

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

CWP No. 4111 of 2016 (O&M)
Date of decision : March 07, 2017

Ct. Sanjay Kumar,

..... Petitioner

v.

State of Haryana and others,

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. SN Yadav, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. DAG Haryana

Ajay Tewari, J (Oral)

The petitioner has challenged the findings of the Inquiry Officer in the departmental inquiry (Annexure P-2), the order dated 30.10.2009 (Annexure P-5) dismissing him from service, and the orders dated 14.11.2011 (Annexure P-7), and 16.6.2015 (Annexure P-11) dismissing his appeal and the revision filed against the order (Annexure P-5).

Brief facts are that the petitioner was recruited as Constable on 1.9.1992 and while he was posted as such at Police Station Kasola, SHO/Inspector Mohd. Jamal of the said police station demanded illegal gratification of ₹ 20,000/- from the complainant-Rajbir on the pretext of releasing his relatives Mahabir Singh and Rajesh who were under custody of that SHO in a theft case. The complainant made a complaint and a

raiding team of State Vigilance Bureau Gurgaon caught the petitioner red handed taking bribe. Consequently, FIR No.31, dated 3.6.2008 was registered under Section 7 of the Prevention of Corruption Act. Thereafter, regular departmental inquiry was initiated against the petitioner and his co-accused and ultimately the Inquiry Officer held the petitioner guilty, vide the inquiry report, Annexure P-2. On the basis of this inquiry, the petitioner was dismissed from service, vide Annexure P-5, and his appeal as well as the revision having been dismissed, the petitioner is before this Court. In the criminal case, the petitioner and his co-accused were, however, acquitted by the trial Court, vide judgment dated 16.5.2012 (Annexure P-9).

Counsel for the petitioner has argued that the petitioner was acquitted in the criminal case and there was no evidence which had emerged against him in the departmental proceedings. As per him, the complainant had clearly and unequivocally exculpated the petitioner by stating that when he went to the police station he met the petitioner and shook hands with him. The complainant was not cross-examined by the presenting Officer and his version was accepted. Apart from the complainant, there were seven other witnesses out of whom four were formal witnesses and out of the remaining three, two were the persons for whose benefit the bribe was allegedly demanded, and apart from the fact that they did not state any thing against the petitioner, it cannot also be lost sight of that they were not present at the spot. The last witness was the raiding Officer who also did not witness any handing over of money and he only stated that the petitioner was arrested because his hands turned pink. As per the learned counsel, in these circumstances, there was no incriminating material at all which had appeared before the Inquiry Officer

and, therefore, not only the high standard of proof required in a criminal trial was there, even the lesser burden of proof required for a departmental inquiry was not present. Counsel for the petitioner has drawn the attention of this Court to the finding of the Inquiry Officer and has argued that the only reason on which the Inquiry Officer has based his findings of guilt is the fact that the petitioner was arrested red handed in the raid. Before proceeding further, it would be appropriate to quote the relevant part of the finding of the Inquiry Officer which is as under :-

“ From the summary of charges, statements of prosecution witnesses, defence witnesses, perusal of written replies of delinquents, examination and from the perusal of departmental inquiry, I have arrived at a conclusion that the complaint made against delinquent Constable Sanjay Kumar given by Rajbir Singh to Superintendent of Police, State Vigilance Bureau Haryana, Gurgaon and FIR No.31 dated 5.6.08 under Section 7 PC Act of 1988, PS State Vigilance Bureau, Gurgaon, cannot be ignored because the delinquent has been arrested during the investigation of prosecution, which strengthens the allegation. As such I held delinquent constable Sanjay Kumar No.631 Rewari as guilty.”

A perusal of the above finding does indeed tend to corroborate the argument of counsel for the petitioner.

Learned Sr. DAG Haryana has not been able to point out any other testimony which may tend to implicate the petitioner. He has argued that the fact that the petitioner's hands and pocket turned pink on water being applied is a clear indication that he was guilty. As per him, it is obvious from the facts and attendant circumstances that the petitioner and the other delinquent official were able to prevail upon the complainant who has exculpated them both during the criminal trial as well as the disciplinary proceedings.

In my opinion, the argument raised by learned Sr. DAG

Haryana is based on presumption. Though presumptions may often be correct yet it is not unknown for them to be incorrect also, and that is why Courts frown upon any finding which may have been arrived at wholly on presumption without any corroborative evidence. A perusal of the findings of the Inquiry Officer also leads to the conclusion that the Inquiry Officer has acted on presumption. As a matter of fact, the findings arrived at by the Inquiry Officer could well have been arrived at without even the inquiry because the sole reason which had weighed with the Inquiry Officer is the fact that the petitioner was arrested red handed. These observations do not imply that in every case where the complainant turns hostile it is necessary that an order to the effect that the delinquent is not guilty has to be passed because there may be cases where money is recovered from the delinquent or cases where the presenting Officer cross-examines the complainant and is able to point out contradictions or various other factors, which may be too numerous to be enumerated here exhaustively. In the present case, once the complainant stated that the petitioner had shaken hands with him, it would tend to rebut the presumption that since the hands of the petitioner turned pink on washing with water it meant that he had taken the money. In the circumstances, the finding of guilt of the petitioner recorded by the Inquiry Officer has to be set aside. Once that is so, the consequent orders of punishment and rejection of appeal and revision all have to go. Resultantly, this writ petition is allowed, the finding of departmental inquiry (Annexure P-2) holding the petitioner guilty, the order dated 30.10.2009 (Annexure P-5) dismissing him from service, and the orders dated 14.11.2011 (Annexure P-7), and 16.6.2015 (Annexure P-11) dismissing his appeal and the revision are set aside. The petitioner would be entitled to be reinstated

in service with all consequential benefits.

Since the main case has been decided, the pending C.Ms, if any, also stand disposed of.

March 07, 2017
'kk'

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No