

Sr. No. 262

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

**CWP No.8673 of 2016 (O&M)
Date of Decision: 14.02.2019**

Jasvir Singh

... Petitioner

Versus

Union of India and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. H.P.S.Ghuman, Advocate,
for the petitioner.

Mr. Vivek Chauhan, Advocate,
for the respondents-UOI.

ARUN MONGA, J.(ORAL)

Present petition has been filed *inter alia* for issuance of a writ in the nature of certiorari to quash the impugned order dated 16.12.2015 (Annexure P-1), vide which the petitioner's services were terminated without any financial benefits. The petitioner, at the relevant time, was serving as a 'Constable' in Border Security Force (BSF) and is governed by BSF Act, 1969. Respondent No.1 was deleted from the array of parties under order dated 30.08.2017.

2. The delinquency attributed to the petitioner is that his actual name is Mohinder Pal, but he impersonated for his brother Jasvir Singh and submitted a false certificate of matriculation at the time of his appointment. Case of the petitioner is that owing to the

enmity between his family and the complainant Hari Singh who is a village Lambardar/Headman, certain litigation is going on. Hari Singh gave a complaint to the respondent-BSF alleging that petitioner has secured the appointment by impersonating as Jasvir Singh to use the matriculation certificate of Jasvir Singh, whereas, he (the petitioner) is the brother of Jasvir Singh and his name is Mahinder Pal.

3. Pursuant to the said complaint, respondent-BSF appointed a Court of Inquiry which inquired into the complaint and submitted an inquiry report dated 20.04.2014 (Annexure P-2).

4. The said inquiry report indicted the petitioner and based thereon a show-cause-notice dated 04.11.2014 was issued under Rule 17 of the BSF Rules 1969, which was replied by the petitioner vide dated 19.11.2015 (Annexure P-4). The contentions raised in the reply to show cause notice, states the petitioner, were not gone into and vide impugned order dated 16.12.2015 (Annexure P-1), the petitioner's services were terminated without any financial benefits.

5. In the reply filed by the respondents, the impugned order has been sought to be justified on the ground of having been passed on the basis of detailed inquiry report and, therefore, it is pleaded that no interference of this Court is called for.

6. I have gone through the pleadings filed by the respective parties and have heard the learned counsels for both sides.

7. Learned counsel for the petitioner has strenuously

argued that the impugned order has been passed without assigning any reasons. The only reasoning given, is very cryptic, inasmuch as, it simply states that the reply of the petitioner given to the show-cause-notice was duly considered and found to be unsatisfactory. He, thus, argues that the contentions of the petitioner have been given a short shrift.

8. Per contra, learned counsel for the respondents has argued that the father of the petitioner appeared as witness No.6 before the Inquiry Officer and has admitted that it is Mahinder Pal who is serving in BSF and not Jasvir Singh. Though in the deposition before the Inquiry Officer, he also states that both his sons Mahinder Pal and Jasvir Singh are matriculates. Learned counsel for the respondents states that, once it has been admitted by the father himself that it is his son, Mahinder Pal, who is working in the BSF, it is thus a clear case of impersonation. The petitioner has given his name as Jasvir Singh at the time of appointment. He contends that petitioner has used the matriculation certificate of Jasvir Singh in order to gain employment.

9. Learned counsel for the respondents relies on another statement of the father of the petitioner made before the Assistant Commissioner of Police (R-19), which was recorded pursuant to an FIR qua certain other offence against Mahinder Pal. Therein, he has again admitted that his son serving in BSF is Mahinder Pal and not Jasvir Singh. Though once again in the statement, he mentions that both his sons are matriculates.

10. Learned counsel for the petitioner states that father of the petitioner is illiterate and, therefore, he could not have understood the statement recorded by either the Inquiry Officer or the Assistant Commissioner of Police as he was asked to put his thumb impression on the dotted lines.

11. Without going into the merits of the rival contentions as recorded in the inquiry report, I find that the inquiry itself is vitiated by illegality. The inquiry has been conducted in violation of the very fundamental principles of recording the evidence and rules of natural justice and fair play.

12. Petitioner is governed by BSF Act, 1969. For ready reference Rule 173 of the Border Security Force Rules, 1969 framed under the Act, *ibid*, is reproduced below :

“173. Procedure of Courts of Inquiry.- (1) The proceedings of a court of inquiry shall not be open to the public. Only such persons may attend the proceedings as are permitted by the court to do so.

(2) The evidence of all witnesses shall be taken on oath or affirmation.

(3) Evidence given by witnesses shall be recorded in narrative form unless the court considers that any questions and answers may be recorded as such.

(4) The court may take into consideration any documents even though they are not formally proved.

(5) The court may ask witnesses any questions, in any form, that they consider necessary to elicit the truth and may take into consideration any evidence, whether the same is admissible under the Indian Evidence Act, 1872 (1 of 1872) or not.

(6) No counsel, or legal practitioner shall be permitted to

appear before a court of inquiry.

(7) Provisions of section 89 shall apply for procuring the attendance of witnesses before the court of inquiry.

(8) Before giving an opinion against any person subject to the Act, the court will afford that person the opportunity to know all that has been stated against him, cross-examine any witnesses who have given evidence against him, and make a statement and call witnesses in his defence.

Provided that this provision shall not apply when such inquiry is ordered to enquire into a case of absence from duty without due authority.

(9) The answers given by a witness to any question asked before the court shall not be admissible against such a witness on any charge at any subsequent occasion except a charge of giving false evidence before such court.”

13. Respondents' case is that after receipt of reports from the Deputy Commissioner, Hoshiarpur; Sub Divisional Magistrate, Garhshankar and the Senior Superintendent of Police, Hoshiarpur, a One-Man Court of Inquiry was ordered on 26.03.2014 to investigate the matter. They have asserted that the Court of Inquiry had recorded the statements three witnesses (no. 10) Karnail Singh Annexure R-14; (No. 13) Kuldeep Manak Annexure R-15 and Jasvir Singh (the petitioner herein) Annexure R-16.

14. However, the inquiry report of the Court of Inquiry dated 20.04.2014 Annexure P/2 (vernacular) produced by the petitioner shows that the one man Court of Inquiry, had based its report, on witnesses No. 1 to 15, some of whom have been named while others are not even named in the said report.

15. A perusal of Annexure P/2 shows that except the three witnesses (no. 10) Karnail Singh; (No. 13) Kuldeep Manak and (No. 13) Jasvir Singh (the petitioner herein), none of the other twelve witnesses was examined by the Court of Inquiry after its constitution vide order dated 26.03.2014. Obviously, the testimony/proof attributed to those twelve other witnesses had already been collected even before the constitution of Court of Inquiry vide order dated 26.03.2014. This being the situation, there was simply no question of the petitioner being afforded opportunity by the Court of Inquiry in its proceedings for their cross examination.

16. As noted above, the Court of Inquiry had recorded the statements three witnesses (no. 10) Karnail Singh Annexure R-14 on 11.04.2014; (witness No. 13) Kuldeep Manak Annexure R-15 on 13.04.2014 and Jasvir Singh (the petitioner herein) Annexure R-16 on 19.04.2014. The statements of witnesses (no. 10) Karnail Singh Annexure R-14 and (witness No. 13) Kuldeep Manak Annexure R-15 do not show whether the same were recorded in the presence of the petitioner. It was incumbent upon the respondents to show that the petitioner was present, when their statements were recorded on 11.04.2014 and 13.04.2014 respectively.

17. The vernacular version of the note dated 19.04.2024 forming part of the report of Court of Inquiry Annexure P/2 does show that on that date (19.04.2014) the petitioner was asked if he wanted to cross examine any witness. However, it does not show what was the answer given to this question by the petitioner. I find

merit in the contention of the learned counsel for the petitioner that this note recorded by the Court of Inquiry cannot be read to mean that the petitioner had been granted any effective opportunity of cross examination of the witnesses and yet he refused to avail of the same.

18. The Court of Inquiry also examined the petitioner as a witness (No. 15) and heavily relied upon his statement for holding him of guilty of the charge. It is not even shown if the petitioner had himself volunteered to be a witness against himself or was apprised by the Court of Inquiry that the statement made by him could be used against him. This manner in which the petitioner was thus examined and his statement was relied upon by the Court of Inquiry has not been shown provided in the Rules *ibid*. To me it seems that the same was/is highly unfair, unjust, opposed to the rules of natural justice, fair play.

19. To sum up, the report of the Court of Inquiry is vitiated by illegality. It follows that the impugned order of termination of services of the petitioner without any financial benefits, which itself is based the said report of the Court of Inquiry, cannot be sustained in law.

20. Another aspect of the matter is that the impugned order is completely cryptic and non-speaking, inasmuch as, it does not consider any of the contentions of the petitioner as raised by him in response to the show cause notice. The cryptic reasoning given in the impugned order is extracted hereinbelow:-

“Whereas, reply to the said Show Cause

Notice was received vide your letter No.nil dated 28.11.2015 which was duly considered by the undersigned and found the same to be unsatisfactory.”

21. I am of the view that an order, which is as harsh as the present one, where the petitioner's services were terminated without any financial benefits ought to have been speaking one, dealing with all contentions raised by the petitioner, their discussion, the conclusion reached about them and the reasons therefor to show proper application of mind by the punishing authority. The impugned order does not pass that test.

22. Reliance has been placed by the learned counsel for the petitioner on two judgments viz. case titled as ***Dr.P.K.Mittal Vs. State of Punjab and others, reported as 1982 (3) SLR 222 and Mohd. Najibul Hassan Vs. The Board of Governors, Government of Polytechnic Education and others, 2015 (2) S.C.T. 204.*** The said judgments relied by learned counsel for the petitioner are applicable in the present case. It would be educative to quote the relevant from judgment in Dr. P.K.Mittal, *ibid* as below:-

*“The only contention raised by Mr. J.L.Gupta, learned counsel for the petitioner, in support of the petition is that order Annexure P-16 is not a speaking order and that no reasons have been assigned as to why the reply of the petitioner has been rejected. According to him, the order is cryptic and sketchy and could well have been passed without the application of any mind. Reliance has been placed by him on **Ram Dass Chaudhary Vs. State of Punjab and another, 1968 S.L.R.792**, wherein P.C.Jain, J. in somewhat similar*

*circumstances, relying on the decision of the Supreme Court in **Bhagat Raja Vs. Union of India and others, AIR 1967 Supreme Court 1606**, took the view that it was incumbent on a punishing authority to give reasons while arriving at a decision against a delinquent officer as the power of punishing was quasi judicial in nature. The case before P.C.Jain, J. arose from an appellate order of the Government but here the impugned order is on the original side. In **State of Punjab Vs. Dr. R.K.Chopra, 1978 (1) I.L.R. 1**, a Division Bench of this Court approved P.C.Jain, J's view in Ram Dass Chaudhary's case (supra) To my mind, the dictum of Bhagat Raja's case (supra) applies reinforcedly to an order passed by a punishing authority on the original side. It goes without saying that such an order may be subjected to appeal or revision or be tested in writ jurisdiction of this Court. Ex facie, something has to be available on the face of the order from which the Court of correction has to go by. In the instant case, as is plain, the order was that the reply of the petitioner had been considered by the Government and found to be unsatisfactory and, therefore, one increment was thereby stopped with cumulative effect. That per se, to my mind, does not reveal as to how the mind of the Government was applied towards arriving at such a conclusion. Such an order cannot be sustained merely because in the return filed by the Government, effort has been made to justify that it is a speaking order, and it indicates the reasons because of which action was being taken against the petitioner. That may be true, that it indicates the reasons because of which action was being taken against the petitioner. But it does not indicate the reasons for coming to the conclusion for punishing the petitioner. The arena for the respective two spheres is well marked. And though permitted to*

overshadow 'to some extent' cannot have the effect of superimposition to wipe out the ultimate aspect altogether."

23. In the light of above, I do not find force in the argument of learned counsel for the respondents, that reasons were required to be given by the Punishing Authority, while passing the impugned order of termination of services only in the event of his being in disagreement with the inquiry report.

24. A perusal of the impugned order nowhere, even remotely, suggests that the findings of the inquiry report were gone into by the Punishing Authority and he is in agreement with the said inquiry report. In fact, there is not even a mention of the inquiry report in the impugned order. The impugned order passed by Punishing Authority, therefore, is not tenable and cannot be sustained.

25. In view of my observations above, the present writ petition is allowed and inquiry report dated 20.04.2014 (Annexure P-2) as also the impugned order dated 16.12.2015 (Annexure P-1) are quashed. Respondents are consequently directed to take the petitioner back in service, however, without any back-wages for the period he was out of service.

26. Let the needful be done within a period of two months from the date of receipt of a certified copy of this order.

27. Petition is allowed in the aforesaid terms.

(ARUN MONGA)
JUDGE

14.02.2019

vandana

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No