

(2012) 06 SHI CK 0113
In the High Court Of Himachal Pradesh
Case No : CWP No. 4881 of 2011

Shri Ram Prasad Jaswal

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 16-06-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 187, 342

Citation : (2012) 06 SHI CK 0113

Hon'ble Judges : Dharam Chand Chaudhary, J

Bench : Single Bench

Advocate : K.D. Shreedhar, with Mr. Y.S. Thakur, for the Appellant; Ramesh Thakur, Assistant Advocate General, for the Respondent

Judgement

Justice Dharam Chand Chaudhary, J.—Aggrieved by the show cause notice Annexure P-10, issued by the 3rd respondent, the petitioner has approached this Court by way of filing the present writ petition with the following prayers:

- a) That the entire record pertaining to the instant case may kindly be summoned and subjected to scrutiny by this Hon"ble Court;
- b) That the instant petition may kindly be allowed with costs and a writ in the nature of certiorari may kindly be issued, quashing and setting aside the show cause notice dated 11.5.2011 (Annexure P-10) with all consequences.

The short controversy brought to this Court in the present writ petition is as to whether in a situation when the Disciplinary i.e. Superintendent of Police, Mandi, while accepting the inquiry report had exonerated the petitioner from the charge framed against him, the 2nd respondent was justified in directing the 3rd respondent, firstly vide letter dated 19.7.2010, Annexure P-7 and subsequently vide letter dated 3.11.2010, Annexure P-9, the contents whereof read as under:

OFFICE OF THE DIRECTOR GENERAL OF POLICE HIMACHAL PRADESH POLICE
HEADQUARTERS SHIMLA-2

To

The Inspector General of Police, Northern Range, Dharamshala, H.P.

No. Law-III-Cr. Appeal/22/08-31289 Dated-19-7-2010

Subject:- Regarding Cr. Apple NO. 722/2k titled as State of HP vs Ranjit Singh

Sir,

Please refer to your letter No. A21/crime/Comp/09-9387 dated 3.12.09 on the above cited above.

2. In this regard the D.G.P. has observed as under:-"Ask IG (NR) to review the De order and pass a speaking order with in 2 weeks and then file be put up alongwith comments of IG (L&O)

It is requested that further action may please be taken in accordance with the direction of the D.G.P. and report be sent to this office with in 2 weeks.

Yours faithfully,

Sd/-

(H.K. Sharma, Supdt.)

FOR DIRECTOR GENERAL OF POLICE HIMACHAL PRADESH

OFFICE OF THE DIRECTOR GENERAL OF POLICE HIMACHAL PRADESH, POLICE HEADQUARTERS SHIMLA -171002.

To

The Inspector General of Police, Northern Range Dharamshala,(H.P)

No. Law-III-Cr. Appeal/22/08-4542 dated-3-11-2010

Subject:-Review of departmental enquiry against Insp. Ram Prasad and ASI Amar Nath regarding criminal appeal N.722/2K-titled as State of HP vs Ranjit Singh.

Memo:

Please refer to your letter No. a.21/Cr-Appl./10-7213 dated 28-8-2010, on the above cited subject.

2. As per this office letter No. Law-III-Cr. Appeal/22/08-31289 dated 19-7-2010 you were directed to review the matter in accordance with the provisions contained in Police Rule 16.28 by summoning the departmental enquiry file whereas vi=de your letter under reference only a report has been sent.

It is, therefore, requested that the punishment may please be reviewed under provision of Police Rule 16.28 after going through the record of department enquiry and pass a speaking order of punishment. A copy of said order be sent to

P.H.Q. for further examination. The record received vide letter NO. A-21/CR-Appl. /10-7213 dated 28-8-2010 is returned herewith.

Encls:- As above.

(S.R. Mardi.ADG/L&O)

FOR DIRECTOR GENERAL OF POLICE, HIMACHAL PRADESH, SHIMLA-2.

to review the De order/punishment under Police Rule 16.28 and pass a speaking order of punishment.

2. The above directions were issued by the 2nd respondent, when the Inquiry Officer, in view of the inquiry conducted and the evidence collected, had arrived at a conclusion that the charge framed against the petitioner was not proved and the Disciplinary Authority, i.e. Superintendent of Police, Chamba, after going through the inquiry report and the record, had exonerated the petitioner, vide order dated 16.4.2009, Annexure P-9.

3. There is not much controversy so far as the facts of this case are concerned.

4. The petitioner, on his appointment as Sub Inspector, was posted as such in the year 1998, in Police Station, Dharamshala, District Kangra. In a case registered under Sections 342 and 187 of the Indian Penal Code, vide FIR No. 281/1998, the investigation on 19.11.1998 was conducted by ASI Kishan Lal. On 20.11.1998, the investigation of that case was, however, entrusted to the petitioner. He had taken into possession the vehicle used for the commission of offence from its owner in presence of the witnesses. The trial of that case had culminated in acquittal. On an appeal to this Court, the learned Single Judge, while pointing out certain infirmities in the investigation conducted in the case, had directed the 2nd respondent, as under:

However, it is directed that a copy of this judgment be sent to the Director General of Police, H.P. for getting an inquiry conducted into the role of the police officials concerned including the Investigating Officer, in view of the observations made above and action shall be taken in view of the facts and circumstances of the case as he deems appropriate. The appeal filed by the State is dismissed accordingly. Bail bonds furnished by the respondent shall stand discharged.

5. Pursuant to the above direction of the learned Single Judge, explanation of the petitioner was called for vide memo. Dated 27.9.2008, Annexure P-2. His reply thereto is Annexure P-3. The Disciplinary Authority, however, did not find the explanation furnished by the petitioner satisfactory and decided to hold a regular inquiry against him, as is evident from the order dated 19.1.2009, Annexure P-4. Consequently, the petitioner was served with the memorandum of charge-sheet, Annexure P-5. Shri Arvind Chaudhary, Dy. S.P., Headquarters, Chamba was appointed the Inquiry Officer. After holding inquiry, he submitted a report to the Disciplinary Authority, i.e. the Superintendent of Police, Chamba, who on going through the same, exonerated the petitioner vide order Annexure P-6.

6. Consequent upon the letter Annexure P-7 of the 2nd respondent, the 3rd respondent though had perused the record, however, concurred with the view of the matter, already taken by the Inquiry Officer and the Disciplinary Authority, i.e. the Superintendent of Police, Chamba. Thus, the petitioner was exonerated vide order Annexure P-8, by the 3rd respondent also, as nothing incriminating was found against him on record.

7. It is, however, under the further direction of the 2nd respondent, issued vide letter Annexure P-9, the 3rd respondent while initiating review proceedings afresh, issued the show cause notice Annexure P-10 against the petitioner, which has been assailed in the present writ petition.

8. Needless to say that on the very first day of hearing i.e., 27.6.2011, this Court had passed the following order:

The challenge is to Annexure P-10, show cause notice issued to the petitioner. According to the petitioner, no fresh steps as proposed could have been taken in view of Annexures P-6 and P-8, which have attained finality. It is seen that the petitioner has brought this matter to the notice of the third respondent by Annexure P-3, reply. There will be a direction to the third respondent to consider Annexure P-11, in light of the stand taken by the petitioner in the reply and with particular reference to the maintainability of that action in view of Annexures P-6 and P-8. Needless to say that a speaking order will be passed. Post on 9.9.2011

9. It is worthwhile to mention here that pursuant to the aforesaid order of this Court, the 3rd respondent in review proceedings initiated pursuant to letter Annexure P-9 of the 2nd respondent, has imposed the penalty of stoppage of one future increment with cumulative effect permanently upon the petitioner, vide order dated 29.7.2011, which has been annexed as Annexure R-1 to the reply filed on behalf of the respondents.

10. It is in this backdrop that Shri K.D. Shridhar, learned Senior Counsel, strenuously contended that since nothing incriminating was found against the petitioner during the course of inquiry conducted by the Inquiry Officer and the Disciplinary Authority after going through the Inquiry report and concurring with the finding of the Inquiry Officer, had exonerated the petitioner from the charge and even the Appellate Authority, i.e. the 3rd respondent, who, on the direction of the second respondent had perused the record and when found nothing incriminating against the petitioner exonerated him, therefore, the 2nd respondent was not justified at-all in directing the 3rd respondent again to review the punishment, in accordance with the Police Rule 16.28 vide letter Annexure P-9.

11. Learned Senior Counsel has further pointed out that under the Police Rule 16.28 neither any show cause notice, in the form of impugned notice Annexure P-10, could have been issued against the petitioner nor any penalty imposed upon him.

12. On the other hand, learned Assistant Advocate General, while inviting the attention of this Court to various contentions raised in reply to the writ petition, has urged that keeping in view the manner in which the petitioner had conducted investigation of FIR No. 281/98, he could not have been exonerated and as such, the 2nd respondent is not stated to have committed any illegality in directing the 3rd respondent to review the order passed by the Disciplinary Authority.

13. Admittedly, the trial in case FIR No. 281/98, partly investigated by the petitioner, had ended in acquittal.

However, since the learned Single Judge of this Court, while deciding the criminal appeal against the acquittal, had made certain observations in the judgment qua the manner, in which the investigation was conducted and it is pursuant to such observations made by the learned Single Judge, the departmental inquiry was ordered to be conducted in the matter. Therefore, before embarking upon the rival contentions of the parties, this Court may notice the procedure required to be followed while conducting departmental inquiries, as per provisions of Punjab Police Rules, as applicable to the State of H.P. The relevant rules for the purpose of the present controversy read as follows:

16.24. Procedure in departmental enquiries.:-

(1) The following procedure shall be followed in departmental enquiries:

(i) XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(ii) XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(iii) XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(iv) XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(v) XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(vi) At the conclusion of the defence evidence or, if the enquiring officer so directs, at any earlier stage following the framing of a charge, the accused shall be required to state his own answer to the charge. He may be permitted to file a written statement and may be given time, not exceeding one week, for its preparation, but shall be bound to make an oral statement in answer to all questions which the enquiring officer may see fit to put to him, arising out of the charge, the recorded evidence, or his own written statement.

(vii) The enquiring officer shall be proceed to pass orders of acquittal or punishment, if empowered to do so, or to forward the case with his finding and recommendations to an officer having the necessary powers. Whenever the officer passing the orders of punishment proposes to take into consideration the adverse entries on the previous record of the accused police officer, he shall provide reasonable opportunity to the defaulter to defend himself; and a copy or at least a gist of those entries shall be conveyed to the defaulter and he shall be asked to give such explanation as he may deem fit. The explanation furnished by

investigation.

2. That you have not taken Maruti Car No. HP-39-1449 into custody on the same date, 19.11.1998, in the investigation of the case. It is not clear that how and in the presence of whom you have taken the vehicle into police custody.

16. The Inquiry Officer in view of the inquiry conducted and the evidence collected did not find any fault with the investigation conducted by the petitioner and returned a finding that the charge framed against the petitioner was not established. He submitted the report to the Disciplinary Authority, i.e. Superintendent of Police, Chamba, who while concurring with the findings recorded by the Inquiry Officer, exonerated the petitioner, vide order Annexure P-6, which is reasoned one and based upon the proper appreciation of the inquiry report and the records as well.

17. As a matter of fact, it is the Disciplinary Authority, who alone could have disagreed with any finding recorded by the Inquiry Officer and in the event of any disagreement to have recorded reasons in support thereof. Not only this, but the reasons so recorded, were also required to be put to the delinquent officer, by way of a notice and his version thereon obtained. It is thereafter, the Disciplinary Authority could have proceeded to impose punishment, if any, upon the petitioner. It is held so by the Hon'ble Supreme Court in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, the relevant portion of the judgment reads as under:-

18. When the disciplinary authority differs with the view of the enquiry officer, and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of enquiry as explained in Karunakar case.

18. In the case in hand, the Disciplinary Authority did not disagree or differ with the findings recorded by the Inquiry Officer and rather concurred with the same and proceeded to exonerate the petitioner. It is thus doubtful that in such a situation, show cause notice, in the form of Annexure P10, could have been issued to the petitioner.

19. The role of Appellate/Reviewing Authority would have come into play had any appeal been preferred before it. Since the petitioner was exonerated in the inquiry proceedings by the Disciplinary Authority, there was no occasion of any appeal having been filed in this matter.

20. If coming to the powers to review, as contemplated under Rule 16.28 of the Rules *ibid*, in the present case it is the 3rd respondent, who alone could have called for the records in respect of award (punishment), made by his subordinate, i.e. the Superintendent of Police, had it been a case of imposition of punishment upon the delinquent, i.e. the petitioner and had he preferred an appeal/review against it. It is highly doubtful that the order exonerating a delinquent can also be reviewed under Rule 16.28. Otherwise also, a plain reading of the Rule demonstrates that it is for the Inspector General/Deputy Inspector General and Superintendent of Police, who if satisfied, may call for the record of award for perusal and it is not contemplated thereunder that a superior officer in the rank of Director General of Police I.e., the 2nd respondent can also direct them to review the order of punishment.

21. It is worthwhile to mention here that the 2nd respondent had directed the 3rd respondent to review the punishment, in accordance with the provisions contained under Police Rule 16.28, after going through the record of departmental inquiry and pass a speaking order of punishment.

22. Since the Disciplinary Authority had exonerated the petitioner, the present is not a case of imposition of punishment. In such a situation, it is not understandable as to how the 3rd respondent could have exercised the power to review, as contemplated under Rule 16.28, in the present case.

23. As regards the observation made by the learned Single Judge while deciding Criminal Appeal No. 722/2000, vide judgment Annexure P-1, it can be noticed that only a direction was given to the 2nd respondent to get an inquiry conducted into the role of the police officials concerned, including the Investigating Officer and thereafter to take action as deemed proper. The petitioner and for that matter any other police official, who conducted investigation in FIR No. 281/98, were not held responsible in any manner whatsoever and rather, lapse(s), if any attributable to them could have only been established during the course of inquiry. The inquiry though was got conducted, however, the charge against the petitioner could not be established.

24. The charge against the petitioner, in a nut shell, was that during investigation he failed to establish the charge against the accused in FIR No. 281/98 and also did not take into custody the Maruti car, bearing No. HP-39-1449, used for the commission of offence on the same day, i.e. 19.11.1998.

25. Admittedly, the investigation was entrusted to the petitioner on 20.11.1998. Thus, there was no occasion for him to have taken into custody the Car on 19.11.1998. He took into custody the same on 20.11.1998 and this only seems to be the investigation he conducted in the case. The charge against the accused would have been established, with the help of entire evidence available on record and not only on the basis of that evidence the petitioner collected during investigation, he conducted. It is that evidence collected on 19.11.1998, immediately on receipt of the information and raiding the premises, where the

principal accused was allegedly present alongwith two girls, which could have connected the accused with the commission of offence. The Inquiry Officer and also the Disciplinary Authority have rightly appreciated such a situation, and in my opinion, not committed any illegality while exonerating the petitioner. The so called seizure memo. and zimni orders, allegedly containing different version qua the manner in which the Car was taken into possession, have not seen the light of the day, being not brought on record of this writ petition.

26. It remained unexplained as to under what provisions of Rules the 2nd respondent had directed the 3rd respondent to initiate review proceedings not only once, but twice and also to review the punishment by a speaking order. The tone and tenor of letters dated 19.7.2010 Annexure P-7 and dated 3.1.2010 Annexure P9, in this behalf issued by the 2nd respondent to the 3rd respondent, make it crystal clear that the said respondent seems to have misunderstood the observations made by learned Single Judge in the judgment Annexure P-4, referred supra, as otherwise no such direction could have been issued by him to the 3rd respondent. When once the 3rd respondent had exonerated the petitioner, as is evident from the perusal of order Annexure P-9, which is a speaking order, how that very incumbent occupying the office of 3rd respondent, could have turned around and issued show cause notice, Annexure P-10, against the petitioner, showing his intention to impose penalty of withholding of one increment. Otherwise also, no opinion could have been formed by the 3rd respondent, without recording reasons qua disagreement with the findings recorded by the Inquiry Officer and putting the same to the petitioner by way of show cause notice and seeking his reply thereto, as required, in view of the ratio of judgment in Kunj Bihari Misra's case cited supra. The action on the part of the 3rd respondent straightway showing his intention to impose penalty of withholding of one increment upon the petitioner, without affording him an opportunity of being heard, is highly illegal and arbitrary. It seems that the 3rd respondent has taken such a step in this matter on being influenced or under the pressure of the 2nd respondent, who was not seized of the matter by way any appeal, review or revision and as such, could have not issued a direction to review the order Annexure P-6, issued by the Disciplinary Authority, exonerating thereby the petitioner. While arriving at such a conclusion, this Court is supported by a judgment of the Hon'ble Supreme Court in Union of India (UOI) and Others Vs. B.N. Jha, . The relevant portion of this judgment is reproduced here as under:

21. Authority who is higher than the commandant, in exercise of his power conferred upon him under Rule 46 could not have directed the commandant of a wing of his own unit to initiate departmental proceedings. In law it was the disciplinary authority alone who was required to apply his independent mind to the materials on record so as to enable him to arrive at the conclusion as to whether a disciplinary actions contemplated or not. He cannot do so at the instance of a higher authority who had not only no role to play in the matter but also admittedly was biased.(See Commr. of Police v. Gordhandas Bhanji and

Union of India v. Harish Chandra Goswami) bias against the respondent on the part of Mr Garcha is undisputed

27. It is during the pendency of this writ petition, the order dated 29.7.2011, Annexure R-1 to the reply filed on behalf of the respondents, came to be passed by the 2nd respondent. It is seen that vide this order the 2nd respondent has imposed punishment of stoppage of one year future increment with cumulative effect permanently upon the petitioner. This order no doubt has been issued pursuant to the directions of this court in its order dated 27.6.2011, quoted hereinabove, but not in terms of the order so passed by this Court. The stand of the petitioners in his reply Annexure P-3 to his explanation Annexure P-2 is reproduced as under:

It is further made clear that the investigation was carried out utmost fair and efforts were made to collect the best piece of evidence. Since, the Hon''ble High Court has only observed against me regarding the recovery of vehicle and about rest of the observations of Hon''ble High Court is pertaining to other police officials who were members of the raiding party. It is further humbly submitted that while I was posted as IO at the relevant time and was also a probationer, therefore, I was about to learn many things regarding investigating, procedure etc. out to be adopted while conducting investigation. As such, there is nothing on record to suggest that there was a deliberate or intentional lapse on the part of the reply officer.

28. Petitioner's stand in reply Annexure P-11 to the show cause notice Annexure P-10 reads as under:

In reference to the subject cited above, it is respectfully submitted that I have been exonerated by the Superintendent of Police Chamba vide order dated 16.4.2009 after taking into consideration all the facts and circumstances of the case and the departmental enquiry as such, the show cause notice dated 11.5.2011 is per se illegal and arbitrary and the same is contrary to the factual position. Hence, it is requested that the same may kindly be withdrawn and dropped in the interest of justice.

29. Since the petitioner was entrusted investigation of FIR No. 281/98 only on 20.11.1998, therefore, he had a very limited role to play, because the occurrence was of 19.11.1998. While ASI Kishan Lal, who being the main Investigation Officer, conducted the investigation on the day of occurrence itself, has only been imposed the penalty of censure, the punishment imposed upon the petitioner vide order Annexure R-1, does not commensurate with his role in case FIR No. 281/98. Not only this, no punishment could have been imposed upon the petitioner, when in the departmental inquiry, pursuant to the observations made by the learned Single Judge of this Court in judgment Annexure P-1, he was exonerated from the charge.

30. Therefore, in such a situation, not only the show cause notice Annexure P-10 issued against the petitioner deserves to be quashed and set aside, but also the

consequential action i.e., imposition of punishment of one year future increment with cumulative effect permanently, vide order Annexure R-1, being illegal, harsh, oppressive, arbitrary and unknown in the service jurisprudence being unsustainable also deserves to be quashed and set-aside. In view of all the reasons hereinabove, this petition succeeds and the same is accordingly allowed. Consequently, the impugned show cause notice Annexure P-10 and the order Annexure R-1 are quashed and set aside.

In view of the disposal of the writ petition, pending applications, if any, shall also stand disposed of.