

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Civil Writ Petition No.26879 of 2014

Date of decision: 24.12.2014

Gurmit Singh

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.R.K.Malik, Sr.Advocate with
Ms.Heena Sabharwal, Advocate
for the petitioner.

Mr.Anshul Gupta, AAG, Punjab.

1. To be referred to the Reporters or not? Yes
2. Whether the judgment should be reported in the Digest? Yes

RAJIV NARAIN RAINA, J.

Notice of motion.

2. Mr.Anshul Gupta, AAG, Punjab accepts notice on behalf of the respondent-State and waives service.

3. The matter is taken up for final disposal in first motion hearing since the impugned order dated 11th December, 2014 is entirely perverse as it is an amalgam of a dissent note against the findings of the enquiry officer and a retrospective and final order of dismissal from service w.e.f. 26th October, 1991 passed without notice and hearing and passed in breach of

principles of natural justice.

4. Heard Mr.R.K.Malik learned senior counsel assisted by Ms.Heena Sabharwal, Advocate for the petitioner and the learned law officer for the State on the correctness of the impugned order dated 11th December, 2014 [P-8] by which the petitioner has been dismissed from service with retrospective effect after recording a half baked dissent note without seeking its reply/comments from the petitioner which is a legal requirement as the petitioner has a right to show that the findings recorded at the enquiry in his favour by Shri S.K.Agnihotri, S.P. Traffic & Security, Kapurthala are justified. The petitioner prays that the order is not only unjust but *per se* illegal and perverse. It is wholly indefensible as no reasonable person would have passed such an order and therefore the same deserves to be quashed at the threshold and the petitioner deserves to be reinstated to service with all consequential benefits.

5. Briefly stated, the facts are that the petitioner was enrolled as a constable in Punjab Police in July, 1979. He was promoted as a Head Constable in November, 1987 and his services were terminated on 26th October, 1991 on the ground of wilful absence from duty without sanctioned leave. Against the order of termination the petitioner filed a civil suit which was decreed by the subordinate Court. The State of Punjab filed an appeal which was allowed by the learned lower appellate Court. Regular Second Appeal No.2705 of 1996 was allowed on 22nd March, 2010 and the suit was decreed and the order in first appeal was reversed.

6. However, liberty was granted to the respondent police department to hold a fresh enquiry into the charge of absence from duty. In

the enquiry conducted by Shri S.K.Agnihotri, S.P. Traffic & Security, Kapurthala, the petitioner was exonerated of the charges. Once the petitioner was exonerated by the enquiry officer, the disciplinary authority had two alternatives before him i.e. either to differ with the enquiry officer by recording a dissent or disagreement note and then calling for the comments of the delinquent thereon. Or else the officer could agree with the findings recorded in the enquiry and its conclusion proving innocence of the petitioner. There was no third option.

7. Instead, the Senior Superintendent of Police, Kapurthala, Punjab ordered a de-novo enquiry vide order dated 16th December, 2010. The formal order appointing de-novo enquiry officer was issued on 19th August, 2011. On the basis of material existing in the original enquiry file and without examining any new witness or considering any document other than what was before the first enquiry officer, the *de novo* enquiry officer submitted a report to the disciplinary-cum-punishing authority where charges were proven against the petitioner for the misconduct of which he was found innocent earlier after the first enquiry.

8. Accordingly, the petitioner was issued a show-cause notice on 5th October, 2012 as to why the enquiry report should not be accepted and acted upon. The petitioner made a request for supply certain orders to make out his defence to the show cause notice.

9. Aggrieved by holding of a de-novo enquiry, the petitioner approached this Court in CWP No.22578 of 2012 before any action was taken by the disciplinary authority on the enquiry report awaiting a reply to process the case further. This Court intervened an vide interim order dated

16th November, 2012 stayed further proceedings on the show cause notice dated 5th October, 2012 on the point of impermissibility of holding a *de novo* enquiry into the allegations which stood traversed in the first enquiry after admitting evidence pro and contra.

10. The petitioner succeeded and the writ petition was allowed on 26th August, 2014 by this Court. The defence of the State in the written statement in the writ petition was that de-novo enquiry was justified under rule 2.8 of the Punjab Police Rules, 1934. However, the argument did not work to the advantage of the State. The Court was of opinion after perusal of the cited rule that power of review vesting with the Inspector General, the Deputy Inspector General and the Superintendent of Police is limited to the awards made by their subordinates with further power to confirm and enhance, modify or annul the same or to make further investigation. This Court found that no award had come into existence and the matter was before the disciplinary authority only for approval which could either have been granted or else differed with by recording reasons in writing. In the absence of treading either of these two paths, the impugned order directing de-novo enquiry was passed which this Court found not sustainable in the eyes of law and the same was quashed and the petition stood allowed on 26th August, 2014.

11. It is much to the surprise of this Court that in the face of the order dated 26th August, 2014 passed by this Court in CWP No.22578 of 2012, the Senior Superintendent of Police, Kapurthala has again dismissed the petitioner from service vide order dated 11th December, 2014, copy of which is placed at Annexure P-8. A reading of the impugned order reveals

that the SSP, Kapurthala was apparently irked by what the Court did and has shown lurking and latent dis-respect for the Court. I would reproduce what he says in the impugned order which is found at page 82 of the paperbook: -

“This notice was received by Gurmit Singh under his signatures on 4.10.2012. Instead of filing reply, he filed a Civil Writ Petition No.22578 of 2012 in Punjab & Haryana High Court. Upon which the Hon’ble Court issued a stay order on 16.11.2012 in this regard.

12. Faced with the order of the High Court, the SSP, Kapurthala sought advice of the Advocate General, Punjab as to the course of action to be adopted. The reply was received on 20th October, 2014 in which the learned Advocate General, Punjab recorded his advice by calling upon the disciplinary authority to clearly disagree or agree to the findings recorded in the de-novo enquiry held by Shri Sudesh Kumar Agnihotri, PPS, SP Traffic and Security, Kapurthala, studiously avoiding making any comment on the use of the term de-novo enquiry as it appears since text of the opinion of the learned Advocate General, Punjab has not been placed on the record but the same could only mean the first enquiry and not the de-novo enquiry which had become non-existent in the face of the order passed by this Court. It may be noted that the total period of absence after the delinquent had proceeded on 30 days earned leave is from 23rd January, 1991 to 30th October, 1991, which may be substantial duration given that the petitioner is a constable in the police department.

13. The sum total discussion in the impugned order deserves to be read to see whether it amounts to a dissent note on the findings arrived at in the enquiry in the purported dissent note on the charge laid or not. A charge

was laid for the first time in the so called dissent note against the petitioner that during the period of absence, he had travelled abroad. Having read the enquiry report of Shri S.K.Agnihotri [P-2] from pages 18 to 45, I do not find such a charge laid. But what the disciplinary authority says in the impugned order is interesting. The same is reproduced : -

“ The undersigned after carefully studying the departmental enquiry report by Enquiry Officer Sh.Sudesh Kumar Agnihotri PPS SP Traffic and Security Kapurthala and all the enquiries conducted before this and all the related court cases has come to the following conclusion : -

1. In the first inquiry conducted by Inquiry Officer Sh.Ravinder Singh PPS DSP Control Room Kapurthala, the said officer stated that the accused's wife told the person sent for inquiry that her husband went to America four months ago.

2. Apart from this all the notices such as attendance notice/show cause notice/orders passed, sent by the inquiry officers from time to time were noted by his family members. Had he been present in India, he would have personally sent the Telegram/Applications in regard to extension of leave that were otherwise sent by this brother Kuldeep Singh. This in itself clearly proves that he was not in India during this time.

3. The above facts by SP Zonal CID Jalandhar vide its letter No.1012/ZJ dated 23.9.1996 that he went to America to visit his relatives in February, 1991 and came back India after one year on death of his father.

4. The medical certificate on account of his treatment for the period 23.1.1991 to 30.10.1991 was issued by the then Dr.Surjeet Singh MBBS Civil Hospital, Kapurthala. In this regard Deputy Medical Commissioner vide its office letter no.91/1281 dated 9.5.1997 wrote that on going through the OPD admission register for the period 23.1.1991 to 30.10.1991, his name was nowhere mentioned in the record whereas as per their record dated 23.1.1991 at Sr.No.4141 Gurmit Kaur w/o Jagir Singh aged 28 years

female was mentioned.

Apart from this Sr.Medical Officer, Civil Hospital, Kapurthala vide its office letter no.98/7642 dated 13.8.1998 informed the then SSP, Kapurthala that no patient of his name was admitted at Civil Hospital, Kapurthala for the period 23.1.1991 to 30.10.1991 and there is not entry in the record of OPD Department regarding treatment of such named person. Civil Hospital, Kapurthala in its letter also clarified that without admitting any patient in the Hospital, the Doctor has no right to issue such certificate.

From the points it is clear that for the period 23.1.1991 to 30.10.1991 neither he was present in India nor he took any treatment of his backbone from Civil Hospital, Kapurthala, rather he presented a false certificate showing his treatment from Civil Hospital, Kapurthala.”

14. Having read the impugned order in its operative part as above and the original enquiry report I cannot help thinking that an entirely new case has been set up against the petitioner of which he has not been put to notice by a specific charge laid against him on any of the foreign matters introduced. It seems that the SSP, Kapurthala made a fishing inquiry from “all the enquiries conducted before this and all the related court cases” to find reasons to dismiss him. Court cases one can understand that they are part of judicial record but what are the plurality of enquiries conducted against the petitioner is not known and what is the “first inquiry” mentioned in Point No.1 conducted by Shri Ravinder Singh, PPS DSP, Control Room, Kapurthala remains a mystery since it is not part of the charge sheet o which the regular enquiries have been held, leave aside the issue of a *de novo* enquiry. Matters mentioned in the impugned order have not found their way into the charge sheet which led to the inquiry. If it was a preliminary

enquiry, then it was not relied upon in the regular enquiry and therefore loses significance. If it was not relied upon in the regular inquiry, it cannot be looked into. This is a well settled proposition of law which rests on the simple premise that one cannot be taken by surprise and must be made aware of what the case against such person is so that he can defend himself and prove his innocence on a full and constructive opportunity given. If he proceeded to America, it must obviously have been after he was dismissed from service on 26th October, 1991 as the dates suggest. After he was dismissed from service, he was a free bird litigating his rights from outside the police department. He was not accountable to the police after being dismissed from service except insofar as the conduct of the inquiry is concerned where his absence might have led to an *ex parte* proceeding against him and he was at liberty to travel wherever he liked leave alone the United States of America.

15. The SSP, Kapurthala conveniently forgets that in 1996 when the petitioner is said to have been abroad, the State of Punjab was in appeal against the decree of the civil court in which it succeeded to keep the petitioner out of service on 9th August, 1996 when the order was passed by the first appellate court. Then where was the question to be put on record in the order which pretends to be a dissent note as to what was the petitioner up to on 23rd September, 1996 in a foreign country when he was a dismissed constable footloose and fancy-free. Therefore, points No.1 to 3 of the impugned order are irrelevant and could never have formed basis of a dissent note. Point No.4 is a matter of evidence. The evidence is on record of the inquiry proceedings where numerous witnesses have appeared and

deposed including the official witnesses from the Civil Hospital, Kapurthala. The SSP, Kapurthala drew support from a letter dated 9th May, 1997 where it was written that on going through the OPD admission register for the period from 23rd January, 1991 to 30th October, 1991, the petitioner's name was nowhere mentioned in the record whereas as per record dated 23rd January, 1991 at Serial No.4141, someone named Gurmit Kaur wife of Jagir Singh was mentioned. This was a matter of which the prosecution should have taken care of at the inquiry and this aspect was not part of the imputation of misconduct or a part of the documents produced against the petitioner and relied upon in the enquiry.

16. On 9th May, 1997, the petitioner was in regular second appeal before this Court and out of service. If no patient by the name of the petitioner was admitted at Civil Hospital, Kapurthala for the period from 23rd January, 1991 to 30th October, 1991, it can form basis only of a decision on evidence, which could not be looked into as the same were not subject matter of the inquiry proceedings. The petitioner cannot be taken by surprise or to be called upon to explain the circumstances which were not allegations levelled against him in the regular enquiry.

17. I have returned to the enquiry report to read it once again to examine this angle but find not a whisper of such a state of things mentioned in the deposition of any of the prosecution witnesses. The petitioner produced a defence witness. He was Dr.Surjit Singh, MBBS, MS Civil Hospital, Kapurthala. He deposed that he was serving in the department of Orthopaedics at Civil Hospital, Kapurthala on 23rd January of the year in question in the charge memo, making statement that the

petitioner was brought before the doctor by his relatives. He deposed that the petitioner was unable to move himself. He checked him and gave him medicines and advised him bed rest due to a disc problem suffered by the petitioner in an accident while supervising the construction/renovation of his house for which leave was initially sanctioned. The medical doctor deposed at the enquiry that the petitioner took medical treatment from him for the period of absence. What weight has to be attached to this evidence of whether Dr.Surjit Singh was helping the petitioner out is a matter of opinion as to what credence has to be attached to the statement but the SSP, does not say Kapurthala in his dissent note says that he disbelieves Dr.Surjit Singh because the petitioner was not in India. He may or may not have been but it was not part of the charge that the petitioner was not present in India and was fudging his presence. There was other defence evidence that was led before the enquiry officer supporting the case of injury and treatment. The petitioner did not leave without sanction and it is not that his continued absence was unexplained or that leave was not applied for. The SSP, Kapurthala has put the entire train of events on a different track to a different destination and the impugned order does not qualify or amount to a dissent note disagreeing with the findings recorded in the inquiry in favour of the petitioner of whatever they may be worth or their truthfulness. It is strange that the SSP, Kapurthala does not agree with the departmental enquiry that the charges against the petitioner are not proved and that too without any basis on the materials on record at the enquiry. It is not a matter of agreeing or disagreeing with the inquiry report, it is a matter of agreeing or disagreeing on an article of charge and the weight attached to the

evidence pro and contra adduced by the parties at the domestic enquiry and where was the error committed in appreciation of evidence by the enquiry officer. A charge not laid is not open to enquiry for the reason that a delinquent has not put to notice of such extraneous factors which have nothing to do with the substratum of the charge of absence from duty during the period of the charge sheet.

18. Quite apparently matters completely foreign to the enquiry have weighed in the mind of the SSP, Kapurthala and he appears to have been so irked by the order of stay dated 16th November, 2012 that his mindset has remained derailed since then as one not of objectivity and openness restricting information to what is available on the enquiry file to inspire faith in his actions which are plainly *de hors* the record.

19. For the foregoing reasons, the impugned order is not sustainable in the eyes of law. It is most certainly far from being a dissent note disagreeing with the findings of the enquiry contained on the file.

20. If the impugned order dated 11th December, 2014 amounts to a dissent note even then dismissal could not have followed simultaneously in one package deal. The petitioner had to be given an opportunity and put to be put to notice of dissent to reply to the disagreement note and then the matter could have been taken forward assuming that points No.1 to 4 were relevant to the consideration, which they appear not to be at all in the considered view of this Court. On this short ground, the impugned order dated 11th December, 2014 cannot survive as it offered no opportunity of hearing to the petitioner on the dissent note and has been passed behind his back without affording opportunity of reply and hearing. Besides, the

petitioner could not have been dismissed from retrospective date, i.e., 23rd January, 1991 in view of the settled law against retrospective dismissal unless statutory rules permit and especially would be bad in this case when the field was covered by Court orders with a decree in his favour in regular second appeal and a decision of this Court in CWP No.22578 of 2012 rendered by the learned Single Judge recently on 26th August, 2014 allowing the writ petition against the initiation of *de novo* proceedings. Besides, it has been recorded in the order of the learned Single Judge that when the administrative order was passed to hold a de-novo enquiry, even then it was contemplated that the petitioner would be inflicted with penalty of dismissal which was in predetermined disposition and wholly premeditated adverse action.

21. In **Punjab National Bank v. Kunj Behari Misra**; 1998 [7] SCC 84, the Supreme Court has held that in case the disciplinary authority disagrees with the inquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement. Those reasons must be given to the delinquent by offering an opportunity to him to represent against them before the disciplinary authority records its findings one way or the other. The principles of natural justice require the authority to give an opportunity to the official charged of misconduct and this opportunity was not given which vitiates the impugned order. These are basic tenets of the rule of law and valuable rules of protection against arbitrary action even where the inquiry report itself has to be supplied to a delinquent if it goes against him and to be empowered to represent himself and free himself of blame. This principle

is well settled in **Union of India v. Mohd. Ramzan Khan**; 1991 (1) SCC 588 and those principles will apply with some vigour to dissent notes expressing disagreement with the inquiry report. The question really is one of fairness-in-action and the protection afforded to a delinquent before the disciplinary authority takes a final decision on the question of guilt of the delinquent. The case law in favour of the petitioner need not be multiplied as there are numerous decisions on the point. Looked at from all angles, the impugned order dated 11th December, 2014 is not sustainable. It has been passed contrary to law. It has been passed with vindictiveness and a pre-determined mind, searching for reasons to dismiss the man from service anyhow thinking that the petitioner would be put through long drawn litigation and perhaps thinking that the inflictor of such magnitude of harm would have retired by then and remain unaccountable to the law. If the SSP, Kapurthala is euphoric of his power to dismiss he would have least expected that this petition would be allowed at the first hearing due to the extent of its perversity. His euphoria is short lived and he must pay a suitable price for it.

22. In the considered view of this Court, the impugned order does not qualify as a disagreement note in the eyes of law. Extraneous materials have prevailed and irrelevant considerations have entered the decision making process. It is well settled that judicial review is not against the decision but against the decision-making process. In case the decision making process is itself so flawed, then the impugned cannot be allowed to stand even for a moment and, therefore, interference has been made at the threshold without inviting written statement of the State only for the sake of

defence. This would be to defend the indefensible and to waste time. The conduct of the petitioner as found from his own order, which is impugned in this petition, is to say the least is contumacious in the disrespect it shows of the order passed by this Court on 26th August, 2014 in CWP No.22578 of 2012. At least that is the deep impression left in the mind of the Court. However, this Court should not be taken for a moment as approving absence from duty of a police constable in its quintessence which is serious business but at the same time the rule of law has to be maintained at any cost for which individuals hardly matter. The rule of law requires an approach which is judicious and free from arbitrariness and this is best done by assigning fair and proper reasons while making orders.

23. For the reasons recorded above, this writ petition is allowed and the impugned order dated 11th December, 2014 is set aside by issuing a writ of certiorari. If points No.1 to 4 were the only reasons for disagreement and two paragraphs below points No.1 to 4, then I see no reason why fresh consideration should be permitted or liberty granted to the State and to the SSP, Kapurthala from whom justice cannot be had by the police force much less the petitioner. This Court records its displeasure and directs the Director General of Police, Punjab to endorse it on the service dossier of the respondent SSP, Kapurthala. It is also directed that the SSP, Kapurthala be not entrusted with the work of reviewing domestic enquiry proceedings or handling quasi judicial duties and responsibilities posing a serious danger to the careers of his 'underlings' in the police department as he has not shown even a rudimentary knowledge of rules, fair procedure or legal principles applicable to dissent notes in enquiry cases. Exposure to one order of the

SSP, Kapurthala as in the present case is good enough for this Court to make up its mind of the damage done to the probity of the officers of the police department. If the police department wish to take the case forward this order will not preclude it from doing so in accordance with law. In which case the SSP, Kapurthala will not be again entrusted with the file and the Director General of Police, Punjab will nominate a mature officer well acquainted with the law of domestic enquiries to re-examine the matter independently and such officer will discard the *de novo* enquiry keeping in view of the order passed by this Court on 26th August, 2014 in CWP No.22578 of 2012 and the present order etc. and review the matter from the stand point of the original enquiry report in accordance with applicable rules.

(RAJIV NARAIN RAINA)
JUDGE

December 24, 2014

Paritosh Kumar