

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

**CWP No.18321 of 2013
Date of decision: 08.11.2016**

Sarabjit Singh

..Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Mrigank Sharma, Advocate
for the petitioner.

Mr. Rupam Aggarwal, DAG, Punjab
for the respondents -State.

Daya Chaudhary, J.

The prayer in the present writ petition is for issuance of a writ in the nature of certiorari for quashing of impugned order dated 30.01.2008 (Annexure P-1), whereby the petitioner has been held guilty of departmental misconduct and punished with stoppage of three future increments with cumulative effect and also order dated 15.04.2011 (Annexure P-3), whereby, the appeal filed by the petitioner has been dismissed.

Briefly, the facts of the case as made out in the present writ petition are that the petitioner was appointed as Constable in Punjab Police in the year 1992. He was deputed in the Intelligence Department at Pathankot in the year 2000. FIR No.40 dated 09.12.2006 was registered against him and other two colleagues under Sections 7 and 12 of the Prevention of Corruption Act, 1988 at Police Station Sujampur, District

Gurdaspur wherein certain allegations of accepting bribe were alleged against them. On the same allegations, departmental proceedings were initiated against the petitioner. A show cause notice was issued to him, to which, the petitioner furnished reply stating that the matter was subjudice before the Criminal Court and the departmental proceedings be kept pending. Order of imposition of punishment of stoppage of three future annual increments with cumulative effect was passed on 30.01.2008.

Aggrieved by said order, the petitioner filed departmental appeal and he was acquitted of the charges in the criminal case vide judgment of the trial Court dated 19.07.2010. The appeal filed by him was dismissed on 15.04.2011 stating that the petitioner had chosen to lead his defence before the trial Court. A mercy petition was also filed by him but it was also dismissed whereas his co-accused was let off.

Learned counsel for the petitioner submits that the departmental proceedings were initiated against the petitioner only because of lodging of FIR whereas subsequently, he had been acquitted of the charge. No independent charges were framed against him. In the departmental proceedings, he was proceeded only on the basis of allegations in the FIR. Learned counsel further submits that the co-accused of the petitioner were let off in the departmental proceedings but this fact has not been considered by the Appellate Authority as well as in the mercy petition. Learned counsel also submits that the co-accused of the petitioner, namely, Constable Narender Singh, was exonerated in the departmental inquiry and other co-accused, namely, Constable Satpal, was also awarded the same punishment with a rider that the punishment proposed shall be subject to outcome of the

trial Court's order and thereafter, he was not awarded any punishment like the petitioner. At the end, learned counsel for the petitioner submits that the action of the respondents is not only discriminatory but unfair as well as equally situated persons have been treated in a different manner by adopting different yardsticks. The reply to the show cause notice was not considered whereas a specific request was made to postpone the proceedings till the decision of the trial Court.

Learned State counsel opposes the submissions made by learned counsel for the petitioner and submits that proper and adequate opportunity of personal hearing was given to the petitioner and his stand was also heard. The petitioner was not having good past conduct as earlier he was awarded punishments and his three years' service was forfeited with permanent effect. By considering the past conduct of the petitioner, his case was differently considered and impugned order was passed.

Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the impugned order of stoppage of three future annual increments with cumulative effect; the order passed in the appeal and the judgment passed by the trial Court, whereby, the petitioner was acquitted of the charge.

It is not disputed that the FIR was registered against three persons including the present petitioner. Show cause notices were issued to all the three including the petitioner. The petitioner filed reply to the show cause notice wherein it was stated that the proceedings before the department be kept in abeyance as the FIR case was pending before the criminal Court. It is also not disputed that the same allegations were levelled

against the petitioner and other two co-accused. The allegations in the charge sheet were the same as levelled in the FIR. Co-accused of the petitioner, namely, Constable Narender Singh was exonerated in the departmental inquiry and another co-accused, namely, Constable Satpal was awarded punishment with a rider that the punishment proposed shall be subject to the outcome of the trial Court's order. Ultimately, he was acquitted of the charge by the trial Court and was not awarded any punishment by the respondent-department.

Undisputedly, the trial Court was seized of the issue and no departmental proceedings were continued as only show cause notice was issued to which, reply was also furnished by the petitioner. A request was made to keep the proceedings pending.

On perusal of impugned order, it is apparent that nowhere it is mentioned that the past conduct has been taken into consideration whereas for the past conduct, the petitioner has already been punished. This ground has been taken in the written statement that by considering the past conduct of the petitioner, punishment of stoppage of three future annual increments with cumulative effect had been imposed. By considering the conduct of the respondent-department, it is apparent that different yardsticks have been adopted while awarding punishment. The case of the petitioner has been kept at different footing only due to past conduct and he was awarded punishment whereas he cannot be punished twice for the lapse committed in past.

As far as allegations under PC Act against the petitioner are concerned, the same were there against all three persons but the action has

been taken only against the petitioner.

The same issue was there before this Court in ***Rajiv Kumar Sharma vs. State of Haryana, 1995(3) SCT 643*** wherein it was held as under: -

“8. The instructions issued by the Government were considered by a learned Single Judge of this Court in C.W.P. No.179 of 1990 (Parveen Kumar v. State of Haryana and another). While taking note of the facts placed before him, the learned Single Judge held that there was no justification to deny appointment to the petitioner Parveen Kumar on the post of Inspector of Police when other similarly situated persons had been appointed as Inspectors. The learned Single Judge held that the action of the Government was arbitrary and unfair. In C.W.P. No.12498 of 1990 (Miss Shinder Kaur v. Punjab State Electricity Board and others) a Division Bench of this Court held that when dependents of two deceased Government servants possess similar qualifications, no discrimination can be made by the employer while giving them appointment on compassionate grounds. Their Lordships of the Supreme Court in S.L.P. No.2517 of 1990 (Smt. Kamla Gaiind v. State of Punjab and others) decided on 12.7.1990 (Annexure P.15) have held that the Government does not have

the power to act discriminatingly while giving employment on compassionate grounds.

9. *As a general proposition of law, it is well settled that the State does not have any power to discriminate between persons similarly situated. While recognising that the Government can classify a person or a group of persons with reference to the object of legislation or even executive action, the Courts have time and again held that such classification must have some nexus with the object to be achieved. The theory of absolute discretion of the Government was negated by the supreme Court in **S.G. Jaisinghani v. Union of India and others, AIR 1967 Supreme Court 1427**. Ramaswami j. speaking for the Constitution Bench of the Supreme observed: -*

“In this context it is important to emphasise that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the

application of known principles and rules and, in general, such decisions should be made by the application of known principles and rules and, in general, such citizen should know where he is. If a decision is taken without any principles or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey - "Law of the Constitution" - Tenth Edn., Introduction x).

*"Law has reached its finest moments." Stated Douglas, J. in **United State v. Wunderlich, (1951) 342 US 98**, "when it has freed man from the unlimited discretion of some ruler..... Where discretion is absolute, man has always suffered." It is in this sense that the rule of law may be said to be the sworn enemy of caprice. **Discretion, as Lord Mansfield stated it in classic terms in the case of John Wilkes, (1970) 4 Burr 2528 at p. 2539 means sound discretion guided by law. It must be governed by rule, not by rumour : it must not be arbitrary, vague, and fanciful.***

10. *This principle has been reiterated, though in different words, in **E.P. Rovappa v. State of Tamil***

Nadu, AIR 1974 Supreme Court 555; Ramana Dayaram Shetty v. The International Airport Authority of India and others, AIR 1979 Supreme Court 1628, and in a large number of cases, including the recent one in Kumari Shrilekha Vidyarthi etc. etc. v. State of U.P. and others, 1991 (1) SCT 575 (SC) : AIR 1991 Supreme Court 537.

*In Ramana Dayaram Shetty's case (supra), the Supreme Court quoted with approval the following observations made by Mr. Justice Frankfurter in **Vitarelli v. Seaton (1959) 359 US 535 -***

“An executive agency must be rigorously held to the standards by which, it professes its action to be judged..... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed.This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword.”

The Supreme Court also approved some of the observations made by Mathew, J., as he then was, in

V. Punnam Thomas v. State of Kerala, AIR 1969***Kerala 91: -***

“The Government is not and should not be as free as individual in selecting the recipients for its largess. Whatever its activity, the Government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic Government cannot law down arbitrary and capricious standards for the choice of persons with whom alone it will deal.”

In ***Rajinder Kumar Khara vs. State of Haryana and another, 1996(3) SCT 99***, this Court held as under: -

*“It is by now settled proposition of law that the discretion vested in the Government is subject to constitutional and public limitations. The action of the Government must be in conformity with some principle which may test to reason and relevance. Way back in 1979 Apex Court in **Ramana v. I.A. Authority of India, AIR 1979 SC 1628**, after relying upon number of earlier judgments held: -*

“It must, therefore, follow as a necessary corollary from the principle of equality enshrined in Article 14 though the State is entitled to refuse to enter into relationship

with any one, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principles which meet that test of reasonableness and non-discrimination and any departure from such standard of principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground.”

It is, thus, apparent from the observations of the Supreme Court quoted above that even in the matter of discretion, the Government cannot discriminate between the persons equally situated. It has been proved in this case on account of non-denial of pleadings of the petitioner fully detailed above that if not more, then atleast four persons who were equally situate as of the petitioner were appointed to the post of Inspector whereas the petitioner only was discriminated by way of giving lower post of Sub Inspector. If unfettered discretion is permitted to vest in the State and there are no norms laid down, it would necessarily result in favouring those who are wielding influence in the corridors of powers and

those ordinary citizens who do not have such an influence would be treated entirely in a different manner. Such a course cannot be permitted as that would certainly violate the equality clause incorporated in Article 14 of the Constitution of India.”

In the present case, the petitioner has been dealt differently whereas the respondent has no power to discriminate the similarly situated. Moreover, the petitioner cannot be punished by considering the past conduct, for which he has already been punished. No charge was framed against him relating to those lapses.

In view of facts as mentioned above, the present writ petition is allowed and the impugned orders dated 30.01.2008 (Annexure P-1) and 15.04.2011 (Annexure P-3) are, hereby, set-aside.

08.11.2016
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

√
Yes/No

Whether Reportable

√
Yes/No