

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.9948 of 2015
Decided on :07.11.2017

Manjit Singh

...Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.R.K.Malik, Sr.Advocate
with Mr.Bhupinder Malik, Advocate, for the petitioner.

Ms.Shruti Jain Goyal, AAG, Haryana.

G.S. SANDHAWALIA, J.

Challenge in the present writ petition is to the order dated 05.10.2013 (Annexure P-1) passed by the Superintendent of Police, Rewari-respondent No.4, whereby petitioner has been dismissed from his service under Article 311 (2)(b) of the Constitution of India. Challenge has also been raised to the subsequent orders dated 18.02.2014 (Annexure P-4) passed by the Inspector General of Police-respondent No.3, whereby the appeals have been dismissed and the order dated 04.05.2015 (Annexure P-8), by which the revision petition had been dismissed by respondent No.2-Director General of Police.

The pleaded case of the petitioner is that he was appointed as Constable on 24.12.2004 and was having excellent service record and had been promoted as Head Constable on 03.05.2012. On account of the false criminal case registered against him on 24.10.2013 under Sections 323, 307 IPC, Police Station Dharuhera, Rewari, he was dismissed from service by exercising the powers under Article 311 (2)(b). He had been acquitted vide judgment dated 03.02.2014 (Annexure P-2). His appeal had been dismissed on 18.02.2014 (Annexure P-4) and thereafter, his revision petition had been

dismissed on the ground of delay. CWP-5167-2015 had been filed which had quashed the said order passed by respondent No.2 and the case was remanded to pass a detailed order which led to the passing of the order dated 04.05.2015 (Annexure P-8), which is now subject matter of challenge. Resultantly, it is his case that no reasons have been given as to why it was not practical to hold a regular enquiry, especially once a criminal case had been registered in which he had been acquitted. Resultantly, he had been given no chance to prove his innocence and the judgment of the Apex Court in **Sudesh Kumar Vs. State of Haryana 2005 (11) SCC 525** has been relied upon. Reliance has also been placed upon Rule 16.3 of the Punjab Police Rules, 1934, to contend that once there was acquittal, he could not be departmentally punished.

State, on the other hand, in its written statement, justified the said order on the ground that one Inderjit, who was an employee of a scrap dealer-Dharmender, had been asked to bring a pint of Signature brand liquor at the shop of the dealer by the petitioner. On refusal, the petitioner had started beating him and put petrol on him and lit the fire with intention to cause death. On the registration of the FIR No.431 dated 24.10.2013, the factual aspect had been got verified by Shri Tahir Hussain, DSP, Rewari and keeping in view the contents of the FIR in the report and the critical condition of the victim, who was stated to be admitted in Safdarjung Hospital, Delhi, in a serious condition with 40-45% burn injuries, the dismissal order was passed.

The same was passed keeping in view the fact that the

injured was a person belonging to 'Harijan' community and keeping in mind, breach of utmost duty by a police official to protect life and liberty of every citizen especially belonging to Scheduled Caste community, conduct of the petitioner who absconded himself from normal place of duty and also the crucial act of crime done by the petitioner which brought disrepute for entire police force. The status of the victim and his vulnerability to depose at a later stage against the petitioner and the remote possibility of conducting a free and fair disciplinary proceedings against the petitioner, where the circumstances, in which the said order had been passed.

It was further mentioned that petitioner had absconded from duty and never explained the factum of the incident and consumption of liquor on the date of occurrence. He had succeeded in winning over the victim and other witnesses and the possibility of the said fact had also been kept in mind by respondent No.4, while dispensing with the enquiry proceedings. The compromise had taken place and the crime committed was undesirable for the Police Department who was responsible for the security of the general public. Resultantly, the dismissal order has been rightly passed and further, accordingly, upheld. It was submitted that departmental enquiry would never serve the purpose of the Police Officer as the petitioner and the scrap dealer were supplement to each other which was also clear in the criminal case where all the material witnesses had resiled.

A perusal of the order passed would go on to show that

respondent No.4 held that it was not possible to hold a disciplinary enquiry and gave valid reasons for dispensing with the same, which is the pre-condition, as such, under Article 311 (2)(b), when the authority empowered to dismiss or remove, has to come to the conclusion that it is not reasonable and practical to hold such enquiry. The reasoning is explicit from the order itself which was passed immediately 3 days after the incident which had taken place on 22.10.2013 since the order was passed on 25.10.2013. It was noticed that the injured was admitted in Safdarjung Hospital with 40-45% burn injuries, the community the victim belonged to and the vulnerability of the victim while deposing at a later stage against the petitioner. The remote possibility of conducting free and fair disciplinary as well as criminal proceedings against the petitioner, were kept in mind. Therefore, the conclusion had been arrived that the petitioner had breached his responsibility as a Police official, which was to protect the life and liberty of every person. The order reads as under:

“These orders shall dispose of the Disciplinary proceedings against HC Manjit Singh No. 309/RWR (Delinquent) for committing a heinous crime against person of SC community, whose life and liberty was to be protected by a Police Officer including the delinquent.

Brief facts leading to initiation of these proceedings are that Sh. Inderjit S/o Sh. Krishan Kumar, Harijan, r/o Ram Nagar ki Dhani, Ward No. 10, Nand Ram Pur Bas Road, village Dharuhera aged about 23 years stated that he is employed with a scrap dealer Dharmender s/o Sh. Mangatu Ram, Bawaria, Dharuhera and on 22.10.2013 at about 8-9 PM HC Manjit Singh, under the influence of alcohol arrived in his

Alto and instructed to bring a pint of Signature brand liquor and on telling that he has no money, started beating him and then poured Petrol on him and lit the fire with intention to cause death. This statement was recorded on 24.10.2013 as the victim; Inderjeet was unfit for making the statement in the intervening period. Upon this statement, case FIR No.431 dated 24.10.2013 u/s 323/307 IPC PS Dharuhera has been registered against the delinquent and is under investigation. Delinquent has fled away from his place of duty.

Facts have been verified by Sh. Tahir Hussain, HPS DSP City Rewari and he has confirmed the allegations leveled.

After perusal of the contents of the FIR, report of the DSP, condition of the victim who has been stated to be admitted now in Safdarjung Hospital after remaining in serious condition with 40-45% burn injuries, community of the victim, economic status of victim, vulnerability of the victim while deposing at later stage against the delinquent/accused and remote possibility of conductance of free and fair disciplinary as well as criminal proceedings against the victim/accused, breach of utmost duty by a police official to protect life and liberty of every citizen especially belonging to Scheduled Community, conduct of delinquent in absconding from normal place of duty, bringing disrepute for entire Police force, I am of the considered opinion that it is not feasible to hold regular disciplinary proceedings.

Hence, exercising powers vested in me vide provisions of Article 311 of the Indian Constitution, I Pankaj Nain, IPS being authority competent to appoint and dismiss the services of a Head Constable do hereby dispensed with the normal disciplinary procedure in the Public interest and exercising powers vested in me vide PPR 16.2, hereby dismiss HC Manjit Singh No. 309/RWR/delinquent from services with immediate effect. I have perused his official record and found that he has been recruited as Constable on 24.12.2004

and today on October 25, 2013 his qualifying service is less than 10 years. As such, his claim for pension has been considered and rejected. His name will stand removed from list C with immediate effect. RI/PL Rewari will ensure that Govt. articles including Belt and I-card are got deposited by the delinquent. Orders be booked and copy of the same be provided to the delinquent free of cost alongwith supportive documents.”

The reasonableness and practicality of passing the order and the fact that it was not reasonable, as such, to hold an enquiry, has to be seen in the light of the circumstances prevailing at that point of time. A perusal of the paperbook would go on to show that on the resiling of the witnesses including the injured and the scrap dealer before the Criminal Court, has led to suppressing the truth. That an affidavit had been produced by him that the injured had got the statement recorded under some misunderstanding and that the petitioner was not involved and statement was recorded in the Court on 27.01.2014, to this extent, which eventually led to the acquittal.

It is, thus, apparent that the apprehension of respondent No.4 that it would not be practical to hold an enquiry, in such circumstances, came true regarding the misuse of the powers by the petitioner. Though it has been held that the decision to dispense with the departmental proceedings cannot be at whims and caprice of the concerned officer but the fact remains that the situation which had been presented before respondent No.4, at that point of time was one which had shocked the general perception of the public that a Police Officer had set a person on fire on account of his unreasonable demand of providing a pint of alcohol

to him. It is not disputed that the injured person was admitted to the hospital and had also given a statement on the basis of which FIR had been lodged against him and that he has suffered the burns. The explanation, though given by the victim was that the can of petrol had fallen on him accidentally.

The reasons which have, thus, been recorded for the satisfaction of passing of the order, but keeping in view the horrendous nature of the act of the petitioner, a man of responsibilities and wearing a uniform, the punishment also which was recorded, as such, of dismissal from service, in such circumstances, was appropriate. The factor of the length of service was also kept in mind and the fact that the petitioner would not be earning any pension and therefore, he could not have any grouse also if a lessor punishment was imposed upon him, apart from dismissal after a regular enquiry. The satisfaction of the competent authority that it was not reasonable and practical to hold the enquiry was also justifiable. The reasons have been validly recorded in the order and it cannot be said that the authority, as such, had not applied its mind to arrive at the subjective satisfaction.

In *Satbir Singh & others Vs. The Union of India & others* 1986 AIR (SC) 555, the 3 Judges Bench of the Apex Court, while referring to Article 311(2)(b), held that whether it is reasonable and practical to hold the enquiry or not must be adjudged in the light of the circumstances then prevailing. The disciplinary authority being on the spot, knowing what is happening, was the best judge of the prevailing

circumstances, whether the civil servant has so terrorized or threatened or intimidated the witnesses or where an atmosphere of violence prevailed, such a decision can be taken, even during the course of the enquiry. The question as to the saying 'Who is to guard the guards', accordingly, cropped up, which will directly apply to the facts and circumstances of the present case. In the present case, as noticed, a person in uniform had turned the wire later and by his action, rendered further pressure on a person who belonged to an oppressed class and therefore, the decision, as such, was well justified to dispense with the departmental enquiry, in the facts and circumstances.

In Union Territory, Chandigarh Vs. Mohinder Singh 1997 (2) SCT 39, the Apex Court held that if the witnesses fail to come forward out of the terror of the delinquent officer, dispensing with the enquiry would be justified, while reversing the judgment of the Tribunal which had set aside such a dismissal.

A similar view was also taken in Union Territory, Chandigarh Vs. Ex.S.I. Gurdit Singh (1997) 10 SCC 430, by holding that once the witnesses would not come forward to freely depose against the employee, the decision of the authority empowered to dismiss, was well justified.

The relevant parameters, as laid down by the Apex Court in Ved Mitter Gill Vs. U.T. Administration, Chandigarh 2015 (8) SCC 86, were, thus, well made out. In such circumstances, since the necessary ingredients were made out, firstly, the conduct of the delinquent

employee was such which would justify the punishment of dismissal from service and the satisfaction of the competent authority that it was not reasonable and practical to hold an enquiry, had been arrived at along with the reasons of the above satisfaction in writing, which would be clear from the order reproduced above.

Reliance upon Rule 16.3 of the Punjab Police Rules, 1934 (as applicable to the State of Haryana) by the petitioner, would not be of much help, since it would not be applicable, in the facts and circumstances of the present case, as from the above sequence of events, it would be clear that the dismissal was within 3 days of the incident and it was not initiated after the acquittal by the criminal Court. Rather, it is to be noticed that the appeal (Annexure P-3) for the first time, was filed in January, 2014 only after the injured had recorded his statement on 24.10.2013 in the Court that there was a misunderstanding and that the petitioner was not involved. It is, thus, apparent that the petitioner was misusing his influence in going ahead to terrorize the injured who had resiled from his earlier statement, which led to the acquittal.

Rule 16.3 reads as under:

“16.3 Action following on a judicial acquittal:- (1)When a Police Officer has been tried and acquitted by a criminal court he shall not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case whether actually led or not, unless:-

- (a) the criminal charge has failed on technical grounds; or
- (b) in the opinion of the Court or of the Superintendent of Police, the prosecution witnesses have been won over; or
- (c) the Court has held in its judgment that an offence was

actually committed and that suspicion rests upon the police officer concerned; or

(d) the evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify departmental proceedings on a different charge; or

(e) additional evidence admissible under rule 16.25 (1) in departmental proceedings is available.

(2) Departmental proceedings admissible under sub-rule (1) may be instituted against Lower Subordinates by the order of the Superintendent of Police but may be taken against Upper Subordinates only with the sanction of the Deputy Inspector General of Police and a police officer against whom such action is admissible shall not be deemed to have been honourably acquitted for the purpose of Rule 7.3 of the Civil Services Rules (Punjab), Volume I, Part I.”

Thus, it would be apparent that the argument raised and the reliance upon the judgments in (i) **Mohinder Pal Vs. The State of Punjab through Secretary Punjab Home Department, Chandigarh etc. 1987 (1) SLR 266**, (ii) **Khurshid Ahmad Vs. State of Haryana & others 2009 (8) SLR 447** (iii) **Punjab State through its Collector & another Vs. Ex.Constable Gulzar Singh 2012 (6) SLR 421**, by Mr.Malik, Learned Senior Counsel for the petitioner, pertaining to Rule 16.3, would be of no assistance to him as they would not be applicable to the facts and circumstances of the present case.

Reliance upon the judgment of the Apex Court, as such, in **Sudesh Kumar's case** (supra) would not be of much help to the Learned Senior Counsel for the petitioner, as it was a case where there was an demand for seeking a bribe for extension of his Visa from a foreign national who was likely to leave the country. It was noticed that there

would be no difficulty in securing the presence of the said foreign national as his Visa had been extended for a period of 2 years and therefore, the order under Article 311 (2)(b) had been set aside.

In the present case, respondent No.2 also has noticed that the matter had reached the Human Rights Commission and the statement of the witness could only be recorded 2 days later, on 24.10.2013, as the victim was unfit to make statement. He had also been provided financial aid of Rs.1,20,000/- as monetary relief by the District Administration, Rewari on 26.06.2014 and resultantly, the Director General of Police has rightly not accepted the revision petition.

Keeping in view the above, this Court is of the opinion that there is no scope for interference in the present writ petition and the same is, hereby, dismissed.

07.11.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes