

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

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CWP No.23246 of 2017

Date of decision:1.11.2017

Varender Kumar

... Petitioner

versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.S.K.Kaushik, Advocate,
for the petitioner
Mr.R.K.Doon, AAG, Haryana
...

AMOL RATTAN SINGH, J. (Oral)

By this petition, the petitioner seeks quashing of the order dated 15.2.2017, Annexure P-2, by which his services have been suspended and a regular departmental enquiry has been initiated against him for misconduct, the alleged misconduct being the re-registration of fake arms licences issued from other States in the record of the Arms Licence Branch, while he was posted as the Incharge of the said branch in the year 2015-16.

Learned counsel for the petitioner has pointed to Rule 16.38 of the Punjab Police Rules,1934, (as applicable to the State of Haryana), which reads as follows:-

“16.38 Criminal offences by police officers and strictures by courts-Procedure regarding.- (1) Where a preliminary enquiry or investigation into a complaint alleging the

commission by an enrolled police officer of a criminal office in connection with his official relations with the public, establishes a *prima facie* case, a judicial prosecution shall normally follow. Where however, the Superintendent of Police proposes to proceed in the case departmentally, the concurrence of the District Magistrate shall be obtained.

- (2) Orders have been issued by the Hon'ble Judges of the High Court making it obligatory on all civil and criminal courts, whenever they make strictures on the personal character or professional conduct of a police officer, to send a copy of the judgment to the executive authorities. In the case of the High Court itself the copies will be forwarded to the State Government. In the case of all other Courts (including Courts of Sessions), the copies will be sent by the Judges and Magistrates concerned to the District Magistrates.
- (3) In cases in which strictures are passed on the conduct of the police by a Sessions Court or by a Magistrate's Court and no specific recommendation is made by the Court making such strictures that an enquiry should be made, the District Magistrate will decide whether an investigation into the matter is necessary, and if so, whether it shall be conducted by police officer or by a selected Executive Magistrate. After an investigation or

enquiry, the procedure laid down in sub-rule (1) shall be followed. In cases in which the Court passing strictures on the conduct of the police suggests that an enquiry should be made, the District Magistrate will comply with such request.

When strictures on the conduct of the police are made by the High Court and communicated to the State Government direct in accordance with sub-rule (2) above, the instructions of Government as to the action to be taken by the local authorities will be communicated to them through the ordinary channels. In cases in which the High Court suggests that an enquiry should be made, that State Government will give orders accordingly.

- (4) Rules 24.14 and 24.15 provide for reports of all serious charges against the police being communicated to the State Government by a special report. In cases where such serious charges arise from strictures passed by criminal Courts, the Superintendent of Police and the District Magistrate should communicate, either in the report itself or in a covering letter, the procedure which they propose to adopt and any information or notes in connection with the case which they consider should be brought to the notice of Government. Rule 24.15 provides the opportunity for Deputy Inspectors-General and Commissioners similarly to communicate their

comments to the State Government.”

Thus, a perusal of Rule 16.38(1) shows that where, after a preliminary enquiry or investigation into a complaint against an enrolled police officer a criminal offence is made out, a judicial prosecution would normally follow, but where the Superintendent of Police proposes to proceed in the case departmentally, the concurrence of the District Magistrate for such proceedings is necessary.

In the present case, an FIR has been registered, though with the petitioners' name not stated to be figuring therein; but during the course of investigation, he having been found to be involved in the offence (as per the investigation of the police), he was included as one of the accused in the report submitted under Section 173 Cr.P.C., filed before the competent Court.

However, the police authorities have also, obviously, decided to proceed against him departmentally.

Though Rule 16.38 envisages one or the other situation, i.e. either a judicial prosecution or departmental action, and in case of departmental action, the concurrence of the District Magistrate is to be obtained, the question would be whether, where both, judicial prosecution as also departmental action, are proposed, would the sanction of the District Magistrate be necessary or not.

In the opinion of this Court, as a matter of fact, sanction of the District Magistrate has been stipulated only where departmental action alone is proposed in the absence of judicial prosecution, so as to enable the District Magistrate to know that no judicial prosecution has been launched

against the allegedly erring official; and therefore, he may either concur with the Superintendent of Police to proceed only departmentally against him or to still recommend or direct that judicial prosecution should follow.

However, learned counsel for the petitioner has referred to the judgment of a coordinate Bench of this Court in State of Haryana vs. Ex.HC Anant Ram, 2015(4) SCT 575, wherein though that is a case in which the petitioner had already been dismissed from service, in relation to Rule 16.38 (1) of the aforesaid Rules it was held as follows:-

“6. Learned counsel appearing on behalf of the respondent-plaintiff submits that the judgment and decree of the lower appellate Court is fair, legal and justified and there is no illegality and perversity in the same. He submits that before conducting the enquiry sanction of District Magistrate is required under Section 16.38(1) of Punjab Police Rules, 1934, applicable to Haryana had not been obtained, which is mandatory in nature and submits that no substantial question of law arise for adjudication before this Court.

7. I have heard learned counsel for the parties and appraised the paper book.

8. It is a matter of record that the sanction as per aforementioned rule was not obtained which is mandatory in nature and therefore the entire process of holding an enquiry was vitiated in law and accordingly the order of dismissal of service of the respondent-plaintiff and dismissal of his appeal were not correct in law and ought not to have been passed. The

appellate court has failed to notice the aforementioned fact.”

Rather than referring the matter to a larger Bench on a small issue, this petition is allowed to the extent that departmental proceedings initiated against the petitioner are ordered to be held in abeyance, with liberty to the respondents to seek sanction of the District Magistrate for proceeding against the petitioner departmentally. While either granting or refusing sanction, the District Magistrate would give reasons for his order.

As regards the question of judicial and criminal proceedings continuing simultaneously, the law is well settled that such proceedings can continue simultaneously, though in order to ensure that the delinquent/accused is not prejudiced in the criminal proceedings, statements of witnesses should not be recorded in the disciplinary proceedings till those witnesses (if they are witnesses in the criminal proceedings) have testified in such criminal proceedings.

Thus, in the present case also, if the District Magistrate grants sanction to proceed against the petitioner departmentally also, the witnesses as are common to both the proceedings, i.e. criminal and disciplinary, shall not be examined in the departmental proceedings, till they have testified in the criminal proceedings.

It is made clear that, obviously, if the witnesses delay testifying before the criminal Court at the instance of the petitioner, all proceedings as would lie against them as per law would be taken by the department.

1.11.2017

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Whether speaking/reasoned

Whether Reportable

(AMOL RATTAN SINGH)
JUDGE

Yes/No

Yes/No