

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CWP-17987-2014

Date of decision :13.09.2017

EHC Surender and others

... Petitioners

Versus

The State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr.Namit Kumar, Advocate,
for the petitioners.

Mr. R.K. Doon, AAG, Haryana.

AMOL RATTAN SINGH, J.(ORAL)

The Deputy Superintendent of Police, Nuh, is present in Court pursuant to the previous order of this Court.

By this petition, the five petitioners are seeking a writ of certiorari, quashing the departmental enquiry as also the order Annexure P-7, dated 17.08.2011, by which the punishment of dismissal from service of petitioner no.1, who is an Exemptee Head Constable (EHC) in the Haryana Police, was reduced and instead a punishment of stoppage of 5 annual increments with permanent effect was imposed, the impugned order further stating that the period spent by him out of service 'could not count' and that he could not be paid any emoluments for that period, on the principle of no work no pay.

Though the petition has been filed by five petitioners, the other four being Constables in the Haryana Police, somehow when the petition was filed, only the order of the appellate authority imposing the aforesaid punishment upon the 1st petitioner, was annexed with the petition.

Subsequently, however, vide an application (CM no.10702 of 2017), the order of the appellate authority imposing the same punishment (after reducing the punishment of dismissal from service imposed by the punishing authority), has also been placed on record by learned counsel for the petitioners, as Annexure P-12. Identical orders passed by the same appellate authority, as in the case of petitioner no.2, in respect of the other four petitioners, have also been placed on record as Annexure P-13 collectively.

The order of the Additional Director General of Police, Administration (exercising the revisional power of the Director General of Police), dismissing the revision petition filed by petitioner no.1 on 22.07.2012, with similar orders having been passed by the revisional authority in the case of other petitioners, have also been placed on record.

2. At the outset, Mr. Namit Kumar, learned counsel for the petitioners has submitted that since the orders of dismissal in respect of petitioners no.3 and 4, i.e. Constables Ram Niwas and Chand Ram, have also been already taken on record as Annexure P-12, with the said orders inadvertently not having been sought to be quashed, as part of the already order impugned dismissing the three petitioners (that order being Annexure P-5), the said order in the case of petitioners no.3 and 4, passed by the Superintendent of Police, Rewari, dated 16.12.2010, earlier taken on record as Annexure P-12, be also treated to be the second part of Annexure P-5, i.e. Annexure P-5 (colly.), and similarly, the orders passed by the appellate authority, i.e. the Inspector General of Police, South Range, Rewari, dated 17.08.2011, passed in the case of petitioners no.2, 3 and 4, earlier taken on record collectively as Annexure P-13, be also treated to be collectively

Annexure P-7, i.e. the order of the same date, of the same authority, originally impugned with this petition, that being the order in appeal in the case of petitioner no.1, EHC Surender Singh.

A similar prayer has been made by him as regards the order dated 22.07.2012, passed by the revisional authority in the case of petitioner no.1 Surender Singh, which has been earlier taken on record as Annexure P-14.

Learned counsel submits that the said order be treated as a part of Annexure P-9 (colly.).

The petition being at the stage of disposal, with arguments having been addressed by learned counsel on both sides in respect of the entire issue, i.e. with regard to the earlier dismissal of all the five petitioners by the Superintendents of Police, Rewari, and Mewat, the said punishment in the case of all five of them having been reduced to stoppage of five annual increments with permanent effect by the aforesaid authority (respondent no.3 herein), and the revision petitions having been dismissed by respondent no.2, the prayed is accepted and it is directed that annexure earlier taken on record as Annexure P-12, be now re-numbered and placed as a part of the Annexure P-5 (colly.). Similarly, the orders earlier taken on record as Annexure P-13 (colly.), be now re-numbered and taken on record alongwith the original Annexure P-7 (colly.), and the order of the Additional Director General of Police, Haryana, dated 22.07.2012, earlier taken on record as Annexure P-14, be now re-numbered and added to the orders already taken on record as Annexure P-9 (colly.).

The Registry is directed to do the needful.

Consequently, the order of this Court dated 04.08.2017 would also be treated to have taken the annexures mentioned therein, i.e. Annexures

P-12, P-13 and P-14, to be treated as Annexures P-5 (colly.), P-7 (colly.) and P-9 (colly.), respectively.

3. The background of the case is that the petitioners, while they were posted at the Police Lines in the District Police, Mewat, were deputed on 25.02.2009 to produce 8 prisoners (undertrials) in the Courts at Firozpur Jhirka and Punhana. Petitioner no.1, i.e. EHC Surender Singh, was placed incharge of the guard consisting of the other four petitioners, with one ASI Akbar Hussain put incharge of other officials, to produce another set of undertrials before the Court.

In all, there were 27 accused to be produced in court on 25.02.2009, all to be taken from the District Jail at Bhondsi.

To show that there were two teams incharge of two sets of prisoners, with those 19 in the custody of ASI Akbar Hussain and his 'troop' to be produced at the Court at Nuh, whereas the petitioners were to produce the accused in their custody in the courts at Firozpur Jhirka and Punhana, the petitioners have relied upon a daily diary report of that date, i.e. 25.02.2009, which has been annexed as Annexure P-3 with the petition.

4. It is further stated in the petition that out of the 8 accused in the charge of the present petitioners, 3 were admitted to bail by the Court, whereas one undertrial was added in the Court, to their charge, to be taken back to the jail at Bhondsi, and therefore, all 6 undertrials prisoners as were in the custody of the petitioners in this petition, were duly lodged back in jail.

Of the 19 accused who were taken by ASI Akbar Hussain and his team to the court at Nuh, 4 prisoners escaped from custody, leading to the registration of FIR no.15 dated 25.02.2009, making out therein, offences punishable under Sections 223, 224, 120-B IPC and 7/13 of the Prevention of

Corruption Act, 1988.

5. Upon the aforesaid occurrence having taken place, the entire escort guard, including the five petitioners and ASI Akbar Hussain and his team, was placed under suspension and a departmental enquiry was ordered, conducted by a Deputy Superintendent of Police.

The said enquiry officer held all members of the two teams as had been constituted to produce the accused in Court, guilty in helping the accused escape, with which finding the punishing authority, (Superintendent of Police) agreed, thereafter dismissing them from service, with that order modified in appeal, as noticed earlier.

6. It is contended by Mr. Namit Kumar, learned counsel appearing for the petitioners, that the enquiry officer wholly erred in not appreciating the fact that, firstly, none of the undertrials in the custody of the present five petitioners, as had been produced before the Courts at Firozpur Jhirka and Punhana, escaped from custody and secondly, even in the trial resulting from the registration of the aforesaid FIR, none of the prosecution witnesses deposed against the petitioners.

Learned counsel further submitted that even the punishing authority wholly erred in believing the version of the enquiry officer without considering the aforesaid factual position and instead imposing a punishment of dismissal from service vide the order Annexure P-5, dated 12.02.2011, by which six persons including the five petitioners and one Constable Mahesh Kumar, were dismissed from service.

[Thus, it is on appeal from the aforesaid orders of the Superintendents of Police, Mewat and Rewari, that the appellate authority (the Inspector General of Police, South Range, Rewari), passed the impugned

orders reducing the punishment of dismissal to one of imposition of five stoppage of annual increments with permanent effect.]

7. Learned counsel for the petitioners further submitted that in the criminal trial, the Additional Sessions Judge, Gurgaon, honourably acquitted the petitioners, while convicting the remaining accused in the trial (ASI Akbar Hussain and his 'team mates'), from whose custody the convicts had escaped.

A copy of the judgment of the learned trial Court in the criminal proceedings, has also been annexed with the petition as Annexure P-8, wherein it has been observed that “Surender, Chand Ram, Jai Bhagwan, Ram Niwas and Sandeep were the members of the escorting team, which was deployed for producing 8 undertrials in courts at Ferozpur Jhirka and another escorting team was deployed to produce 19 undertrials at Nuh, which was headed by ASI Akbar Hussain”. Thus, the aforementioned persons (the petitioners herein) were acquitted but on the other hand, the 10 accused in whose custody the escaped prisoners were actually placed, were convicted. (It is to be noticed here that though not pointed out by counsel on either side, ASI Akbar Hussain is not one of the 10 police officials convicted for being responsible for the escape of the prisoners).

8. In the aforesaid background, Mr. Namit Kumar, learned counsel for the petitioners, further submitted that as a matter of fact, of those officials who were convicted by the trial Court, EHC Rajbir, Constable Mahesh Kumar and Constable Vijender Singh have been reinstated in service by the DGP Haryana, upon a revision petition filed by the aforesaid officials against their dismissal, with the DGP stating in his order (Annexure P-11) that as in identically placed “defaulter”, Constable Manoj Kumar, had been reinstated

by the appellate authority, there was no reason to not pass similar orders in the case of the aforesaid Rajbir Singh, Mahesh Kumar and Vijender Singh.

Hence, he submitted that very strangely, out of those who have been found guilty and convicted even by the trial Court in criminal proceedings, four persons at least have been reinstated, with no punishment imposed upon them, whereas the petitioners, who have been wholly acquitted by the trial Court, holding that they were in no way responsible for the prisoners' escaping from the custody of ASI Akbar Hussain and party, have been imposed a punishment of stoppage of 5 increments with cumulative effect.

9. Mr. R. K. Doon, learned Assistant Advocate General, Haryana, has tried to justify the impugned orders, stating that the petitioners were actually found guilty in disciplinary proceedings of letting the four accused escape alongwith ASI Akbar Hussain and his staff, because eventually all the prisoners were sitting in one vehicle when they were brought back from Nuh, Firozpur Jhirka and Punhana.

Thus, as per learned State counsel, basing his argument on the written statement filed on behalf of the respondents, with the fact of the aforesaid four prisoners having escaped having been discovered when the vehicle reached back at the District Jail Bhondsi, the petitioners were held guilty as were the others, for letting such an escape to take place.

10. It had also been submitted before this Court on an earlier date, that ASI Akbar Hussain had actually put even the escaped undertrials in the incharge of the 1st petitioner and his party, while they were in transit.

Upon the aforesaid arguments having been made, this Court, vide its order dated 30.08.2017, had directed that the record be produced in Court,

showing that ASI Akbar Hussain had put the prisoners who had escaped, in the charge of the petitioners, with he himself having left for some official duty.

It was also directed that the Superintendent of Police, Mewat, would place on record by way of an affidavit, the statutory provisions under which any undertrial can be handed over to the charge of a person other than the person to whom such charge had already been given, for production of the undertrial in Court.

11. Pursuant to the order dated 30.08.2017, a reply by way of an affidavit of Smt. Naazneen Bhasin, Superintendent of Police, Nuh, has been filed in Court today, in paragraph 8 of which it is stated that there is no provision by which under trials are to be handed over to any other police official (i.e. other than the police officials to whom their custody has been entrusted, to be taken to courts from the jail premises).

Further, as per the said affidavit, the petitioners were entrusted with the custody of 8 accused, 6 of whom were to be produced in the Court at Firozpur Jhirka and 2 accused at the Mobile Court, Punhana. The remaining accused were entrusted to the custody of ASI Akbar Hussain and his staff, for producing them in the District Court / Sessions Court at Nuh.

Thereafter, the affidavit more or less reiterates what is stated in the written statement.

12. That being so, and admittedly no prisoner whose custody was entrusted to the petitioners herein, having escaped, with even some members of the team of ASI Akbar Hussain (from whose custody 4 prisoners escaped), having been reinstated in service by the order of the DGP, Haryana, even though they are stated to have been convicted in criminal proceedings, I see

no reason as to why the petitioners, who are admitted to have been acquitted in criminal proceedings, and from whose custody, to repeat, no prisoner escaped, should not be exonerated completely, of the charges framed against them, and therefore the impugned orders of punishment of stoppage of 5 annual increments with cumulative effect, should not be quashed.

Even though the reasoning of the punishing authority for initially dismissing the petitioners, (who were thereafter reinstated by the order of the appellate authority, with the aforesaid punishment of stoppage of 5 annual increments with cumulative effect, having been imposed), would be that the prisoners escaped with the petitioners also being incharge of one of the parties of the prisoners who were taken in two common vans; however, in the opinion of this Court, the petitioners would not be expected to know as to which of the prisoners as were entrusted to the custody of the other party, had been bailed out by the Courts before whom they were presented, and which were not. They would be expected to know only about the prisoners entrusted to them. Hence, the reasoning adopted by the punishing and the appellate authorities is not sound, in the opinion of this Court.

13. Consequently, this petition is allowed and the order of the punishing authorities, i.e. the Superintendent of Police, Rewari, dated 16.12.2010, in respect of three petitioners, i.e. Constables Chand Ram, Ram Niwas and Sandeep Kumar, now part of Annexure P-5 (colly.), is quashed. The order of the Superintendent of Police, Mewat, dated 12.02.2011 in respect of the other two petitioners, i.e. EHC Surender Singh and Constable Jai Bhagwan, is also hereby quashed.

All the five orders of the appellate authority, dated 17.08.2011 (Annexure P-7 collectively), are also hereby quashed, as are the orders of the

revisional authority (respondent no.2 herein), dated 22.07.2012 and 09.01.2014 (Annexure P-9 collectively), rejecting the revision petitions of petitioners Constables Ram Niwas, Jai Bhagwan and Chand Ram.

14. The petitioners having been wholly illegally dismissed from service in the opinion of this Court, as per the circumstances discussed hereinabove, they would be entitled to all consequential benefits, including the arrears of salaries for the period that they remained out of service.

The directions be carried out within a period of 3 months from the date of receipt of certified copy of this order.

(AMOL RATTAN SINGH)
JUDGE

September 13, 2017.
Davinder Kumar/dinesh

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No