

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

CWP No.1864 of 2012

Date of decision : 25.04.2016

Mohd. Farukh

...Petitioner

versus

State of Haryana and others.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Rakesh Nagpal, Advocate
for the petitioner.

Mr. Keshav Gupta, AAG, Haryana.

RITU BAHRI , J. (Oral)

The present petition under Article 226/227 of the Constitution of India is for issuance of a writ in the nature of certiorari for quashing orders dated 09.04.2009 (P-2), 29.10.2009 (P-3) and 15.03.2010 (P-5)

The allegation against the petitioner was that on 2.4.2009 he was on duty to produce accused Shalli s/o Badan, Meo r/o Guraksar in the Court at Hathin District Palwal. When the prison Van reached Court premises Hathin, one of the accused Shalli was being escorted to the Court by the petitioner, when some of the criminals out of which one of them was identified as Jafru s/o Badan, Meo r/o Guraksar came there in a Tavera Van, and got released accused Shalli from the custody of the petitioner and speed away in the said vehicle but the petitioner did not make any serious attempt to resist his escape.

Accordingly, FIR No. 115 dated 02.04.2009 under Sections 223/224/225-A/225-B/120-B IPC has been registered against the petitioner with the allegation that he connived with the accused Shalli to escape from

the custody of the police. Preliminary enquiry was conducted against the petitioner on dated 2.4.2009 and he was charge sheeted along with other officials and was suspended as well on 2.04.2009 (Annexre P-1). In the fact-finding enquiry, it has been found that the mobile number of the petitioner was 9812859391 and as per the call details, he had continuous talks on mobile no. 9813994581, which belongs to Jafru, the real brother of absconding accused Shalli. After analyzing the call details, it was found that the petitioner was in constant conversation with accused Jafru, the real brother of accused Salli, under a criminal conspiracy and in a pre-plan manner assisted him in running away. Accordingly, he was dismissed from service, vide order dated 09.04.2009 (P-2) and no regular departmental enquiry was conducted against him. The appeal as well as revision filed against the dismissal order, were also dismissed, vide orders dated 29.10.2009 and 15.03.2010 (P-3 and P-5) respectively.

However, petitioner has placed on record receipt of vodafone wherein it has been shown that mobile No. 9813994581 belongs to Hem Raj Annexure P11. Petitioner has also filed affidavit in this regard stating therein that mobile no. 9813994581 belongs to Hem Raj in which his ID has been deposited and Mahd. Faruq i.e the petitioner is the maternal uncle of his friend Aslam and he has a usual talk with petitioner on mobile no. 9812859391 about his well being.

The petitioner by way of his replication has also placed on record Annexure P-10, whereby Director General of Police vide order dated 21.05.2012 had taken a lenient view against the other employees who were dismissed along with the petitioner without holding enquiry under Article 311 (2) (b) of the Constitution of India. The punishment of dismissal from

service was reduced to that of stoppage of four annual increments with permanent effect.

In view of the affidavit given by Hem Raj Annexure P12 and the information given by Vodafone Annexure P-11, mobile no. 9813994581 belongs to Hem Raj and not to petitioner. Hence, the finding in the preliminary enquiry that the petitioner was involved with the brother of the accused to get him released is not made out. The plea taken by the petitioner in paragraph 21 of the petition to this effect has also not been denied by the respondents in the written statement. However, they have taken a stand that the affidavit given by the Hem Raj was false and wrong.

Keeping in view the information given by the Vodafone (Annexure P-11) and the affidavit given by Hem Raj that the mobile no. 9813994581 belongs to him, the petitioner services could not have been dismissed without holding a regular departmental enquiry.

In view of the above facts, orders dated 09.04.2009 (P-2), 29.10.2009 (P-3) and 15.03.2010 (P-5) are hereby set aside and opportunity is granted to the respondent-department to make a regular enquiry and thereafter pass an appropriate order in accordance with law.

The writ petition is allowed.

April 25, 2016
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(RITU BAHRI)
JUDGE