

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

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CWP-9832-2015 (O&M)

Date of Decision : 28.11.2018

Maman Ram

...Petitioner

Versus

State of Haryana & others

...Respondents

CORAM:HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.N.Lohan, Advocate, for the petitioner.

Mr. G.S.Wasu, Addl. A.G. Haryana.

RAJIV NARAIN RAINA, J.(ORAL)

1. Having regard to the nature of the misconduct imputed against the petitioner in the charge sheet of misbehaviour with Inspector Vinod Shankar, DI/CID Unit, Hisar on mobile phone, when contacted by him for knowing the situation of the agitation in Narnaul in protest of arrest of Anna Hazare at Delhi I find that no unparliamentary, abusive or filthy language was spoken by the petitioner in his official dealing with Inspector Vinod Shankar and taking into account the words spoken were truthful in the articles of charge, the order passed by the Senior Superintendent of Police, Jind dated 20.03.2012 was the appropriate choice of punishment inflicted by

him, that is, the minor punishment of withholding of two future annual increments with temporary effect. The Senior Superintendent of Police, Jind being the first in command, was the best judge to gauge the ground situation and understand the conversation between both the officials and choose the right measure of punishment.

2. The action taken by the Inspector General of Police, Hisar Range, Hisar by entering a dissent note to the findings arrived at by the enquiry report and the punishment imposed by the subordinate officer as punishing authority, to my mind, appears to be an expression of personal opinion with hardly any objectivity inasmuch as he has enhanced the punishment to withholding five increments with permanent effect by the impugned order dated 02.10.2012. The penalty chosen out of the hat is shockingly disproportionate, too harsh, oppressive and uncalled for as against the charge of misconduct even if proven.

3. In appeal against the order dated 02.10.2012, the Director General of Police, Haryana has modified the punishment to stoppage of two future annual increments with permanent effect by order dated 04.04.2014 (Annex P-11). Against these orders, the petitioner has approached this Court by way of the present petition praying for a writ of certiorari to quash all the orders.

4. Mr. Wasu argues that choice of punishment is the prerogative of the ultimate manager of punishment and it is for him to choose one of the penalties provided by the rules appropriate to the mis-conduct and, therefore, interference is not called for. There can be no doubt on this proposition, but at the same time the question is one of proportionality.

Admitting to the gravamen of misconduct, which conduct is of using loose words cannot be applauded coming from a person in police uniform but still, I find nothing shockingly wrong with the choice of the punishment by the Superintendent of Police, Jind to have been enhanced out of proportion. To understand the import of the incident it is best to reproduce the relevant portion of the charge-sheet which reads as under:-

"On 17.08.2011, the Area Officer Head Constable Ishwar Singh of Police Station Narnaund had to go to the court at Loharu District Bhiwani for evidence therefore, you ASI Maman Ram No. 119/Jind was instructed that he should watch the agitators himself at Narnaund and shall exchange the information. In this regard, on 17.08.2011 at 10.10 AM Inspector Vinod Shankar contacted you ASI Mamn Ram No.119/Jind on his Mobile No.9416559382 from his Mobile No.9813516381 for knowing situation about the agitation, then you ASI Maman Ram replied to Inspector Vinod Shankar that at that time he was near Hansi and after reaching Narnaund he could have given information in this regard. Inspector Vinod Shankar asked you ASI Maman Ram No. 119/Jind that it was sensitive duty, he should have reached there early. The information had to be given to the higher authority well in time and he was negligent towards his duty. On this you ASI Maman Ram ASI replied Inspector Vinod Shankar that he is working in the CID for the last many years and I know better the CID duty than you and there is no need to tell me. During my stay in the CID, you do not know, many Inspector came and go. I work with my own will and if you have power, you may get me repatriated from CID. He can give the information on reaching to Narnaund and direct to Unit number and if

you have to ask something, you can ask from the Munshi of unit and disconnected the phone and by misbehaving with the District Inspector Hisar you have shown indiscipline and carelessness. This action is reprehensible and punishable."

5. Keeping in view the incident of misbehaviour and the exchange of hot words between the petitioner and Inspector Vinod Shankar, blown out of proportion, withholding five/two increments with permanent effect is totally disproportionate to the charge. The decision relied upon by Mr. Gagan Wasu for the State in the case titled as ***Chennai Metropolitan Water Supply and Sewerage Board and others versus T.T.Murali Babu***, (2014) 4 SCC 108 is not apposite. This was a case of absence over a long period of time of 1 year and 7 months and the petition was brought to the High Court after period of 4 years of the passing of order of dismissal and accordingly, the Supreme Court held that the Court should have thrown the petition overboard at the very threshold and in any case the punishment was held not to be shockingly disproportionate and, therefore, interference by the High Court with the punishment was held to be totally unwarranted and unsustainable and was accordingly, set aside. In my view major punishment of withholding of two annual increments with temporary effect handed down by the Superintendent of Police was the right doze to be administered, and if restored, will serve the ends of justice and still act as an effective restraint on the petitioner in the future keeping in mind the interest of police administration as a disciplined force. The swing of the pendulum from one punishment to the other is too wide to be within the limits of tolerance of a reasonable person of ordinary intelligence if called upon to punish the delinquent. It is one of a kind which shocks the conscience of the court.

6. Having heard the learned counsel for the petitioner and the State, I have no doubt in my mind that the order of the Inspector General of Police, Hisar and the orders of the Director General of Police, Haryana are arbitrary and unreasonable and deserve to be set aside and the order of the Superintendent of Police Jind restored.

7. As a result of the discussion above, the writ petition is partly allowed. The impugned orders dated 02.10.2012 and 04.04.2014 imposing enhanced penalty of withholding five and thereafter reduced to two increments with permanent effect are set aside being unreasonable, arbitrary and extremely harsh. They appear to have been passed impetuously in the heat of the moment and in colourable exercise of power as punishing authorities. Accordingly, the order passed by the Senior Superintendent of Police, Jind on 20.03.2012 is ordered to stand restored with all consequential benefits.

28.11.2018

pooja saini/Vimal

**(RAJIV NARAIN RAINA)
JUDGE**

Whether speaking/reasoned?

Yes

Whether reportable?

No