

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-25968-2015

Date of decision: 25.07.2018

Mukesh Kumar (deceased) through LRs

...Petitioner

V/s.

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

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

Mr. Kiran Pal Singh, AAG, Haryana.

RITU BAHRI, J. (Oral).

The petitioner is seeking writ of certiorari quashing the enquiry report (Annexure P-6) and order dated 13.07.2009 (Annexure P-10) whereby he has been inflicted the punishment of 'stoppage of increments for a period of two years with cumulative effect' and order dated 11.02.2015 whereby his revision petition against the said orders has been rejected (Annexure P-12).

The brief facts of the case are that the petitioner joined as Constable in the Haryana Police on 22.03.1994 and thereafter he was promoted as Exempt Head Constable on completion of 16 years of service. In the year 2008, he was posted as Ahlmad in the Sessions Court, Sonapat. A notice dated 07.10.2008 (Annexure P-1) was issued to him with the allegations that he misbehaved with Rakesh Kumar and Krishan Kumar, Chowkidars under the influence of liquor. A departmental enquiry was ordered to be conducted and the charge-sheet was issued with the same allegations (Annexure P-2). During the enquiry, statements of Rakesh

Kumar, Chowkidar (PW3) and Krishan Kumar (PW4), Chowkidar were recorded which are annexed as Annexures P-3 and P-4 and they did not support the charges levelled against the petitioner. Thereafter, the Superintendent of Police, Sonapat wrote a letter dated 24.12.2008 to the District and Sessions Judge, Sonapat that the complainants have not supported the prosecution (Annexure P-5) and they have resiled from their written complaints. However, the Inquiry Officer gave his report (Annexure P-6) against the petitioner and a show cause notice dated 08.02.2009 was issued to the petitioner (Annexure P-7). Finally, vide order dated 30.03.2009 (Annexure P-8), he was ordered to be dismissed from service. The petitioner filed an appeal against the said order which has been partly accepted and the punishment of dismissal was reduced to that of stoppage of increments for a period of two years with cumulative effect (Annexure P-10).

The stand taken by the respondents in the written statement is that dismissal order has been passed by the Superintendent of Police, Sonapat after following due process of law such as giving show cause notice, recording statements of witnesses and granting opportunity of hearing to the petitioner. It is further stated that in addition to it, it has been found that the petitioner remained absent from his duties most of the times which amounts to misconduct towards duties enshrined to the police official. He has been suspended once being found absent from the duties. Even during Jatt agitation, he was found willfully absent from his duties. Another departmental enquiry is still pending against the petitioner. After getting the complaint, necessary concurrence of the District Magistrate, Sonapat was obtained as envisaged under Rule 16.38 (i) of Punjab Police

Rules. The petitioner has prolonged the departmental enquiry and intentionally won over both the complainants Rakesh Kumar and Krishan Kumar and this information was given to the District and Sessions Judge Sonapat by the then Superintendent of Police, Sonapat. The details of his misconduct are as under:-

- I. For checking of Stock Register of office by opening Almirah punishment of stoppage of two increments with permanent effect was awarded to him on 02.08.2008.
- II. For misbehaving and beating to Chowkidars he was dismissed from service. However, on appeal he was taken back in service after inflicting upon punishment of stoppage of two increments with permanent effect.
- III. Punishment of censure was awarded to him on 22.09.2015.
- IV. Punishment of censure was awarded to him on 23.07.2015.
- V. For remaining willful absent, his absent period for 4 days was treated as Leave without Pay and similarly he remained absent from 04.04.2014 to 22.11.2014 and from 25.05.2015 and 17.08.2015 and his above absent period was sanctioned as LWP.
- VI. At present one regular Departmental Enquiry is also pending against him for his willful absence from very important duty.”

Replication has also been filed reiterating that the complainants had given statements Annexure P-3 and P-4 and submitted that the petitioner had never misbehaved with them nor he was under the influence of liquor. They did not support the prosecution case inspite of above statements. This fact was informed to the District and Sessions Judge, Sonapat vide letter dated 24.12.2008 (Annexure P-5) by the Superintendent of Police, Sonapat. Learned counsel for the petitioner has

argued that during the pendency of this writ petition, the petitioner has since died and his legal representatives are brought on record by way of CM-1957-CWP-2018. Learned counsel for the petitioner has further argued that once the complainants had resiled from their statements vide Annexures P-3 and P-4 and this information was conveyed to the District and Sessions Judge, Sonapat by the then Superintendent of Police vide letter dated 24.12.2008 (Annexure P-5), in this backdrop, the inquiry report could not be given against him. Punishment order dated 30.03.2009 (Annexure P-8) dismissing him from service as well as the revisional order reducing punishment to stoppage of increments for a period of two years with cumulative effect is liable to be set aside.

Learned counsel for the State on the other side has argued that as per the inquiry report (Annexure P-6) comments from the District and Sessions Judge, Sonapat were sought by the Superintendent of Police, Sonapat vide letter dated 19.01.2008 and District and Sessions Judge, Sonapat vide letter dated 16.01.2009 informed that on the request of the petitioner-Mukesh Kumar, witnesses had given the statements in his favour. The above said witnesses again gave their statements to the District and Sessions Judge, Sonapat. Statements of witness No. 1 Constable Sunil Kumar, Assistant Military Clerk, who has apprised in his statement about the posting of the defaulter Constable. Witness No. 2 Constable Rakesh Kumar who had apprised in his statement about the good/bad entries of the default constable. Witness No. 3 Krishan Kumar, Chowkidar, Sessions Court, Sonapat and witness No. 4 Rakesh Kumar, Chowkidar, Lower Court, Sonapat have got their statements recorded that the defaulter Constable Mukesh Kumar had beaten and abused them.

Keeping in view the statements made by these witnesses as is found by District and Sessions Judge, Sonapat vide letter dated 16.01.2009 the Inquiry Officer has rightly come to conclusion that the charge of beating and abusing to Krishan Kumar and Rakesh Kumar, Chowkidars by defaulter Mukesh Kumar under the influence of liquor is duly proved. The petitioner at this stage cannot take benefit from the statements made by these two witnesses on 25.11.2008 (Annexure P-3) and 02.12.2008 (Annexure P-4). Moreover, after issuing a show cause notice dated 08.02.2009 (Annexure P-7) and vide the impugned order dated 30.03.2009 (Annexure P-8), the petitioner was dismissed from service as he was held defaulter by abusing and beating Chowkidars under the influence of liquor while performing his duties. On appeal, this order was modified by Inspector General of Police vide order dated 13.07.2009 (Annexure P-10) and the punishment of dismissal was reduced to that stoppage of increments for a period of two years with cumulative effect. The revision against this order has been dismissed by Director General of Police on the ground that it was filed after a delay of almost 4 years against the appellate order dated 13.07.2009 (Annexure P-12). The inquiry in the present case is not liable to be interfered with (Annexure P-6) as it has been done after correctly appreciating the evidence especially the report sent by District and Sessions Judge dated 06.01.2009.

I have heard learned counsel for the parties and perused the paper-book carefully. In the facts of the present case, a perusal of the dismissal order (Annexure P-8) shows that full opportunity was provided to the defaulter to know the statement of prosecution witnesses and the statements of witnesses were again sent by District and Sessions Judge,

Sonepat vide letter dated 06.01.2009 to the effect that defaulter had consumed liquor and had not followed discipline while performing his duties. The witnesses Krishan Kumar, Chowkidar, Sessions Court and Rakesh Kumar Chowkidar, Lower Court have stated that earlier statements were given by them on the asking of the defaulter because defaulter had begged to give statement in his favour otherwise he and his children would be ruined. Therefore, by feeling mercy with the defaulter, they have given statements in his favour. Order dated 30.03.2009 (Annexure P-8) further shows that punishing authority had called the defaulter verbally time and again and vide order dated 19.03.2009, opportunity of personal hearing was given. The defaulter appeared for personal hearing on 16.03.2009 but did not wear dress as per pattern. He was ordered to present himself again in proper dress but he did not wear proper dress time and again through his incharge and he himself gave in writing that he will come before the punishing authority on 19.03.2009 but he did not present himself before the punishing authority till date. Hence keeping in view his behaviour and departmental enquiry, statements of witnesses, the punishment of dismissal has been awarded. However, on appeal this punishment has been modified from dismissal of service to stoppage of increments for a period of two years with cumulative effect.

Now the next question for consideration is that what is the scope of interference for the quantum of punishment. The Division Bench in the case of ***Union of India and others V/s. Sushil Kumar Vashisht and another, 2016(4) S.C.T. 77*** has laid down guidelines for interference in the departmental proceedings in para 12 on the following issues:-

“13. The High Court can only see whether:

a. the enquiry is held by a competent authority;

- b. the enquiry is held according to the procedure prescribed in that behalf;*
- c. there is violation of the principles of natural justice in conducting the proceedings;*
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- i. the finding of fact is based on no evidence.*

Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;*
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii). go into the adequacy of the evidence;*
- (iv). go into the reliability of the evidence;*
- (v). interfere, if there be some legal evidence on which findings can be based.*
- (vi). correct the error of fact however grave it may appear to be;*
- (vii). go into the proportionality of punishment unless it shocks its conscience.”*

As per the guidelines issued by the Division Bench, in the present case, the enquiry is held according to the procedure prescribed such as giving show cause notice, recording statements of witnesses and granting

opportunity of hearing to the petitioner. Therefore, the inquiry report does not suffer from violation of principles of natural justice nor the Inquiry Officer was influenced by irrelevant or extraneous considerations. There was no other evidence in favour of the petitioner which the disciplinary authority has failed to consider. Moreover, High Court is not required to re-appreciate the evidence and interfere with the conclusion of the enquiry as it has been conducted in accordance with law. Only the High Court can go into the proportionality of punishment unless it shocks its conscience. Hence, as per the judgment of Division Bench, there is no need to go into the proportionality of punishment as it does not shock the consciousness.

Keeping in view the above, no ground to interfere in the impugned orders is made out.

Dismissed.

25.07.2018

Divyanshi

**(RITU BAHRI)
JUDGE**

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No