

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

**CWP No.23083 of 2015
Date of decision: 31.05.2019**

Rajesh Yadav

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. V.S. Bhardwaj, Advocate,
for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana.

Ritu Bahri, J.

Petitioner is seeking a writ of mandamus/certiorari for quashing the enquiry report dated 07.02.2015 (Annexure P-9), show cause notice dated 09.03.2015 (Annexure P-11), order dated 27.05.2015 (Annexure P-13), whereby he has been dismissed from service and order dated 18.09.2015 (Annexure P-15), whereby Director General of Police has dismissed his appeal.

Petitioner has placed on record correct copy of enquiry report (Annexure A-1) vide CM No.1787-CWP of 2017, which was allowed on 17.02.2017. As per this enquiry report, petitioner had visited Punjab and Haryana High Court at Chandigarh on 05.10.2014 to attend the proceedings in case No.162/2014, under Sections 148/149/307/506 IPC and Arms Act, registered at Police Station, Hathin in FIR No.166 of 2012 and also in relation to FIR No.342 of 2013. On 05.10.2014 itself, members of Ram Sena/Bajrang Dal carried out illegal activities of setting up a Mosque on fire

and damaged the said Mosque, which was situated near the old police station building when the roof was being laid. When the persons belonging to the Muslim Community came to know about the same, they gathered and damaged the idols in the Kunda Mandir, Hthin. Due to this, a lot of tension prevailed amongst both the communities on the night of 05.10.2014 and a situation of riot had occurred. The petitioner was informed about the said incident when he had gone to attend the Court proceedings at Punjab and Haryana High Court, on 05.10.2014 and Deputy Superintendent of Police, Palwal as well as Sh. Krishan Kumar, Haryana Police Service, Deputy Superintendent of Police, Hathin had also ordered him to reach immediately and take control of the situation on 06.10.2014. One Udai Raj, HPS, Deputy Superintendent of Police (HQ), Palwal had also held a telephonic conversation with the petitioner on 06.10.2014 when the petitioner informed him that he was in Delhi. Rather, the petitioner came for duty at 9.00 A.M. on 07.10.2014. He should have followed the orders given by the higher officers and reached at Police Station, Hathin so that the situation could have been controlled. Despite the fact that DSP spoke to the petitioner on 06.10.2014, he did not reach Police Station, Hathin and disobeyed the orders of the higher officers. Superintendent of Police, Palwal enquired into the matter and sent his report to the Inspector General of Police, South Range, Rewari for further necessary action. Vide order dated 20.10.2014, a direction was given for initiation of departmental enquiry and thereafter, the DSP, Palwal, vide order dated 22.10.2014, gave direction for conducting a regular enquiry.

On 13.11.2014, copy of statement of allegations, list of witnesses and list of documents were given to the petitioner and during enquiry,

statements of witnesses were recorded in his presence. After recording statements of the witnesses, petitioner was charge-sheeted on 09.12.2014. After getting written reply from the petitioner, the Enquiry Officer gave his finding that as per PW-1 Sh. Patram Singh, IPS, Inspector Rajesh Kumar had taken permission from him before going to Chandigarh and after resuming duty on 07.10.2014. He had displayed swift action, courageous and brave in conducting raid and residents/hideouts of the miscreants and apprehended them. PW-2 Sh. Uday Raj Singh, HPS, had also admitted during his cross-examination conducted by Rajesh Kumar-petitioner that after coming back on duty on 07.10.2014 from Chandigarh, he (petitioner) had displayed courage, bravery and extreme swift action in conducting raids at the houses of suspects. PW-3 Sh. Krishan Kumar, HPS, has admitted that Inspector Rajesh Kumar had conducted raids at the houses of suspects immediately upon reaching back from Chandigarh on 07.10.2014 and displayed bravery, courage, conviction and swiftness in action.

PW-7 HC Sanjay, MHC, Police Station Hathin, has also stated in his evidence that as per roznamcha rapat No.23, Inspector Rajesh Kumar (petitioner) had reached at Police Station, Hathin at 02.00 A.M., on 07.10.2014. He also filed reply in CRM No.32910, which was listed in the High Court. After hearing of the Court, delinquent Inspector Rajesh Kumar did not reach back in Police Station, Hathin on time and even after reaching Hathin, he did not inform senior officers about his arrival. He did not take action to bring the situation under control.

Grievance of the petitioner is that on the basis of statement made by PW-7 HC Sanjay, the Enquiry Officer had returned a finding that the allegations against the petitioner had been duly proved. Copy of this inquiry

report dated 07.02.2015 is attached as Annexures P-9. After this enquiry report, Superintendent of Police, Palwal vide letter dated 25.02.2015 (Annexure P-10) recommended dismissal of the petitioner from service. Consequently, a show cause notice dated 09.03.2015 (Annexure P-11) was given to the petitioner by the Inspector General of Police, South Range, Rewari. Petitioner gave his reply dated 24.03.2015 (Annexure P-12) to the show cause notice. Finally, vide order dated 27.05.2015 (Annexure P-13), petitioner has been dismissed from service. Appeal against the said order has also been dismissed vide order dated 18.09.2015 (Annexure P-15) passed by the Director General of Police, Haryana.

Upon notice, reply on behalf of respondent Nos.1 to 3 has been filed, wherein it has been stated that there was history of communal riots in the area of Hathin. The petitioner was posted as SHO of Police Station, Hathin and he should have to keep a regular close watch on the whole situation in the area. During the tenure of the petitioner as SHO, on 17.09.2014, a settlement between the responsible persons of two communities had taken place regarding construction of Mosque, which shows that the petitioner was already aware about the tension prevailing between the two communities. The communal riots on the intervening night of 05/06.10.2014 was the result of failure of intelligence of Police Station, Hathin. Petitioner should have told his subordinate to keep informing about the situation. He should have maintained a communication with his subordinates. The petitioner had gone to the High Court to get reply vetted after hearing of CRM-M-32910 of 2014, whereas his case was taken up in the Court after lunch etc. only to fulfill the gap of time and also to adjust all the things in his favour. Even, he was informed on 06.10.2014 about

distorted law and order situation by DSP Udai Raj over telephone while he was crossing Delhi at 10.30 P.M. However, instead of rushing back to the police station and reporting his arrival to the seniors, he appeared only at 9.00 A.M. next morning i.e. 07.10.2015. He confessed during personal appearance before the Inspector General of Police, South Range, Rewari that after reaching at Police Station, Hathin, he switched off his mobile and slept because he was tired. He also assumed that nothing more will happen. Hence, this laxity on his part had caused gravest misconduct of disobedience of the order of senior authorities. Instead of taking over the command of the situation, petitioner came and slept by keeping his mobile aside. His plea was that he had reached the police station at 2.00 A.M. on 07.10.2015. In this manner, he had violated the clear instructions to reach Hathin on 06.10.2014. Moreover, petitioner did not bring to the notice of any senior officer that he had reached Hathin and was present in the police station to take further instructions from them in order to control the situation or apprise himself for further line of action. It has been further stated that the Superintendent of Police had rightly taken serious note against the petitioner that despite being informed by the Senior Police Officers to reach at Hathin as soon as possible, he reported to his seniors on 07.10.2014 at 09.00 A.M. Hence, the proceedings of charge-sheet and enquiry had been rightly initiated against the petitioner. Subsequently, order of dismissal has been rightly passed as the petitioner was indulging in gross dereliction of duty and has done willful disobedience of lawful orders of senior officers and displayed cowardice of the worst kind by not reporting on duty when his presence was most required. It is stated in the written statement that once, a compromise had taken place between both the communities on

17.09.2014 with regard to construction of Mosque, it was the duty of petitioner being SHO of the Police Station to keep regular close watch on the situation.

After filing of the written statement, this Court vide order dated 12.07.2017, gave direction to produce the record to show that in the intervening night of 06/07.10.2014, any kind of rioting had taken place and the petitioner was required to be on duty on the roads to control the situation.

The incident of damage to the mosque had taken place during the intervening night of 05/06.10.2014. On 18.07.2017, when the case was taken up, learned State counsel had informed that the petitioner had taken permission from the Superintendent of Police, Palwal to attend the Court proceedings on 06.10.2014 in connection with CRM-M-32910-2014 and two other cases. Copy of roznamcha/daily diary report for the period from 06.10.2017 to 07.10.2017 of the concerned police station was produced in Court on that date. A perusal of the same showed that the petitioner's return from Chandigarh to Hathin was entered at serial No.23. This was neither the first nor the last entry on the page so as to take an inference of any kind of tempering/ante-dating in the 'roznamcha'. As per the said entry, he returned at about 2.00 A.M. on 07.10.2014 i.e the intervening night of 06/07.10.2017. Keeping in view the entry in the roznamcha, a further direction was given to the Superintendent of Police, Palwal to file an affidavit stating as to at what time, he had left the place of occurrence on the night of 6th and 7th October, 2014. Pursuant to the said order, affidavit of Sh. Krishan Kumar, DSP was filed to the effect that in the month of October, 2014, he was posted as Deputy Superintendent of Police, Hathin,

District Palwal. On the intervening night of 5th and 6th October, 2014, communal riots had erupted in the area falling under the jurisdiction of Police Station, Hathin, District Palwal. On 05.10.2014, he had left his official residence at 8.20 A.M. He received an information regarding communal riots at around 9.30 P.M. on 05.10.2014. Thereafter, he immediately informed the higher officers and patrolled during the entire night in the troupled area upto 4.30 A.M. in the morning of 06.10.2014. After having rest for 2½ hours at his residence, he again came present on duty at 7.00 A.M. on 06.10.2014 and patrolled/flag marched in the troubled area upto 11.00 P.M. on that day. Thereafter, he went to his residence and again came present on duty at 7.30 A.M. on 07.10.2014. He again patrolled and flag marched in the troubled area upto 11.00 P.M. on that day. Even during the period from 11.00 P.M. on 06.10.2014 to 07.30 A.M. on 07.10.2014, he remained available on call to respond to any untoward incident. It was further stated that on 06.10.2014, petitioner had gone to Chandigarh to attend the Court, but he had not returned on duty up to the morning of 07.10.2014. Therefore, he (Krishan Kumar, DSP) recorded DDR No.03 dated 07.10.2014 at 9.10 A.M. in Police Station, Hathin in this regard. Additional affidavit of Pat Ram Singh, IPS, the then Superintendent of Police, Palwal has also been filed, wherein it has been stated that he had stayed during the intervening night of 5/6.10.2014 in the Camp Office of the SDM, Hathin. He remained at Hathin during 06.10.2014. At about 11.30 P.M., he patrolled certain sensitive villages in Hathin area. Similarly, on 07.10.2014, he left Palwal at 7.00 A.M. and patrolled the area of Police Stations, Hathin, Bahin, Mindkola, Ootaward Chowk and came back to Palwal at 11.30 P.M. In this affidavit, it has been further stated that as per

record, Sh. Shatrujeet Kapoor, IPS, the then IGP, South Range, Rewari had visited Hathin town via Sohna, Mindkola etc. at 9.30 A.M. on 06.10.2014 and left for Rewari on the same day at about 2.30 P.M.

Learned counsel for the petitioner has argued that the petitioner had rendered 25 years of service and even if, it is assumed that the charges against him were duly proved, punishment of dismissal from service is disproportionate to gravity of the charge.

Heard, counsel for the parties.

A perusal of the affidavits filed by Pat Ram Singh, IPS, the then SSP, Palwal and Sh. Krishan Kumar, DSP, shows that they came to Hathin from their residences on 06.10.2014 at about 7.00 A.M. and left Hathin at about 11.30 P.M. On 07.10.2014, they again left Palwal at 7.00 A.M. for Hathin and came back to Palwal at about 8.00 P.M. In these affidavits, it is nowhere mentioned that on the intervening night of 06/07.10.2014, there was any riot in that area. Keeping in view the sensitive situation, they were available on telephone during the intervening night of 06/07.10.2014. This fact is not disputed that the petitioner, after attending the Court proceedings at Chandigarh, had reached Delhi at 6.00 P.M. when DSP Udai Raj held a telephonic conversation with the petitioner on 06.10.2014 and asked him to report immediately for duty at the Police Station. The petitioner reached Hathin at 2.00 A.M. in the morning, went home and reported back at 9.00 A.M. For this intervening period from 2.00 A.M. to 9.00 A.M., he has been charge sheeted for disobeying the orders passed by the superior officers. Another fact, which requires consideration in the present case is that before leaving Hathin, the petitioner was given due permission by the Superintendent of Police to attend the Court proceedings at Chandigarh. At

the time of leaving Hathin, charge of the police station was given to another Inspector. Hence, till his returning in the police station on the next morning, the charge had been given to the another Inspector. It is not the case of the respondents that any rioting had taken place on the intervening night of 06/07.10.2014. This fact is evidence from the aforesaid affidavits filed by Krishan Kumar and Pat Ram Singh. In the absence of any rioting during such period, petitioner cannot be held liable. In the enquiry report, three witnesses namely Sh. Pat Ram Singh, SP, Palwal, Sh. Udey Raj, DSP, HQ, Palwal and Sh. Krishan Kumar, HPS, DSP, Palwal, have consistently stated during their cross-examination that when the petitioner had come back on duty on 07.10.2014, he performed his duty and displayed swift action, courage and quickness in conducting raids at the houses/hideouts of the suspects. Apart from this, even the defence witness namely Sh. Dinesh Kumar (Annexure P-7) had stated that on the intervening night of 05.10.2014, situation had become tense in the presence of Sh. Pat Ram, Superintendent of Police, Sh. Udai Raj, DSP (HQ) and Sh. Krishan Kumar, DSP. A discussion was held, in which it was concluded that Inspector Rajesh Kumar (petitioner) can bring the situation under control. The senior officers suggested that they should call Inspector Rajesh Kumar on 07.10.2014, as he can bring the situation under control. On 07.10.2014, petitioner reached at Jainty Chowk, Hathin and displayed his acumen, courage and bravely took over the law and order duty. He conducted raids on the houses of the anti-social persons and called up certain persons for an enquiry to the Police Station. Afraid of the action taken by Rajesh Kumar (petitioner), the anti-social elements ran away from the spot. On account of the efforts made by Inspector Rajesh Kumar, a committee consisting of

members of both the communities was formed in the office of Sub Divisional Magistrate, Hathin for ensuring peace in the area. It was stated that the contribution and works done by Sh. Rajesh Kumar, Inspector , Police Station Hathin and Shj. Kamal Yadav, Naib Tehsil, Hathin were commendable. To the same effect is the statement of Sh. Ishaq Mohammad (Annexure P-8). He has also appreciated the steps taken by the petitioner. Since there was no riot on the intervening night of 06/07.10.2014, the petitioner while coming back on duty at 9.00 A.M. on 07.10.2014 has carried out his duties, which have been appreciated by the senior officers while appearing as witnesses in the enquiry proceedings. Since there was no riot on the intervening night of 06/07.10.2014, the absence of petitioner did not accelerate the tense situation further.

Another fact, which requires to be considered is that prior to this incident, a compromise had already been effected between both the parties on 17.09.2014 with the intervention of the petitioner. While awarding punishment vide order dated 27.05.2015 (Annexure P-13), it has been observed that problem in Hathin was going on for some time when a compromise between two communities was effected on 17.09.2014 and hence, the petitioner was aware about prevailing tension between two communities and it was his duty to ensure that no party may violate the conditions of the compromise. It has been further observed in the impugned order that petitioner had failed to keep update of the situation in the area of his police station. When he was informed about the law and order problem on the next day by Superintendent of Police, Palwal and then by DSP Udai Raj over telephone, instead of rushing back to the police station and reporting his arrival to senior officers, he (petitioner) appeared only at 09.00

A.M. next morning.

The fact that after reaching Hathin, the petitioner had gone back to his house and slept because of tiredness, cannot be taken to be the gravest act of misconduct, which would invite punishment of dismissal from service, especially keeping in view that no rioting had taken place on the intervening night of 06/07.10.2014 in Hathin.

The Hon'ble Supreme Court in **Charanjit Lamba vs. Commanding Officer, Southern Command & Ors.**, 2010 (4) SLR 385, has held as under:-

“9. The doctrine of proportionality which Lord Diplock saw as a future possibility is now a well recognized ground on which a Writ Court can interfere with the order of punishment imposed upon an employee if the same is so outrageously disproportionate to the nature of misconduct that it shocks conscience of the Court. We may at this stage briefly refer to the decisions of this Court which have over the years applied the doctrine of proportionality to specific fact situations.

10. In **Bhagat Ram v. State of Himachal Pradesh (1983) 2 SCC 442** this Court held that if the penalty imposed is disproportionate to the gravity of the misconduct, it would be violative of Article 14 of the Constitution.

11. In **Ranjit Thakur v. Union of India & Ors. (1987) 4 SCC 611**, this Court was dealing with a case where the petitioner had made a representation about the maltreatment given to him directly to the higher officers. He was sentenced to rigorous imprisonment for one year for that offence. While serving the sentence imposed upon him he declined to eat food. The summary court martial assembled the next day sentenced him to undergo imprisonment for one more year and dismissal from service. This Court held that the punishment imposed upon the delinquent was totally disproportionate to the gravity of the offence committed by him. So also in **Ex-Naik Sardar Singh v. Union of India & Ors. 1992 (1) RCR (Criminal) 583** instead of one bottle of brandy that was authorised the delinquent was found carrying four bottles of brandy while going home on leave. He was sentenced to three months rigorous imprisonment and dismissal from service which was found by this Court to be disproportionate to the gravity of the offence proved against him.

15. That the punishment imposed upon a delinquent should commensurate to the nature and generally of the misconduct is not only a requirement of fairness, objectivity, and non-discriminatory treatment which even those form quality of a misdemeanour are entitled to claim but the same is recognised as being a part of Article 14 of the Constitution. It is also evident from the long time of decisions referred to above that the courts in India have recognised the doctrine of proportionality as one of the grund for judicial review. Having said that we need to remember that the quantum of punishment is disciplinary matters is something that rests primarily with the disciplinary authority. The jurisdiction of a Writ Court or the Administrative Tribunal for that matter is limited to finding out whether the punishment is so outrageously disproportionate as to be suggestive of lack of good faith. What is clear is that while judicially reviewing an order of punishment imposed upon a delinquent employee the Writ Court would not assume the role of an appellate authority. It would not impose a lesser punishment merely because it considers the same to be more reasonable than what the disciplinary authority has imposed. It is only in cases where the punishment is so disproportionate to the gravity of charge that no reasonable person placed in the position of the disciplinary authority could have imposed such a punishment that a Writ Court may step into interfere with the same.”

In the aforesaid case, Hon'ble the Supreme Court was examining a case, where appellant was holding a rank of Major in the Indian Army. He had made a false claim for payment on account of moving his household luggage and car to Chandigarh. Secondly, he had not cleared the electricity bill upon his transfer from one place of posting. Hon'ble the Supreme Court held that the competent authority was justified in taking the view that the nature of the misconduct proved against the appellant called for a suitable punishment. However, punishment of dismissal was taken to be disproportionately of the conduct of the officer. Keeping in view that he was a senior officer in the Indian Army and had to lead by example not only in the matter of his readiness to make the supreme sacrifice required of him in war or internal strife, but even in adherence to the principles of honesty,

loyalty and commitment, the appeal was dismissed.

In the aforesaid judgment, Hon'ble the Supreme Court was considering the case of a Major in the Indian Army, whereas in the present case, the petitioner was posted as SHO of Police Station, Hathin. After taking due permission from the senior officer i.e. Superintendent of Police, he had gone to attend the Court proceedings at Chandigarh. While he was going towards Delhy, he was informed by Uday Raj, DSP to immediately report for duty. He reported for his duty on 07.10.2014. However, on the intervening night of 06/07.10.2014, no rioting had taken place in the town. Senior officers were on patrolling duty. They had left Hathin at 11.30 P.M. and gone back to their residences, which was 5/7 K.M. away from Hathin. Since, there was no rioting in the intervening night of 06/07.10.2014, his absence at that time did not cause any harm to the prevailing law and order situation. On earlier occasion, a compromise had been effected between both the communities on 17.09.2014 with the intervention of the petitioner. Moreover, after reporting for duty, petitioner immediately displayed swift action in conducting raids at the residents/hideouts of the miscreants and apprehended them. His work has been apprehended by aforesaid three senior officers i.e. Sh. Krishan Kumar, SP, Sh. Pat Ram Singh and Uday Raj, DSP.

In view of the above discussion, this Court is of the view that punishment of dismissal from service is disproportionate to the gravity of misconduct of the petitioner. ACRs of the petitioner have also been proved by EHC Kamal Singh vide his statement dated 13.11.2014 (Annexure P-6), which was made before the Enquiry Officer. A perusal of the same shows that out of 29 entries, four were adverse. Hence, even as per record, his 25

entries were good. Keeping in view that the petitioner had rendered about 25 years of service and the impugned punishment is in disproportionate to the gravity of the charges, this petition deserves to be allowed.

Resultantly, the present petition is allowed and impugned orders dated 27.05.2015 & 18.09.2015 (Annexure P-13 & P-15) are set aside. Petitioner is also held entitled to all consequential benefits.

31.05.2019
ajp

(RITU BAHRI)
JUDGE

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