

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 14387 of 2018
Date of decision : 08.07.2019

Sanjiv Kumar

.... Petitioner

versus

State of Punjab and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Sandeep Kumar, Advocate
for the petitioner

Ms. Anu Chatrath, Sr. Advocate with
Ms. Ambika Bedi, AAG Punjab

ARUN MONGA, J.

Petitioner herein seeks quashing of order dated 17.01.2018 (Annexure P-1), whereby regular disciplinary enquiry has been ordered against him, on the ground that the enquiry has been initiated and is being conducted in an arbitrary manner without following the proper procedure prescribed under the Punjab Police Rules, 1934.

2. Brief facts are that petitioner was appointed as Constable in Punjab Police Intelligence Wing on 30.07.1992 and was later on promoted as Head Constable in 2016. While being posted at Intelligence Wing Branch, Sector 22, Chandigarh he came into touch with Balbir Singh, Jarnail Singh and Narmail Singh. Son of the petitioner had applied for VISA to the USA and for that purpose amount of Rs. 25,00,000/- was to be shown in the account of the petitioner. For this, the petitioner took loans from various persons including the aforementioned persons. When the VISA for his son failed to materialise he returned the borrowed money through cheque and cash as well.

3. On 17.01.2018, the petitioner was called to the office of Director General of Police, Intelligence, Punjab and was handed over copy of the impugned order. The impugned order stated that Balbir Singh had made a complaint against the petitioner stating that petitioner borrowed Rs.2 lacs on the pretext of arranging job for his son in Punjab Police. It was further stated that on not being able to fulfil the promise, the petitioner had returned Rs. 1,50,000/- but retained Rs. 50,000/-. It was further stated that complaint had been finally marked to DSP, Internal Vigilance Cell, Punjab on 27.07.2017. During investigation it was found that the matter was being compromised and the complainant did not want to pursue the case. The letter was also signed by the petitioner.

4. The Assistant Inspector General of Police, Intelligence, Punjab vide order dated 17.01.2018 (Annexure P-1) ordered regular departmental enquiry into the complaint. The departmental enquiry is being conducted by one Sh. Rakesh Kumar, DSP as per Punjab Police Rules 16.24. The petitioner states that the enquiry is being done in an arbitrary manner without following the proper procedure, that, he made representation dated 16.04.2018 (Annexure P-2) for setting aside the regular departmental inquiry initiated against him but the same was not adverted to.

5. Petitioner then moved an application, seeking documents on the basis of which enquiry was initiated, under the Right to Information Act, 2005 dated 02.05.2018 (Annexure P-3) but the respondents denied to provide the requested information on the ground that the enquiry is pending vide letter dated 21.05.2018 (Annexure P-4). Being aggrieved, the petitioner has come before this court by way of the present writ petition.

6. Petitioner avers that he had never received any copy of the complaint nor was issued any show cause notice and no opportunity of being heard was given to the petitioner by the respondents. Failure to provide copies of the above-said documents also prejudices the right of the petitioner to defend himself. It is further averred that the respondents have not been following the proper procedure as prescribed under Rule 16.24 of the Punjab Police Rules, 1934 dealing with the procedure to be adopted while conducting departmental enquiry.

7. It is averred that as per Rule 16.24, *ibid*, the accused officer has to be brought before a competent officer who has power to punish him. The accused officer should be read over the statement summarizing the alleged misconduct and he should be given an opportunity to defend himself. In the present case, no such step was taken by the respondents. It is further stated that the evidence and statements of witnesses being recorded in the departmental enquiry was done in the absence of the petitioner and in contravention of the rules.

8. Petitioner further states that he represented (Annexure P-3) to the respondents that no document was supplied to him and the faulty procedure is being adopted by them but to no avail. No information was provided to him under RTI as is reflected from Annexure P-4. The whole process of initiation of the proceedings and the conduct of the departmental enquiry being marred by arbitrariness deserve to be set aside.

9. Per contra, the respondents, in their reply, have averred that the petitioner has not approached this Court with clean hands. As is reflected from Annexure R-1, on the Photo ID Card of the petitioner, he himself has admitted that he had taken an amount of Rs. 2 lacs from one Balbir Singh

(the complainant). During inquiry into the complaint by DSP, Internal Vigilance Cell, Punjab, complainant gave an undertaking that the matter has been compromised and no further action was necessary.

10. However, seeing the gravity of the offence Director General of Police, Internal Vigilance Cell, Punjab vide letter dated 24.10.2017 recommended initiation of departmental proceedings against the petitioner. AIG, Intelligence, Punjab vide order dated 17.01.2018 (Annexure P-1), initiated departmental proceedings against the petitioner and appointed Sh. Rakesh Kumar, DSP as the Enquiry Officer.

11. It is averred that all the documents related to the enquiry like the complaint, list of charges, statement summarizing the alleged misconduct, etc were duly supplied to the petitioner. It is further stated that the petitioner was present throughout the conduct of the departmental proceedings and it is only after about 4 months of initiation of the departmental proceedings that he approached this Court as he felt the enquiry is going against him. It is also pointed out that show cause notice dated 02.05.2018 (Annexure R-2) was duly communicated to the petitioner and he filed his reply to the same also.

12. The petitioner filed his replication to the reply. It is averred that the respondents have tried to mislead the court as a perusal of Annexure R-1 shows that the petitioner took Rs. 2 lacs from the complainant as credit, which is the explanation being given by the petitioner since day one.

13. It is categorically denied that the show cause notice was issued to the petitioner timely. Rather it was an afterthought by the respondents having rejected the application of the petitioner under RTI Act. Further no other documents would have been asked for under RTI if they had been

supplied to him during the course of the enquiry proceedings.

14. I have heard the learned counsel for both the parties and have gone through the paper-book with their able assistance.

15. Admittedly, the petitioner had received a sum of ₹2 lacs from the complainant and out of this, an amount of ₹1.5 lac has been returned by him to the complainant. Petitioner's version is that he had borrowed the money for arranging US visa for his son. As against this, the allegation against him is that he had taken the money by promising to get the complainant's son employed in the police department. Considering the sensitivity of the matter, departmental inquiry was ordered in this connection and the same is in progress.

16. In the facts and circumstances of the case, I am of the opinion that it would not be appropriate for this Court to exercise its extraordinary writ jurisdiction under Article 226 of the Constitution of India, to interfere with the administrative discretion exercised by the competent authority for holding a departmental inquiry in the matter and to scuttle the same mid-way.

17. Accordingly, without expressing any opinion on the rival contentions of the parties and merits of the case, writ petition is dismissed. However, it will be open to the parties to challenge the ultimate outcome of the departmental inquiry, in accordance with law.

18. No order as to costs.

08.07.2019
smriti

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No