

Sr.No.486

IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

CWP-4626-1999(O&M)

Decided on: **09.12.2015**

Manphool ChandPetitioner

vs.

State of Haryana and othersRespondents

Coram: Hon'ble Mr. Justice Mahesh GroverPresent: Mr.Dhiraj Chawla, Advocate for the petitioner.
Mr.Ashok S. Chaudhary, Addl. A.G. Haryana.

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Mahesh Grover, J

The petitioner questions Annexure P11 and Annexure P13 by which his services have been terminated.

He was appointed as Clerk in the year 1966 and suspended in the year 1983, the cause of which was attributed to registration of FIR No. 293 dated 18.07.1983 under the provisions of Sections 409, 467 and 468 IPC which was initially lodged against one Surjit Singh Bedi, Conductor in the same Department. The petitioner was not named in the FIR but a separate charge sheet was issued to him pertaining to virtually same allegations resulting in loss of Rs.15787.25 ps. to the Department.

A charge sheet was issued to the petitioner on 08.05.1984 under the provisions of Rule 7 of the Punjab Civil Services Punishment and Appeal Rules 1952 with major penalty on the ground that while working as Police Voucher Clerk he was alleged to have received Police Vouchers amounting to Rs.15787.25 ps. in the ledger register maintained by Sh.Surjit Singh Bedi, Conductor (the person against whom the FIR was registered on the same cause) whereas this amount was actually never received in the office.

An Inquiry Officer was appointed to look into the proceedings and after going through the record available with him he submitted an interim report stating that most of the relevant record which would have a bearing on the allegations against the petitioner

was with the police and had not been received. He, thus, opined that there was no material to implicate the petitioner. For the purposes of references, the relevant portion of the report is extracted here below:-

“ During the course of enquiry all the witnesses in their statements so recorded have particularly stated that what so ever wrong action was done, that was done through Booking Branch. What so ever bungling has been made in the Police Vouchers, the main culprit is Sh.Surjit Singh Bedi who was working in the Booking Branch. What so ever matter of shortage was that was in the Booking Branch. Of course, this is correct that the record of the Police Vouchers was also with Sh.Manphool Chand. This official during the course of enquiry moved applications for the production of the record, but the relevant record is not fully available. He has made this as main base. In this case Sh.Surjit Singh Bedi was guilty and he had made all these bungling. I have examined the record which is placed in the enquiry file in which it is written that there was a conspiracy between Sh.Manphool Chand and Sh.Surjit Singh Bedi. But to prove the conspiracy the record which is required is not available on the record. It is stated that the relevant record is in the custody of Police which has been made available. Under these circumstances, it is not possible to held Sh.Manphool Chand guilty. Hence this interim report is submitted to the Transport Commissioner for further Directions.”

The inquiry persisted and finally the petitioner was indicted in the inquiry by virtue of Annexure P18.

After conclusion of the inquiry, the petitioner was issued a show cause notice and subsequently punishment of termination inflicted upon him. The appeal against the same has also been dismissed which is now the cause of grievance to the petitioner.

While impugning Annexures P11 and P13 learned counsel for the petitioner contends that when the interim report was given it was specifically opined that the relevant record is with the police and in the absence of the vouchers which would establish the culpability of the petitioner, the final conclusions arrived at by the Inquiry Officer in Annexure P18 is patently wrong as this material was still not available at the time of conclusion of the inquiry.

Apart from this it is submitted that in the FIR a cancellation report was submitted by the police even though primary allegations of causing loss to the Government of an amount of R.15787.25 ps was essentially against Surjit Singh Bedi, Conductor. The final inquiry report also indicates that this amount was recovered from the Conductors and it is thus contended that once there was no further material available with the respondents in the final inquiry proceedings, and the allegations being primarily against Surjit Singh Bedi against whom a cancellation report was submitted there would be no cause to hold the petitioner liable for the loss or mis conduct particularly when the amount also stands recovered from persons other than the petitioner.

It is the case of the petitioner that despite his numerous efforts no material distinct from the one which was available before the Inquiry Officer who submitted the interim report has been placed on record and yet the petitioner has been held liable and terminated from service.

Respondents justify the stand to contend that the conduct of the petitioner reflects against his integrity and therefore, the action of termination is perfectly legal.

I have heard the learned counsel for the parties and perused the record. Indeed Annexure P18 which is the final report does not indicate any material distinct from one which was before the Inquiry Officer who submitted interim report exonerating the petitioner. It has been specifically noticed that ten shortage registers concerning FIR No. 293/83 which were with the police could not be arranged inspite of requests made to the police. It is not in dispute that there is no other shortage of an amount except Rs,15787.25 ps. which also forms the basis of FIR against Surjit Singh Bedi, against whom a cancellation report was submitted. This very amount has also been recovered from persons other than the petitioner. If that be so then there would be no sustainable

services when the petitioner had put in 30 years with his Department.

Respondents have not been able to show any such material which would clearly indicate the complicity of the petitioner. The situation leans in favour of the petitioner further when he has repeatedly made a request that material adverse to him be shown so that he may be able to respond. In spite of that the authorities have admitted that there was no other material against the one which was before the Inquiry Officers. If that be so then in the absence of relevant material pertaining to this shortage the petitioner could not have been held guilty. Such conclusion would necessarily have to be discarded being based on conjectures and surmises.

Even the Inquiry Officer notices in his report Annexure P18 that ten shortage registers were not received from the police and hence could not be shown to the delinquent official. This itself would indicate violation of principles of natural justice since the petitioner would be condemned without confronting him with the material adverse to him.

Consequently, the petition is accepted and the impugned orders Annexures P11 and P13 are set aside being totally arbitrary and based on non sustainable material. The petitioner would be deemed to be in service. All consequential benefits be granted to the petitioner as expeditiously as possible preferably within a period of four months from the date of receipt of certified copy of the order.

Petition stands allowed.

09.12.2015

mamta

(MAHESH GROVER)

JUDGE