

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

238.

LPA No. 839 of 2014

Date of Decision : January 29, 2015

Dilbagh Singh

....APPELLANT

Vs.

State of Haryana and others

....RESPONDENTS

**CORAM : HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**

Present : Mr. K.B.Raheja, Advocate,
for the appellant.

Mr. Amar Vivek, Additional Advocate General, Haryana,
for the respondents.

AUGUSTINE GEORGE MASIH, J.

1. In this appeal, the challenge is to the order passed by the learned Single Judge dated 02.07.2013 dismissing the writ petition preferred by the appellant challenging the order dated 25.07.2011 (Annexure P-9) demoting him as Head Constable from the post of Assistant Sub-Inspector having been found guilty in the departmental enquiry held against him. The appeal and the revision preferred by the appellant were also dismissed vide orders Annexures P-10 and P-11 respectively.

2. It is the contention of the counsel for the appellant that findings recorded by the Enquiry Officer in the regular departmental enquiry held against the appellant are without any basis as there is no evidence against him. None of the witnesses, who have been produced during the enquiry, has supported the charges levelled against the appellant. He further states that the relevant witnesses, who were present on the spot when the alleged incident took place and could have stated the true and correct facts relating to the charges levelled against the appellant, have not been examined. The enquiry report, therefore, cannot be made the basis for holding the appellant guilty of the charges levelled against him. The enquiry report and the consequent order of demotion of the appellant and the subsequent orders of rejection of his appeal and revision, therefore, deserve to be set aside. Prayer has, thus, been made for allowing the present appeal and granting the appellant all the consequential benefits.

3. On the other hand, counsel for the respondents has controverted the assertions put forth by the counsel for the appellant and contends that during the departmental enquiry, the witnesses have supported the charges levelled against the appellant. He contends that strict rules of evidence have not to be applied to the departmental proceedings and, therefore, the findings recorded by the Enquiry Officer in the enquiry report do not call for any interference by this Court. He further contends that the conduct of the appellant was such that he deserved a strict punishment to be

imposed upon him for the mis-conduct, which was established to have been committed by him, on the basis of the report submitted by the Enquiry Officer. He supports the order of demotion of the appellant and the subsequent orders of rejection of his revision and appeal. He, on this basis, contends that the order passed by the learned Single Judge deserves to be upheld and the appeal dismissed.

4. We have considered the submissions made by the counsel for the parties and with their assistance, have gone through the records of the case.

5. Briefly, the facts of this case are that one Karamvir Singh son of Shri Dalip Singh, R/o Village Dadwana, Tehsil Pundri, District Kaithal, a blind person, used to perform as a singer, a mimic, shared and cracked jokes with the crowd to entertain them. He could also produce the sound of the siren of the police vehicle with his mouth. He filed an application on 14.09.2010 before the Superintendent of Police, Kaithal stating therein that on 13.09.2010, after the Chaman Rishi Mela in Village Salempur Madud having concluded, SHO Ram Kumar, Rishi Pal, Shish Pal, the other two police officials, called him and started gossiping with him. They asked him to share some jokes with them also and thereafter, asked him to blow the siren of the police vehicle with his mouth. While he was performing, someone spat on his face. Being blind, he could not see anything nor could he identify him. However, his associate told him that a police official, who was having three stars on his shoulder, had committed this act.

He, therefore, requested that the matter be enquired into and

appropriate action be taken.

6. On this application, a preliminary enquiry was held by the Deputy Superintendent of Police, Guhla and on the basis of the enquiry report, a charge-sheet dated 30.05.2011 was served upon the appellant. The allegations against the appellant were that after the conclusion of the Chaman Rishi fair at Village Salempur Madud, Karamvir was asked by the appellant-ASI Dilbagh Singh to recite jokes and thereafter, to blow the siren of the police vehicles with the mouth. When Karamvir started producing sound of the siren with his mouth, the appellant put a finger on his mouth to stop him and then again asked him to blow the siren. This time when he started blowing the siren, the appellant spat on his face. At that time, Inspector Ram Kumar, SHO, Police Station Dhand was also present. For spitting on the face of a blind person, he had committed an act of indiscipline being a member of a disciplined force and, therefore, punishable as per the Police Regulations and Rules.

7. Reply was submitted to this charge-sheet by the appellant, which was not found satisfactory and a regular departmental enquiry was initiated against him. Six prosecution witnesses were examined, out of which, ASI Sant Lal-PW1 and ASI Satpal Singh-PW2 had only produced the records with regard to the posting and the service-book of the appellant. Inspector Ram Kumar-PW3, who is also an eye witness, deposed during the enquiry proceedings on 17.02.2011, where he had stated that ASI Dilbagh Singh (appellant) called Karamvir and asked him to produce the sound of the siren of the police vehicle with his mouth. At that time,

the appellant also blew some air with his mouth jokingly in light manner, which was not liked by Karamvir and showed his annoyance. The appellant thereafter, felt sorry and pacified Karamvir. It would not be out of way to mention here that Inspector Ram Kumar did not state that the appellant had either spat on the face of Karamvir or any saliva had fallen on his face.

8. Kali Ram-PW4 being resident of Village Dadwana was present when the matter regarding the application submitted by Karamvir was discussed in the Panchayat. He stated that no allegations were levelled against anyone in the presence of respectables of the Village nor any matter regarding spitting on the face was discussed. He also stated that earlier the statements were recorded by the Panchayat but nothing in this regard was referred to there.

9. Nripjit Singh-PW5, HPS, Deputy Superintendent of Police, is a person who had held the preliminary enquiry. He, in his cross-examination, stated that he had enquired about the matter from SHO, Police Station Dhand and other witnesses but no one openly deposed against the appellant in any statement. He also admitted that no complaint was received against the appellant when he was posted in Police Station Dhand except for the complaint, which was being enquired into.

10. Karamvir @ Vicky-PW6, the complainant, stated that he had already made a statement before the Panchayat and no pressure was exerted on him. He had stated in the Panchayat that he did not want to take any legal action on the application submitted by

him.

11. At this stage, reference to the application dated 14.09.2010 submitted by the complainant Karamvir Singh would be necessary. The relevant portion reads as follows:-

“ But yesterday, after the fair was over, the S.H.O. and other police officials met me there in the P.C.R., where Sh. Ram Kumar S.H.O. and Rishi Pal, Shish Pal, started chatting with me and also heard jokes from me. They had also asked me to blow police vehicle horn with my mouth. When I started blowing horn from my mouth, someone spitted in my mouth. I am blind and cannot see anything. I do not know as to who spitted inside my mouth. However, my associate told that a police official, who was having three stars on his shoulder, has committed this act.”

12. A perusal of the above would show that there is no reference with regard to any person having stopped him from blowing with his mouth the siren of the police vehicle. What he states is that while he was blowing the siren with his mouth, someone spitted on his mouth. He being blind could not see anything, however, his associate told that a police official, who was having three stars on his shoulder, had committed this act. It also requires to be mentioned here that he has referred to two other police officials, namely, Rishi Pal and Shish Pal apart from SHO Ram Kumar being present on the spot. Rishi Pal and Shish Pal have not been examined during the departmental enquiry. The associate of Karamvir, who was also

present when the incident took place, has not been named or identity disclosed. None of these three persons, who are eye witnesses to the incident, has been produced during the enquiry.

13. On considering the evidence that has come during the departmental enquiry, it cannot be said that the witnesses, who have been produced in the enquiry proceedings, have supported the allegations against the appellant. Further going by the complaint, it is apparent that the person, who spat on the face of the complainant, was an official, who was wearing three stars on his shoulder batch. Appellant admittedly, at that stage, was an Assistant Sub-Inspector and, therefore, would be wearing one star on his shoulder batch. None of the witnesses, who had deposed during the enquiry, has stated that the appellant had spat on the face of the complainant Karamvir. This clearly shows that the findings recorded against the appellant are based on conjunctures and surmises and present is a case where the report of the Enquiry Officer does not suggest any direct or corroborative evidence on record against the appellant. Rather the findings can be said to be based on no evidence.

14. It has been held by a catena of judgments by the Supreme Court that the High Court, while exercising its jurisdiction under Article 226 of the Constitution of India, will not sit in appeal on the report of the Enquiry Officer. However, when it is a case where the finding in an enquiry report is based on no evidence, the Court is required to interfere to do justice and stop the injustice, which has been perpetuated because of such report.

15. In the case of **Indian Oil Corporation Limited Vs. Ashok Kumar Arora AIR 1997 (SC) 1030**, it has been held by the Supreme Court that the Court while exercising its writ jurisdiction would not interfere with the findings recorded during the departmental inquiry sitting over the said findings as an Appellate Authority or it can be said that the jurisdiction is limited. However, exceptions have been carved out in this regard, which includes power of interference by the High Court where the domestic inquiry is vitiated because of findings being based on no evidence as in the present case.

16. In the case of **Mohd. Yunus Khan Versus State of U.P. and others**, 2010 (10) SCC 539, it has been held by the Supreme Court that holding departmental proceedings against a Government employee for imposing punishment on his being found guilty of misconduct under the Statutory Rules is in the nature of quasi-judicial proceedings. The punishment for mis-conduct can be imposed in consonance with the Statutory Rules and principles of natural justice. Though, the strict technical rules of procedure contained in the Code of Civil Procedure, 1998 and the Indian Evidence Act, 1872 do not apply in the domestic enquiry but the principles of natural justice are required to be observed strictly. The enquiry is to be conducted fairly and reasonably and the enquiry report must contain the reasons for reaching the conclusion that the charges framed against the delinquent stood proved against the delinquent official. It cannot be an *ipse dixit* of the enquiry officer. In such a situation, the Court can exercise its extraordinary writ jurisdiction.

17. Present is a case where the finding has been recorded by the Enquiry Officer abruptly without giving any reasons as to how the appellant is involved in the mis-conduct and the evidence, on the basis of which, the findings have been recorded against him.

18. In view of the above, the present appeal is allowed. The judgment passed by the learned Single Judge is hereby set aside. The report of the Enquiry Officer dated 09.06.2011 (Annexure P-8A) is hereby quashed being based on no evidence. As a consequence thereof, the order dated 25.07.2011 (Annexure P-9) passed by the Superintendent of Police, Kaithal, demoting the appellant as Head Constable from the post of Assistant Sub-Inspector and the order dated 28.10.2011 (Annexure P-10) passed by the Inspector General of Police, Karnal Range, Karnal-Appellate Authority and the order passed by the Additional Director General of Police, Administration in revision (Annexure P-11) are hereby quashed. The appellant is held entitled to all consequential benefits, which would be released to him within a period of three months from the date of receipt of certified copy of the order.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(AUGUSTINE GEORGE MASIH)
JUDGE

January 29, 2015

pj