

220 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 12808 of 2014 (O&M)

Date of Decision: 06.12.2018.

Mohinder Pal

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

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

Ms. Bhawna Gupta, DAG Punjab.

JITENDRA CHAUHAN.J.

The petitioner seeks quashing of the order dated 26.11.2008 (Annexure P-4) vide which the petitioner was dismissed from service passed by the Deputy Commissioner, Shaheed Bhagat Singh Nagar and order dated 19.08.2013 (Annexure P-8) whereby the representation (Annexure P-6) moved by the petitioner was rejected.

The petitioner was appointed and posted as Peon in the office of Deputy Commissioner, Nawanshahar. On 14.05.2007 at about 10.30 a.m., Naresh Kumar, Accountant was called by Mr. Upkar Singh, Assistant Commissioner (General). Said Upkar Singh was informed by Naresh Kumar that between 11.05.2007 and 14.05.2007 an

unauthorized withdrawal of Rs.31,000/- was made from the bank account of Suvidha Centre. The petitioner was allegedly seen in the CCTV camera installed in ATM of State Bank of India carrying out transactions of Rs.5000/-, Rs.2000/- and Rs.4000/- on 13.05.2007, 16.05.2007 and 14.05.2007 respectively. Thereafter, FIR No. 91 under Sections 380 and 409 IPC was registered against the petitioner. A departmental inquiry was also conducted in which the petitioner was found guilty of withdrawing a sum of Rs.31,000/- from the account of Suvidha Centre. The petitioner was dismissed from service vide order dated 26.11.2008 (Annexure P-4). However, the petitioner was acquitted in the criminal case by the Court of Chief Judicial Magistrate, Shaheed Bhagat Singh Nagar vide judgment dated 01.11.2012 (Annexure P-5). Thereafter, the petitioner made a representation for reinstatement in service however, the same was rejected vide impugned order dated 19.08.2013 (Annexure P-8).

It is contended that the petitioner is alleged to have withdrawn a sum of Rs.31,000/- from the ATM however, the most important witness to this effect i.e. Mr. Upkar Singh, Assistant Commissioner (General) who was entrusted with the custody of ATM card, was not examined in the departmental inquiry. It is said Upkar Singh, who could have proved the fact as to how the ATM card and its confidential PIN number landed with the petitioner. It is further contended that under threat and coercion of the respondents, the

petitioner deposited the amount of Rs.31,000/- with the department however, this fact has been wrongly made the basis of holding the petitioner guilty.

On the other hand, the stand of the respondents is that the petitioner while posted as Peon in the office of Deputy Commissioner, Shahid Bhagat Singh Nagar made an illegal withdrawal of government funds amounting to Rs.31,000/- from the account of Suvidha Centre, Nawanshahar during the period 11.05.2007 to 14.05.2007 by committing theft of ATM card of one Upkar Singh, Assistant Commissioner (General), Nawanshahar and the petitioner was seen in the CCTV footage of State Bank of India, Nawanshahr, therefore, the order of dismissal after giving due opportunity of hearing was rightly passed.

Heard.

From the perusal of file and the material available on record, it reveals that Upkar Singh, Assistant Commissioner (General), Nawanshahar was the custodian of ATM card and its confidential PIN number. The petitioner did not have any access to the same. The most important question as to how the ATM card and its PIN number reached the petitioner remains unanswered inasmuch as the crucial witness, said Upkar Singh, Assistant Commissioner, (General), Nawanshahar was not examined by the department either in the criminal case or in the departmental inquiry. Though, it is not a

criminal trial but a link as to how the ATM card and its number came into possession of the petitioner, who is a Peon in the office, is missing. The petitioner has specifically averred in the writ petition that Upkar Singh was not examined by the department for the reasons best known to it. In response to this pleading, the respondents-department has not whispered a single word which leads to an irresistible inference that the petitioner has been made a scapegoat. Consequently, the present civil writ petition is allowed. The impugned order dated 26.11.2008 (Annexure P-4) and order dated 19.08.2013 (Annexure P-8) are hereby set aside. The respondents are directed to reinstate the petitioner with continuity of service and release all the consequential benefits to him within a period of two months from the date of receipt of copy of the judgment.

06.12.2018.
SN

(JITENDRA CHAUHAN)
JUDGE

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