

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.4027 of 2020(O&M)
DECIDED ON : 12.03.2020

Nagender

...Petitioner

versus

State of Haryana and ors.

...Respondents

CORAM : HON'BLE MR. JUSTICE GIRISH AGNIHOTRI

Present : Mr. S.K. Redhu, Advocate
for the petitioner.

Ms. Palika Monga, DAG, Haryana.

GIRISH AGNIHOTRI, J. (ORAL)

Petitioner-Nagender has filed the present writ petition, *inter alia*, with the following prayer:-

“Civil Writ Petition under Article 226 of the Constitution of India for the issuance of a writ in the nature of certiorari to quash the order No.498-505/Steno dated 13.09.2019 (Annexure P-5), subsequent proceedings summary of allegations (Annexure P-6 colly) vide which Commandant, Ist Bn. HAP, Ambala City has initiated the second departmental enquiry on the basis of showing absent on having been falsely implicated in a criminal case FIR No.0054 dated 30.05.2019 u/s 25/54/59 Arms Act Police Station Bond Kalan District Charkhi Dadri, Charge Sheet dated 27.11.2019 (Annexure P-7), Finding dated 27.12.2019 (Annexure P-8) and Show Cause Notice No.120/Steno dated 23.01.2020 (Annexure P-9) and further issue a

writ in the nature of mandamus directing the respondents to held in abeyance the present second departmental enquiry as the same is being conducted taking into consideration the judicial custody period which was also subject matter of earlier enquiry order vide order dated 11.07.2019 (Annexure P-3)”.

This Court on 14.02.2020 and thereafter on 28.02.2020 passed the following orders.

Order dated 14.02.2020

“The petitioner-Nagender has filed the present petition inter alia praying for quashing of the show cause notice dated 23.01.2020 (Annexure P-9) and also the show cause notice dated 10.02.2020 (Annexure P-11), whereby, a provisional decision has been taken to dismiss him from service.

Learned counsel for the petitioner submits that qua the FIR No.5 dated 03.01.2017, this Court vide order dated 06.10.2018, issued notice of motion in CWP-25780-2018 and stayed the passing of the final order with other additional interim directions.

He then submits that qua FIR No.54 dated 30.05.2019 under Sections 25/54/59 of Arms Act, registered at Police Station Bond Kalan, district Charkhi Dadri, this Court passed the order in CWP-21521-2019 on 16.08.2019, once again issuing interim directions to the department not to examine common/identical witnesses, until and unless, they are examined in the criminal proceedings first.

The grievance of the petitioner is that in spite the above two orders of this Court, regular departmental enquiry was initiated on 13.09.2019. Still further, the Enquiry Officer has referred to the same FIR i.e. FIR No.5 dated 03.01.2017 and FIR No.54 dated 30.05.2019 (which were subject matter of writ petitions as

aforementioned). He submits that by making reference to these FIRs and also in addition mentioning alleged absence, the Enquiry Officer has held him guilty and recommended dismissal.

*He importantly and **lastly** submits that the petitioner is suffering from a serious ailment. He is suffering from disk problem. He further submits that the Doctor of General Hospital, Ambala City has recommended him for operation/treatment at PGIMS, Rohtak. Counsel for the petitioner therefore prays that in these peculiar circumstances that he is suffering from such ailness, he deserves medical leave for at least two months so that he can be operated upon and can avail his medical treatment.*

Notice of motion.

Ms. Palika Monga, DAG, Haryana, accepts notice on behalf of the State.

Let the Department examine and verify the above facts and if need be, file an application to clarify the true factual position or apply for vacation of interim orders, in case any of these averments are false. Till the next date of hearing, the respondents are directed to maintain status quo regarding services of the petitioner. It is directed that in pursuance to the show cause notice dated 10.02.2020, no adverse order shall be passed till the next date of hearing.

List on 12.03.2020.

Copy of this order be supplied to counsel for the petitioner under signatures of the Bench Secretary of this Court.

Order dated 28.02.2020

This application has been filed by the applicant-petitioner seeking permission to place on record photocopy of medical certificates and further direct

respondent No.4 to permit him to get treatment at PGIMS, Rohtak in view of the serious ailment of the petitioner.

Learned counsel for the petitioner makes a reference to Annexure A-1 (appended with the present civil miscellaneous application) to submit that earlier also, vide Annexure P-10, Civil Hospital, Bhiwani had given its opinion and now vide Annexure A-1 dated 11.02.2020, Medical Officer of Civil Hospital, Ambala City, has referred the petitioner to PGIMS, Rohtak for surgical, treatment if required.

This Court vide order dated 14.02.2020, had observed that the request of counsel in these peculiar circumstances is that the petitioner deserves medical leave for at least two months, so that he can be operated upon and can avail his medical treatment. By making reference to Para 3 of the application, counsel for the petitioner submits that the petitioner has submitted his medical certificate dated 11.02.2020 to the Commandant, 1st Battallion, HAP, Ambala City. He therefore seeks permission to get treatment at PGIMS, Rohtak in view of the medical certificate.

Notice of the application.

Ms. Safia Gupta, AAG, Haryana, accepts notice on behalf of the State.

It is directed that in case, the petitioner applies for medical leave for undergoing operation/treatment as recommended by the Medical Officer, Civil Hospital, Bhiwani, the said application be considered in accordance with law and an appropriate order be passed within three days from the date of receipt of certified copy of the order. It will be appreciated, in case, the steps have been already taken by the Competent Authority to permit the petitioner for medical treatment.

Accordingly, the present Civil Miscellaneous

Application stands disposed of.

Copy of this order be given to counsel for the petitioner under signatures of the Bench Secretary of this Court.”

Today on resumed hearing of the case, reply on behalf of respondents No. 1 to 5 has been filed by Ms. Smiti Chaudhary, IPS, Commandant Ist Battalion, Haryana Armed Police, Ambala City. Reply has also been filed on behalf respondent No.6 by Sh. Amit Dahiya, HPS, Dy. S.P. Cum Enquiry Officer, Ist Battalion, Haryana Armed Police, Amabala City. Replies are taken on record.

During the course of hearing, attention of this Court has been drawn to para 10 of the preliminary submissions of reply filed by respondent No.1 to 5, which is reproduced hereunder:-

“10. That the petitioner filed CM-3619-CWP-2020 in the present writ petition and the CM application was disposed of by this Hon'ble Court on 28.02.2020 with the direction that, “..... in case, the petitioner applies for medical leave for undergoing operation/treatment as recommended by the Medical Officer, Civil Hospital, Bhiwani, the said application be considered in accordance with law and an appropriate order be passed within three days from the date of receipt of certified copy of the order. It will be appreciated, in case, the steps have been already taken by the Competent Authority to permit the petitioner for medical treatment.”

In this regard it is submitted that keeping in view the referral by the Medical Officers of Civil Hospital, Ambala City and on the insistence of the petitioner, he was taken to Pt. BD Sharma PGIMS Rohtak by Additional Senior Medical Officer, Police Hospital, HAP, Ist Battalion, Ambala City on 28.02.2020 itself. It

had been directed that an early date for surgery be taken, if need be. The petitioner was examined by orthopedics surgery Doctor and Doctor of Neurosurgery. It has been opined that the petitioner is fit for light duty. Copy of the report is attached as Annexure R2. The Additional SMO has been directed to ensure follow up care to the petitioner. the has also been directed to take adequate rest. It is submitted that since the petitioner is under suspension, no duty whatsoever has been assigned to him. It is also submitted that the petitioner has been granted leave from time to time and permitted to go and attend the Court proceedings and also during illness of his mother.”

In view of the above, this Court deems it appropriate to dispose of the writ petition with following directions:-

- i) In view of alleged medical ailment of the petitioner, and also in the light of averments as submitted in the reply that he requires follow-up care by Medical Officer, this Courts deems it appropriate to direct that the headquarter of the petitioner is temporarily transferred to Rohtak.
- ii) The petitioner shall be under the medical treatment of the doctors so assigned/appointed by the Medical Superintendent/Director PGIMS Rohtak till the expiry of 10 days from the date of passing of the order in the departmental enquiry or until his treatment is over whichever is earlier. The Director General of Police is directed to pass appropriate orders appointing Competent Authority/Punishing Authority at Rohtak for further proceedings in the enquiry.
- iii) With regard to another grievance raised by the petitioner qua grant of medical leave, this Court deems it appropriate that the petitioner may

apply for leave, if so advised. This Court has no doubt that the Competent Authority shall deal with this aspect as well in accordance with law.

March 12, 2020
 jyoti3

(GIRISH AGNIHOTRI)
JUDGE

Whether speaking/reasoned : YES/NO
Whether reportable : YES/NO