

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP NO.10800 of 1993
Date of Decision:27.1.2016

Ex-Constable Makhan Chand

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: Hon'ble Mr.Justice Rajiv Narain Raina

Present: Mr.S.K.Sharma Budhladawale, Advocate for the petitioner

Mr.Harkesh Manuja, Addl.A.G., Punjab

RAJIV NARAIN RAINA, J.

1. The petitioner was dismissed from service in the Police Department as a result of a departmental enquiry conducted against him for wilful and unauthorised absence from duty wherein the charge of major misconduct was proven. The case is that the petitioner proceeded on three days casual leave w.e.f. 28th March, 1990 and was required to report back on 31st March, 1990, but he failed to do so. The admitted position is that a criminal case was registered against the petitioner on 23rd April, 1990 in which he was arrested by the Police on 26rd April, 1990 and was admitted to bail on 1st June, 1990. During this period, the petitioner failed to inform the police department about his absence. The criminal case apart, the petitioner was charge-sheeted by the Senior Superintendent of Police on allegations which are rather peculiar. One Constable Atma Singh who is resident of the native village of the petitioner was instigated to post a letter to the petitioner purporting to be written by extremists so that he could get police protection, a weapon and necessary security cover from the police authorities on the strength of this letter of threat. During the departmental enquiry, Constable Atma Singh confessed to penning down the letter of threat at the instance of the petitioner. The letter

was posted to the home address of the petitioner, Makhan Chand. In the regular enquiry, the charges were proven and he was dismissed from service on 27th January, 1992 by the Senior Superintendent of Police, Bhatinda inflicted punishment of forfeiture of five years service on permanent basis for wilful absence. His appeal before the Deputy Inspector General of Police, Ferozepur was duly considered and rejected on merits but the original penalty was mitigated to three years by the Deputy Inspector General of Police, Ferozepur after considering the grounds appeal. The Inspector General of Police, Punjab, Chandigarh rejected the further revision filed by the petitioner.

2. The petitioner has narrated a long story in the petition and in the replication filed by him of a dispute he had with the private driver of Bakhashish Singh Brar, the then Superintendent of Police, Headquarters Bathinda. The brother of the husband of the sister of the petitioner was the driver. The petitioner asserts that Brar was very close to the family of in-laws of the sister of the petitioner who was murdered on 6th September, 1989 by her in-laws in a dowry death case accused of the offence. The trial had led to conviction of certain persons. As a counter-blast, respondent no.4 implicated the petitioner in a false case on a complaint filed by Bhola Ram who was the *Jeth* of Darshan Kumar, the husband of the petitioner's sister and involved him in commission of offence under Section 307 of the IPC for attempting to take the life of Bhola Ram by firing at him with a licenced gun. That is why FIR No.30 dated 23rd April, 1990 was registered. In the said incident, no one was injured. The petitioner surrendered in Court on 10th May, 1990 and was enlarged on bail on 1st June, 1990 and ultimately, he was acquitted by the Court of Sessions Judge, Bathinda on 15th July, 1992. In this manner, a long story of victimisation has been made as motive and foundation of the

dismissal from service.

3. Learned counsel for the petitioner argues that the enquiry was sham and was manipulated by the 4th respondent to achieve the pre-determined end. He further submits that his client has been unfairly dealt with inasmuch while no harm has come to Constable Atma Singh while the petitioner was left on the road for no grave fault of his, but for the mala fide actions of 4th respondent. Even the commendation certificates earned in 1985 were not given due consideration while issuing dismissal order. It seems rather had to believe that the petitioner could instigate a mature police personnel like Atma Singh to write a letter at his behest appearing to be the work of terrorists.

4. Learned counsel for the State has placed on record translated copies of the findings recorded during preliminary and regular enquiries including the statements of the witnesses recorded and the enquiry report. The same have been taken on record with no objection from the other side being official documents.

5. Having heard the learned counsel for the parties at some length, perused the record and examined the role of the petitioner alongwith the other co-accused mentioned in the FIR, together with the charge-sheet and the findings of fact recorded in the departmental inquiry, I find no cogent ground to interfere in the impugned order of dismissal or to scale down the punishment chosen by the appellate authority. No procedural flaws have been pointed out in the enquiry proceedings or breach of principles of natural justice. The petitioner had reasonable opportunity to produce his defence witnesses and prove his innocence in the inquiry. Atma Singh had admitted of writing the material letter which was the foundation of the charge and connected to the wilful absence from duty. The petitioner has not pointed out any real animosity of ill-will that Constable Atma Singh had with him to

make the statement before the inquiry officer even when admittedly Constable Atma Singh belonged to his village and was a neighbour known to each other. I have read the order of dismissal, the appellate order and the order passed in revision. There appears to be no error apparent on the face of the record or any perversity of reasoning calling for interference. It is well settled that the Court does not sit in appeal over the findings recorded at the departmental enquiry. The findings are neither palpably erroneous, perverse nor are they irrational and such which could not be taken by a reasonable person. The choice of punishment rests with the punishing authority. The dismissal order has been reviewed twice by superior officers who supported the reasons assigned in the dismissal order. It cannot be said that Article 311 of the Constitution has not been complied with. I do not find any legal infirmity in the impugned orders and would, therefore, be inclined to dismiss this petition.

6. This petition lacks merit and is accordingly dismissed with no order as to costs.

(RAJIV NARAIN RAINA)
JUDGE

27.1.2016
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