
(2011) 01 SHI CK 0079
In the High Court Of Himachal Pradesh
Case No : C.W.P. (T) No. 10196 of 2008

Vijay Kumar

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 05-01-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 224
Punjab Police Rules, 1934 — Rule 16.29(4)

Citation : (2011) 01 SHI CK 0079

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kuldeep Singh, J.—The Petitioner has prayed for quashing of punishment order dated 6.5.2003 Annexure A-1, appellate order dated 3.7.2003 Annexure A-2 and order Annexure A-3 passed by Director General of Police endorsed on 22.11.2003.

2. The facts in brief are that the Respondent No. 4 Superintendent of Police, Shimla had ordered an inquiry against Petitioner on 17.8.2000. An FIR No. 370 was already registered on 28.7.2001 against the Petitioner regarding the matter for which inquiry was ordered against the Petitioner.

3. A show cause notice was issued to the Petitioner by Respondent-Department as well as by the Inquiry Officer. The Petitioner submitted his reply to the show cause notice. The reply of the Petitioner was not considered and inquiry proceeded in a mechanical manner in violation of the rules and regulations. A copy of the inquiry report was not supplied to the Petitioner even though a request to this effect was made on completion of inquiry.

4. The Respondent No. 4 in mechanical manner imposed penalty of forfeiture of 5 years of service permanently. The Petitioner filed appeal against the penalty but Respondent No. 3 vide order dated 3.7.2003 dismissed the appeal. The Petitioner

filed revision, which was also dismissed by Respondent No. 2 vide Annexure A-3. The Petitioner has assailed the Annexures A-1, A-2 and A-3 on the ground that the same are wrong, illegal, arbitrary and in violation of the Articles 14, 16 of the Constitution of India.

5. The Respondents have contested the petition by filing reply. it has been stated that on 27.7.2001 Petitioner along with constable Sohan Lal No. 670 of Shimla District were deputed to escort accused Abraham Micha from Kanda Jail, Shimla to the court of Ld. Sessions Judge, Kullu. They took the accused from Jail on 27.7.2001 at 10.05 A.M. and escorted him to Kullu. Constable Sohan Lal instead of taking the accused to Police Lines/ Police Station, Kullu took him to Hotel Shobhla Dhalpur, Kullu and Petitioner and Constable Sohan Lal took liquor in the company of the accused and also had dinner with him. At about 9.30 p.m. on the same day when they left the hotel the accused gave a slip and escaped from their custody. The Petitioner and Constable Sohan Lal did not make any effort to apprehend the accused. The matter regarding escape of the accused was reported to the local police at Kullu on 28.7.2001 at 10.35 a.m. The Petitioner and his companion Constable facilitated escape of the under trial prisoner. In these circumstances noticing grave misconduct on the part of Petitioner, departmental inquiry was conducted and punishment was rightly imposed.

6. It has been stated that FIR was registered u/s 224 IPC and the departmental inquiry was rightly ordered against the Petitioner and another constable for gross negligence and dereliction of duty on their part. There is no illegality in ordering inquiry against the Petitioner and registering regular case against the escape of the accused.

7. The charges leveled against the Petitioner were proved in the departmental inquiry. The show cause notice proposing punishment was rightly issued in accordance with law. In escape cases dismissal is the penalty provided in the Police Act but in the case of the Petitioner lenient view has been taken by awarding him lesser punishment.

8. The Petitioner had not applied for a copy of the inquiry report as required under Punjab Police Rule 16.29 (4) in writing or verbally, hence the copy of inquiry report was not supplied to the Petitioner. The Petitioner did not raise this plea in the statutory appeal or revision. The Respondents have prayed for dismissal of the petition. No rejoinder has been filed.

9. I have heard the learned Counsel for the parties. It has been submitted on behalf of the Petitioner that during the inquiry the Petitioner has submitted an application dated 28.12.2002 indicating that he would be producing five witnesses and certified copy of statement of Rishi Raj, waiter recorded in the court. It has been submitted that the Petitioner was not allowed to examine the witnesses mentioned in the application dated 28.12.2002 nor these witnesses were summoned by the inquiry officer during the inquiry. A copy of the inquiry report was not supplied to the Petitioner and therefore, on this ground alone, the

punishment order Annexure A-1 upheld in orders Annexure A-2 and A-3 has vitiated. It has also been submitted that the grounds taken in the appeal were not specifically dealt with in the appellate order. The learned Counsel for the Petitioner to be precise has submitted that the statement of Rishi Raj, waiter has been wrongly relied in the inquiry whereas in the criminal case, the said witness has refused to identify the delinquent. It has been submitted that there was delay in lodging the FIR. The learned Additional Advocate General has supported the impugned orders and prayed for dismissal of the petition.

10. The record of the inquiry was called. The Petitioner has submitted an application dated 28.12.2002 in which he has intimated that he would examine witnesses Anil Padha, Paras Ram Negi, Ram Lal Sharma, Prem Gautam, Manager, Punjab National Bank, Kullu and who would state that accused had escaped from Dhalpur Chowk. In the same application, it has been stated that the Petitioner would produce certified copy of statement of Rishi Raj, waiter recorded in the court of learned Chief Judicial Magistrate, Kullu. In the application, there is no prayer for summoning the witnesses or summoning the file of the case mentioned in the application. On 28.1.2003 the delinquent during the inquiry had prayed time for producing the defence witnesses and the inquiry was fixed on 6.2.2003. On 6.2.2003, the delinquent did not produce any defence evidence. The orders dated 28.1.2003 and 6.2.2003 in the inquiry file indicate that on 28.1.2003 and 6.2.2003 the Petitioner did not make any request to the I.O. for summoning the witnesses of the record mentioned in the application dated 28.12.2002 nor he examined the witnesses mentioned in the application dated 28.12.2002. He also did not place on record the copy of statement of Rishi Raj, waiter on the said dates. Therefore, the Petitioner in the petition cannot be permitted to raise grievance for not examining the defence witnesses mentioned in the application dated 28.12.2002 or for not placing on record copy of statement of Rishi Raj, waiter.

11. It has been submitted on behalf of the Petitioner that copy of inquiry report was not supplied to the Petitioner and therefore, for this reason the punishment order is not sustainable. In the reply, the Respondents have stated that the Petitioner in the appeal or in revision had not taken the plea that the punishment order is bad for not supplying the inquiry report. It has been submitted that no prejudice was caused to the Petitioner for not supplying the inquiry report and, therefore, he has not taken this plea in appeal or revision before the authorities. Moreover, it has been submitted that as per Punjab Police Rule 16.29 (4), no request in writing or verbally was made by the Petitioner for supplying the copy of inquiry report and, therefore, the Petitioner now in the petition cannot raise any grievance for not supplying the inquiry report.

12. In *Sarv U.P. Gramin Bank Vs. Manoj Kumar Sinha*, the Supreme Court has held as follows:

Thereafter, this Court notices that development of the principle that prejudice must be proved and not presumed even in cases where procedural requirements

have not been complied with. The Court notices a number of judgments in which the action has not been held ipso facto illegal, unlawful or void unless it is shown that non-observance had prejudicially affected the applicant. Ultimately, it is concluded as follows: (Haryana Financial Corpn. Case, SCC p. 44, para 44)

44. From the aforesaid decisions, it is clear that though supply of report of the inquiry officer is part and parcel of natural justice and must be furnished to the delinquent employee, failure to do so would not automatically, result in quashing or setting aside of the order or the order being declared null and void. For that, the delinquent employee has to show "prejudice". Unless he is able to show that non-supply of report of the inquiry officer has resulted in prejudice or miscarriage of justice, an order of punishment cannot be held to be vitiated. And whether prejudice had been caused to the delinquent employee depends upon the facts and circumstances of each case and no rule of universal application can be laid down.

13. The Petitioner has not taken the plea of prejudice for not supplying the copy of inquiry report to him in appeal or revision. In these circumstances, it cannot be said that non-supply of copy of inquiry report is fatal to the inquiry and ultimate punishment order passed by the competent authority. The learned Counsel for the Petitioner has submitted that the grounds of appeal and revision were not considered by the authorities. In this context, he has submitted that the statement of Rishi Raj, waiter which was made in the criminal court was not considered. In the appeal Annexure A-9, it has been stated that PW-7 Rishi Raj, waiter of Hotel was produced as prosecution witness who deposed against the Appellant and Solan Lal No. 670. During the departmental inquiry, he has stated different story than to his earlier version recorded u/s 161 Code of Criminal Procedure on 29.7.2001. It is not the case of the Petitioner that witness Rishi Raj had not stated against the Petitioner in the departmental inquiry. The departmental inquiry is to be decided on the basis of material on record. It is not the case of the Petitioner that present case is of no evidence. This Court is not sitting in appeal against the departmental inquiry.

14. The learned Counsel for the Petitioner has submitted that the alleged occurrence took place on 27.7.2001 and the FIR was lodged on 28.7.2001 at about 10.30 a.m. even as per the stand of the Respondents. There is delay in lodging the FIR. The delay in lodging the FIR has nothing to do with the misconduct of the Petitioner which has been independently proved in the inquiry report. The Petitioner has not made out a case that the punishment order is perverse. The Petitioner is a member of discipline force. In these circumstances, it cannot be said that the punishment imposed on the Petitioner is on the higher side keeping in view his misconduct. There is no merit in the petition.

15. No other point has been raised.

16. The result of the above discussion, the petition fails and is accordingly dismissed.