

Sr.No.224

IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

CWP-22212-2011(O&M)

Decided on: 21.09.2015

Prithvi RajPetitioner

vs.

State of Haryana and othersRespondents

Coram: Hon'ble Mr. Justice Mahesh Grover

Present: Mr.D.S.Patwalia, Sr.Advocate
with Mr. Bikramjit S. Patwalia, Advocate for the petitioner.
Mr. Hitesh Pandit, Addl. AG, Haryana.
Mr. R.K.Malik, Sr. Advocate
with Mr. Ramandeep Singh Advocate for respondent no.3.
Mr. Vikas Bahl, Sr. Advocate
with Mr. Balpreet Sidhu, Advocate for respondent no.4.

**

Mahesh Grover, J

This writ petition has been filed questioning the decision of the official respondents to charge sheet the petitioner for having got a FIR registered against a co employee, respondent no.4 Sh.Rajesh Kumar.

The petitioner has been working as a Range Officer with the Forest Department. Some allegations surfaced against respondent no.4 of embezzlement regarding which he was charge sheeted in the year 2006 resulting in an inquiry whose report came on 28.06.2011 indicting him. During the course of audit, it was pointed out by the competent authority that where officers are found guilty in departmental inquiries apart from disciplinary action, an FIR be got registered against the delinquent employees for having embezzled funds to the tune of Rs.2,91,650/- . For the purposes of references the relevant portion of the order of the Inspecting

Officer, Audit is extracted here below:-

“2. As per rules in such type of cases, after conducting immediate departmental enquiry against the delinquent employee/officer and on being found guilty, after taking immediately disciplinary action, FIR may be got registered against the charged employees for embezzlement of funds to the tune of Rs.2,91,650/-. After compliance, the same may be informed to the Accounts Examination.”

Pursuant thereto, the Deputy Conservator of Forest Production Division, Hisar vide his communication dated 26.07.2011 directed the registration of FIR against Sh.Rajesh Kumar – respondent no.4. This communication was addressed to the Forest Range Officer Production Sirsa which was being made by them and he pursuant to the directives of his superiors got the FIR registered against respondent no.4 with intimation to the Deputy Conservator of Forest.

The official respondents took exception to this action of the petitioner and have now proposed to charge sheet him on the premise that the FIR could not have been registered against co employee by the petitioner, he being not competent to do so. At the same time, a decision has been taken to withdraw the FIR against respondent no.4. This communication dated 04.11.2011 appended with the petition as Annexure P5 that the petitioner impugns to say this has resulted in unwarranted and peculiar situation where on the one hand he had no option but to obey the directives of his superiors and on doing so he is being victimized by the official respondents on the premise of insubordination.

The official respondents had filed the reply and have referred to Annexures R1 and R2 which are decisions taken by them to the effect that

no FIR would be registered against the official / officer of the Forest Department without permission of the undersigned in future. This communication is dated 11.11.2011 after the registration of the FIR by the petitioner at the asking of his superiors.

The respondent's decision to the aforesaid effect discouraging registration of FIR by the officers of the Forest Department without the permission of the Principal Chief Conservator of Forest would possibly be a decision well merited to obviate the chances of indiscipline within the Department where officers would intend to outwit the others but at the same time the fact that the petitioner was asked by superiors to do so cannot be lost sight of. If the petitioner had disobeyed the directives of the Deputy Conservative Forests, he would have been accused of insubordination. Therefore, in the considered view of this Court, the petitioner has been wronged when an action pursuant to Annexure P5 is contemplated against him particularly when Annexure R2 came into existence after the registration of the FIR by the petitioner. In the given set of circumstances, the respondents would have been at liberty to remedy the situation by taking any action in this regard which they deemed fit but the petitioner certainly cannot be victimized when he was acting at the behest of his superiors.

The impugned order is, therefore, quashed.

The official respondents would be at liberty to proceed in the matter on the basis of inquiry / inquiries pertaining to embezzlement which already stands established.

The writ petition is allowed in the aforesaid terms.

21.09.2015

mamta

(MAHESH GROVER)

JUDGE