made out on the basis of allegations on a delinquent employee, the same is not mandatory as the language of the Rule itself suggest that it is only discretionary in nature and it is upto the punishing authority either to proceed to get a criminal case registered against an employee where criminal offence is made out or to proceed with the departmental enquiry. Prayer has, thus, been made for dismissal of the writ petition.

9. I have considered the submissions made by the counsel for the parties and with their assistance have gone through the records of the case.

10. The ground on which the impugned orders have been challenged is that the Enquiry Report dated 23.05.2012 (Annexure P-2) as submitted is based on no evidence and, therefore, cannot be made the basis to punish the petitioner and thus, the orders of punishment, rejection of appeal and the revision by the competent authorities are unsustainable.

11. The judgments on which reliance has been placed upon by the counsel for the petitioner are those where the Court, on the basis of the evidence on record, had come to a conclusion that there was no evidence at all, on the basis of which, a conclusion can be drawn that there was any semblance or connectivity of the delinquent employee with the misconduct attributed to him. There cannot be any dispute with regard to the proposition as has been laid down by the Hon"ble Supreme Court and the judgments of this Court reliance whereon has been laid by the counsel for the petitioner namely Kuldeep Singh's case, Constable Kulbir Singh's case and ASI Sudhinder Singh's case (supra).

12. In the present case, such a conclusion that there is no evidence against the petitioner, cannot be drawn as there is ample evidence against the petitioner which would justify the findings which have been recorded by the Enquiry. Officer. First and foremost would the acceptance of the complainant, Vijay Pal, that he had, in fact, submitted a complaint against one Shri Mohan, Munshi of the police station. The contents of the complaint which has been referred to in the Enquiry Report clearly projects that the complainant Vijay Pal had approached the police station, Sector 5, Gurgaon on 25.05.2011, after having submitted his application dated 23.05.2011 for sale of his arms/gun licence. The contents of the enquiry indicate the clear picture with regard to the complainant having made a statement which read as follows:--

"But the complainant Vijay Pal Bahadur Singh enquired about his file in the police station Sector 5, Gurgaon on 25.05.2011, then Mohan Kumar Munshi asked to the complainant that your file has already been sent to the office of Assistant Police Commissioner, Industry Gurgaon, thereafter on same day complainant went to the office of Assistant Police Commissioner, Industry Gurgaon and enquired about his file, then they disclosed that his file could not come in their office from police station. The complainant came back to the police station and enquired from Mohan Munshi, then Mohan Munshi had not given any satisfactory reply. The complainant again made request, then Mohan Munshi took out his file

from almirah and shown the same to complainant and said that when he wants, only then file can move further and raised a demand of Rs. 500/-. The complainant Vijay Pal had given him Rs. 500/- then Mohan Munshi sent his file in the office of Assistant Police Commissioner, Industry Gurgaon, on 02.06.2011. Only due to this reason, after passing of one month, on 23.06.2011, the complainant has filed an complaint in the office of Joint Police Commissioner Gurgaon and its enquiry has been carried out through Deputy Police Commissioner, West, Gurgaon and the Munshi Mohan found prima facie guilty. During departmental enquiry the complainant Vijay Pal son of Bahadur Singh, prosecution witness No. 7, resiled from his statement which he had made in his complaint and under some pressure he is making this statement. Apart from this the prosecution witness No. 8 Shri Abhay Singh Rao HPS Deputy Police Commissioner, West, Gurgaon certified his earlier enquiry report. The prosecution witness No. 3 Head Constable Giriraj, writer Police Station Sector 5, Gurgaon also disclosed that the arms licence Letter No. 307/LC/W dated 23.05.2011 was received in the police station Sector 5, Gurgaon for the purpose of Sell/transfer, the same was attested by the ASI Pardeep Kumar and Constable Mohan Singh No. 2109/G, who was posted as Assistant Writer Police Station Sector 5, Gurgaon, the file was given to him for the purpose of enquiry and the same was sent to the office of Assistant Police Commissioner, Industry Gurgaon, on 02.06.2011, from this it is clear that on 25.05.2011 Vijay Pal complainant came to the police station Sector-5, Gurgaon and met the delinquent Constable Mohan Singh No. 2109/G and constable Mohan Singh had sent the file of complainant to the office of Assistant Police Commissioner, Industry Gurgaon, on 02.06.2011 only after received Rs. 500/- but now Vijay Pal complainant turn hostile his statement, their statement and previous enquiry, the allegation in the complaint of Vijay Pal against the delinquent Constable Mohan Singh No. 2109/GGN is proved."

13. A perusal of the above would show that not only the petitioner had raised a demand of Rs. 500/- and after receiving the amount from the complainant, proceed to send the file after that only. Prior to, when the complainant had visited the police station, the petitioner told the complainant that his file has already been sent to the office of Assistant Commissioner of Police. On the same day, the complainant had gone to the office of the Assistant Commissioner of Police, Industry Gurgaon, where he was intimated that the file has not been received. He came back to the police station and enquired from Mohan, Munshi and thereafter he did not give a satisfactory reply. When further request made by the complainant, Mohan Singh Munshi took out his file from the almirah and showed it to him and said that he would move the file only when an amount of Rs. 500/- is paid to him. This amount was paid by Vijay Pal to Mohan Munshi who then sent the file to the office of the Assistant Commissioner of Police, Industrial Area, Gurgaon on 02.06.2011.

14. Apart from this, evidence of ASI Pardeep Kumar (PW-4), clearly indicates that the records with regard to the application in question for the sale/transfer of

the arms was in possession of the petitioner who was the Munshi of the police station. No other person could have opened the almirah of the Munshi of the police station except the petitioner and, therefore, even if the complainant resiled during the enquiry proceedings and refused to recognize the petitioner as the person whom the money was paid or whom he had met in the police station, the said statement cannot be accepted to be correct. It is required to be mentioned here that the complainant himself had admitted the fact of filing of the complaint. The contents of the complaint has already been admitted by him except that he has not admitted that-the petitioner was the person whom he had met in the police station.

15. There can be no dispute with regard to the principles that a Court can interfere in exercising of its extra-ordinary jurisdiction in a case where there is no evidence. This, in my considered view, is not such a case specially where the complaint clearly indicates not merely of offer of an amount of Rs. 500/- but thereafter opening the almirah, taking out of the file which was shown to the complainant and thereafter processing it and sending to the concerned authority for further action which are also attributed to the petitioner.

16. The judgments relied upon by the counsel for the petitioner, as referred to above, would not be applicable to the case in hand as those were cases where Court had proceeded to hold that there was no evidence on record. In the case of Kuldeep Singh (supra) before the Hon'ble Supreme Court, during the enquiry proceedings, complainant was not at all produced by the department which the Court said was the responsibility of the officials of the department and non-production of the complainant was taken as there being of no evidence against the delinquent official. In the present case, the complainant has owned his complaint and its contents except that he has denied the identity of the petitioner to be the person against whom the complaint was filed which has been rightly disbelieved by the Enquiry Officer in his findings.

17. As regards the contention of the counsel for the petitioner that the permission/concurrence of the District Magistrate was required under Rule 16.38(a)(1) of the Punjab Police Rules, 1934 for holding a departmental enquiry, it would be appropriate if this Rule is quoted here. Rule 16.38(a)(1) of the 1934 Rules reads as follows:--

"Rule 16.38

a) Criminal offences by police officers and strictures by courts-procedure regarding-

1) Where a preliminary enquiry of investigation into a complaint alleging the commission by an enrolled police officer of a criminal offence in connection with his official relations with the public, establishes a prima facie case, a judicial prosecution shall normally follow. Where, however, the Superintendent of Police proposes to proceed in the case departmentally, the concurrence of the District Magistrate shall be obtained."

18. The heading of this Rule shows that it deals with a situation where a Court passes strictures against a police officer which amounts to commission of an offence(s) by such an officer and thereafter the procedure to be followed. Present is not a case of such a nature and therefore, it would not apply.

19. Had it been a case where the above Rule would have been applicable and the punishing authority instead of proceeding against the delinquent employee for judicial prosecution, which shall be the normal process to be followed, decides to take action departmentally, the concurrence of the District Magistrate had to be obtained. However, where the normal process of judicial prosecution has been followed on the criminal side, the punishing authority can proceed against the police official departmentally also but in this case, no concurrence of the District Magistrate is envisaged under the Rule and thus, it is not required. In view of the above, the contention of the counsel for the petitioner on this ground also cannot sustain.

Finding no merit in the present writ petition, the same stand dismissed.