

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.599 of 2002 (O&M)

Date of decision: 28.03.2019

State of Haryana and another

..... Appellants

Versus

Rai Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Saurabh Girdhar, AAG, Haryana
for the appellants.

Mr. Jai Vir Yadav, Advocate
for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Defendants-appellants are in the regular second appeal against the judgment and decree passed by the First Appellate Court reversing the judgment of the trial Court.

In the considered opinion of this Court, following substantial questions of law arise for consideration:-

1. Whether in a civil suit challenging the correctness of order of dismissal/punishment passed after a domestic enquiry, is it mandatory to examine in evidence before the trial Court the Enquiry Officer as well as the complainant?
2. Whether a fact which has been admitted is required to be proved?
3. Whether the order of dismissal passed by the disciplinary authority after considering all aspects of the matter

is liable to be set aside merely on account of fact that total number of years of service of the delinquent employee has not been referred to or in the order, it is not noticed that the employee against whom the order is being passed has rendered 12 years of service?

FACTS

Plaintiff was enrolled as a Constable in Haryana Police on 24.08.1982. In August 1993, he was deputed to undergo lower school course at Police Training College, Madhuban. As per the allegation of the defendants, he entered temporary quarter of a workman on the intervening night of 20.09.1993 at 1.00 AM and pressed the mouth of Smt. Shanti Devi w/o Khyali Ram-workman. At that time, Khyali Ram, his wife and children were sleeping in the temporary quarter. She raised alarm, however, the plaintiff managed to run away but his purse containing identity card and Rs.240/- fell and was found from the house of Smt. Shanti Devi.

On the basis of complaint made by Smt. Shanti Devi, a departmental enquiry was initiated in which he was found guilty and therefore, ordered to be removed as per the order passed by the competent authority i.e. Superintendent of Police, Hisar vide order dated 30.09.1994. The appeal filed against the order of dismissal was dismissed on 04.04.1995 and further revision to the Director General of Police was also dismissed on 03.07.1996.

The plaintiff, after having filed a writ petition challenging the orders passed by the competent authorities withdrew the writ petition with permission to file civil suit, filed the civil suit. The plaintiff challenged the order of dismissal on following grounds as mentioned in para 6 of the plaint

which are extracted as under:-

- “a) That before the start of the departmental enquiry, concurrence of the District Magistrate under rule 16.38 of P.P.R. 1934 was not taken.*
- b) That the Enquiry Officer conducted the enquiry with a closed mind and he cross-examined the defence witnesses to prove that they are liars. The enquiry was also not conducted fairly.*
- c) That the charge sheet was not approved by the Competent Authority i.e. by the Superintendent of Police, Hisar.*
- d) That while passing the order of dismissal, the Punishing Authority did not pass orders in terms of Rule 16.2 of the Police Rules.*
- e) That while dismissing the Appeal, the DIG, Hisar Range, Hisar did not give any personal hearing.*
- f) That the order of the Director General of Police, Haryana suffers from the same vice.”*

In the written statement, the defendants denied all allegations of the plaint and pleaded that the concurrence of the District Magistrate has been taken vide order dated 11.01.1994. It was further pleaded that the enquiry was conducted fairly and as per the rules. It was further pleaded that charge-sheet was approved by the competent authority i.e. Superintendent of Police, Hisar. It was further pleaded that the order of dismissal was passed by the competent authority after considering all pros and cons of the matter. It was further pleaded that personal hearing was given by the Superintendent of Police and Deputy Inspector General of Police. The assertion that he has not been given hearing by the Director General of Police was also denied.

Replication was filed and it was pleaded that while giving concurrence, the District Magistrate has not recorded any reason for

ordering departmental enquiry. Thus, the concurrence of the District Magistrate was not disputed while filing the replication.

The plaintiff in order to prove his case produced certain documents and examined himself as witness. In cross-examination, he admitted that the enquiry was conducted by Deputy Superintendent of Police, however, he states that in his presence, the Officer did not record the statement of the witnesses. He also denied that he had been given opportunity to cross-examine the witnesses. On the other hand, on behalf of the defendants, HC Jagdish Chander was examined who produced concerned record including the order by which the plaintiff was deputed to the lower school Courts. He also produced on file complete enquiry report including charge-sheet, reply, statements of the witnesses, concurrence of the District Magistrate and the orders passed by the authorities. In the cross-examination, he stated that the enquiry was not held in his presence. He further stated that he was not given opportunity of personal hearing by the disciplinary authority or by the Deputy Inspector General.

It will be noted here that report of the domestic enquiry is Ex.D-1 whereas details of imputations levelled are Ex.D-2, D-3 and D-4 and complete enquiry proceedings are Ex.D-5 and D-6. Ex.D-7 is charge-sheet and Ex.D-8 is statement of the plaintiff admitting that he has received copy of the charge-sheet along with documents free of cost. Ex.D-9, D-10, D-11 are various documents which are part of the enquiry file. Ex.D-13 is reply to the show-cause-notice dated 06.09.1994 given by the disciplinary authority along with the enquiry report. Ex.D-14 is a detailed order passed by the disciplinary authority whereas Ex.D-15 is communication through which the order passed by the Appellate Authority was communicated.

Ex.D-16 is concurrence of District Magistrate, Karnal before initiating departmental action against the plaintiff.

Learned trial Court on appreciation of evidence dismissed the suit filed by the plaintiff whereas learned First Appellate Court reversed the judgment passed by the trial Court on the following grounds:-

1. The Enquiry Officer has not been examined in the civil suit and therefore, best evidence has been withheld.
2. The concurrence of District Magistrate before initiation of the enquiry has not been produced and he has not been examined in the civil suit.
3. While passing the order, Rule 16.2 of the Punjab Police Rules, 1934 as applicable to Haryana was not taken into consideration.
4. In order to prove impugned order, examination of the Superintendent of Police in the Civil Court was necessary/mandatory.
5. The material witnesses namely, Smt. Shanti Devi and her husband-Khyali Ram have not been examined in the civil suit.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

On the one hand, learned counsel representing State of Haryana has submitted that the judgment passed by the First Appellate Court is perverse whereas on the other hand, learned counsel appearing for the plaintiff-respondent has supported the judgment of the First Appellate Court.

Now let us deal with the reasons which have been given by the First Appellate Court to reverse the finding of the trial Court.

As regards non-examination of Enquiry Officer, it will be noted that attention of this Court has not been drawn to any instructions or rules of enquiry or provisions of the Evidence Act which makes it obligatory for the employer to examine the Enquiry Officer in the Civil Court to prove the enquiry report. However, learned counsel for the plaintiff-respondent has relied upon 3 judgments passed by the Court in support of his submission. First judgment is in the case of Jagsir Singh Vs. State of Punjab and others, 1983(2) SLR, 685. The High Court was examining the correctness of order passed by the Labour Court. The Court held in the aforesaid judgment that since the person who was examined failed to prove the signatures on the enquiry file, either of the Enquiry Officer or of the petitioner on the enquiry file, therefore, there is no ground to interfere with the award passed by the Labour Court. It is nowhere held in the aforesaid judgment as a ratio decidendi that it is obligatory for the employer to examine the Enquiry Officer.

Next judgment relied upon by learned counsel is in the case of State of Punjab Vs. Jagir Singh (dead), 2002(1) SLR 398. In the aforesaid judgment, High Court has examined the order of punishment which was passed without holding any enquiry as the appointing authority failed to satisfy that it was not reasonably practicable to hold domestic enquiry. The next judgment is in the case of Haryana State Electricity Board, Panchkula Vs. Presiding Officer, Labour Court, Faridabad, 2000(1) SLR 350. In the aforesaid case also, this Court was examining the validity of the award passed by the Labour Court at the hands of management. In the aforesaid case, the Labour Court found that fair and proper enquiry has not been held and management was given opportunity to prove the charges before the

Court. It was found that the management failed to prove the charges. In those circumstances, the Court held that non-production of Enquiry Officer in the Court assumed significance and therefore, the Presiding Officer of the Labour Court was justified in drawing adverse inference on the ground that Enquiry Officer did not enter into the witness box to rebut the allegations made by the workman about denial of opportunity of hearing and non-observance of principles of natural justice. Hence, it cannot be said that examination of Enquiry Officer in a civil suit to prove the enquiry report is mandatory. It would always depend upon the facts and circumstances of each case.

Learned First Appellate Court has relied upon various judgments. First judgment is in the case of Sait Tarajee Khimchand and others Vs. Yelamarti Satyam and others, AIR 1971 SC 1865. In the aforesaid judgment, it was held that mere marking of a document as exhibit does not dispense with its proof. Next judgment referred to by the First Appellate Court is in the case of Partap Singh Vs. State of Haryana, 1998 (8) SLR(P&H) 533 wherein the Court held that consumption of liquor by the petitioner was after duty hours and from the past record of service, penalty of dismissal from service was found to be too harsh. Next judgment relied upon by First Appellate Court is in the case of Ex. Constable Mohinder Singh Vs. State of Haryana, 1999(4) RSJ 679 wherein the Court considered the correctness of the order of dismissal passed by the disciplinary authority as mandatory provisions of Rule 16.2 of the Punjab Police Rules, 1934 were not taken into consideration. Last judgment which has been relied upon by the First Appellate Court is in the case of Constable Shiv Charan Vs. Superintendent of Police, Gurgaon and others,

1998(3) RSJ 151 wherein a Division Bench of this Court found that the initiation of disciplinary proceedings was totally against the record and in fact initiated to hide the mistake of an Officer. The Court further found that report of the Enquiry Officer is perverse.

Thus, it is apparent that in none of the judgments either referred to by learned counsel for the plaintiff-respondent nor discussed by the First Appellate Court, it has been laid down as a ratio decidendi that examination of the Enquiry Officer in the civil suit is mandatory.

The domestic enquiry is held by the Enquiry Officer under the orders of the employer. Once the enquiry file has been produced and the employee against whom disciplinary proceedings were initiated proves or establishes certain facts which shifts the onus on the employer it may be in those cases, mandatory to examine the Enquiry Officer. The Court in that particular case can draw an adverse inference in the facts and circumstances of the case. However, it cannot be laid down as a matter of law that non-examination of the Enquiry Officer who conducted domestic enquiry is mandatory in the Court failing which the enquiry file cannot be looked into.

This Court has carefully seen the enquiry file which is part of the Court file. The plaintiff has been given opportunity to cross-examine each of the witness produced by the employer. The plaintiff has signed the statement of each witness who has been examined and he himself has cross-examined all the witnesses. Counsel appearing for the plaintiff has failed to show as to why examination of the Enquiry Officer was necessary. Accordingly, question No.1 is answered in favour of the appellants.

As regards second reason and second question of law, it will be noted that the plaintiff no doubt in the plaint had alleged that concurrence

of District Magistrate had not been taken before initiating departmental proceedings as required under Rule 16.32 of the Punjab Police Rules, 1934, however, in the written statement, correctness of the allegation was disputed and it was pleaded that the concurrence of the District Magistrate has been taken vide order dated 11.01.1994. In the replication, the plaintiff did not dispute this fact but pleaded that no reason has been recorded by the District Magistrate. Therefore, factum of the order passed by the District Magistrate was not disputed in the replication. Still further, the order passed by the District Magistrate is Ex.D-16. Further, as regards non-examination of District Magistrate, attention of the Court has not been drawn to any provision of the Evidence Act which makes it mandatory for the employer to examine the District Magistrate himself in the Court to prove the order granting sanction to initiate the proceedings. Accordingly, question No.2 is also answered in favour of the appellants.

Next reason assigned by the First Appellate Court is with regard to failure of the disciplinary authority to take into consideration provisions of Order 16.2 of the Punjab Police Rules, 1934. In this regard, it would be apt to re-produce the Rule 16.2:-

“16.2 Dismissal

(1) Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect or continued misconduct proving incorrigibility and complete unfitness for police service. In making such an award regard shall be had to the length of service of the offender and his claim to pension.

[Explanation.- For the purposes of sub-rule (1), the following shall, *inter alia*, be regarded as gravest acts of misconduct in respect of a police officer, facing disciplinary action:

- (i) indulging in spying or smuggling activities;*
- (ii) disrupting the means of transport or of communication;*

- (iii) *damaging public property;*
- (iv) *causing indiscipline amongst fellow policemen;*
- (v) *promoting feeling of enmity or hatred between different classes of citizens;*
- (vi) *going on strike or mass casual leave or resorting to mass abstentions;*
- (vii) *spreading disaffection amongst the Government, and*
- (viii) *causing riots and the like]*

(2) An enrolled police officer sentenced judicially to rigorous imprisonment exceeding one month or to any other punishment not less severe, shall, if such sentence is not quashed on appeal or revision, be dismissed. An enrolled police officer sentenced by a criminal court to a punishment of fine or simple imprisonment, or both, or to rigorous imprisonment not exceeding one month, or who, having been proclaimed under Section 87 of the Code of Criminal Procedure fails to appear within the statutory period of thirty days may be dismissed or otherwise dealt with at the discretion of the officer empowered to appoint him. Final departmental orders in such cases shall be postponed until the appeal or revision proceedings have been decided, or until the period allowed for filing an appeal has lapsed without appellate or revisionary proceedings having been instituted. Departmental punishments under this rule shall be awarded in accordance with the powers conferred by rule 16/1.

(3) When a police officer is convicted judicially and dismissed, or dismissed as a result of a departmental inquiry, in consequence of corrupt practices, the conviction and dismissal and its cause shall be published in the Police Gazette. In other cases of dismissal when it is desired to ensure that the officer dismissed shall not be re-employed elsewhere, a full description roll, with particulars of the punishments, shall be sent for publication in the Police Gazette.”

It is apparent from Rule 16.2 that while passing an order of dismissal, the disciplinary authority regard shall be had to the length of service of the offender. On reading of the order passed by the disciplinary

authority, it is apparent that the disciplinary authority, although, did not refer to the length of service of the plaintiff, however, while concluding recorded as under:-

“As regards the quantum of punishment to be inflicted upon the defaulter, I have given a deep thought to the issue and am convinced that the defaulter by entering the house of Shri Khyali Ram with a bad intention has certainly committed a gravest misconduct and the same is inexcusable. He has lowered the prestige of the police department, which is responsible to protect the honour of the women-folk, by exhibiting such a misconduct. He has thus proved his absolute disutility in the law-enforcing agency i.e. police and deserves some exemplary punishment, which can be no less than the proposed one i.e. dismissal from service. There are no reasons to show any leniency towards him. As such, after taking into consideration every pros and cons of the matter, I am disinclined to scale down the punishment proposed for the defaulter in the show cause notice and hereby dismiss him from service with immediate effect.”

On reading of the order, it is clear that the disciplinary authority considered all aspects of the matter and further took into consideration the gravest misconduct of the plaintiff in police force while doing job in the police force which is meant to protect the citizens of the country. In the considered view of this Court but for lapse of the Officer refer to Rule 16.2, the disciplinary authority had taken into consideration all aspects, therefore, it would not be appropriate to hold that Rule 16.2 has not been kept in view. Hence, question No.3 is also answered in favour of the State and against the plaintiff-respondent.

As regards next two reasons assigned by the Court i.e. non-examination of Superintendent of Police, the disciplinary authority, who passed the order dismissing has not been examined and non-examination of

Smt. Shanti Devi and her husband in the Civil Court, it is suffice to mention that learned counsel for the respondent-plaintiff failed to draw attention of the Court to any rule of evidence which obligates the employer to examine the disciplinary authority in the Court or to examine the complainant.

It will be noted here that jurisdiction of the Civil Court to examine the correctness of the order passed by the disciplinary authority after a domestic enquiry is limited unless the employee establishes either the violation of principles of natural justice or violation of any provisions of rules or any perversity in the order, it would not be proper for the Civil Court to interfere in such orders.

In view of the discussion made above, the judgment and decree passed by the First Appellate Court is set aside and that of the trial Court is restored.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Regular Second Appeal is allowed.

28.03.2019

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No