

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

**CWP No. 21784 of 2017 (O&M)
Reserved on May 17, 2022
Date of Pronouncement: May 20, 2022**

Head Constable Balbir Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. R.K. Arya, Advocate
for the petitioner.

Ms. Kanika Sachdeva, AAG, Punjab.

JAISHREE THAKUR, J.

1. The petitioner herein by way of instant writ petition seeks quashing of the inquiry report dated 30.4.2015 (Annexure P/2), order dated 26.5.2015 (Annexure P/3) passed by respondent No. 3, whereby 7 years' service of the petitioner has been forfeited permanently for the purpose of future increment and order dated 28.12.2015 (Annexure P/4) vide which the appeal of the petitioner was partly allowed and instead of 7 years' service, 4 years' service was ordered to be forfeited.

2. Brief facts of the case are that the petitioner joined the Punjab Police on 5.6.1990. On 1.1.2014, he was posted as Head Constable with City Police Station Nawanshahr. It was alleged that prostitution business was going in the area of City Police Station and, therefore, directions were

issued from time to time to SHO, Nawanshahr to close the prostitution business. On raids being conducted by the then DSP, Ms. Rupinder Kaur Bhatti, at the places where prostitution business was allegedly going, FIR Nos. 178 and 179 both dated 19.12.2014 were registered under Sections 3, 4, 5 and 6 of the Immoral Traffic (Prevention) Act. During the investigation, it came to the notice that the petitioner, who was posted in the said police station for a long time, was having intimacy with the ladies/men who were involved in this illegal business. Therefore, on the basis of the report of the DSP, Sub-Division, Nawanshahr, the Senior Superintendent of Police, SBS Nagar, by order dated 10.2.2015, suspended the petitioner from service w.e.f. 9.2.2015 and departmental inquiry was initiated against him for having intimacy with the ladies/men involved in illegal business of prostitution. Consequently, a charge sheet dated 6.4.2015 (Annexure P/1) was served upon the petitioner levelling allegations that he was keeping liaison with the people indulging in flesh trade and was also sending secret information of the police department to those people. During the inquiry, the petitioner examined as many as four witnesses (who were accused in the aforesaid two FIRs), who stated that they never met the petitioner; nor did they have any conversation with him. It was stated that they met him for the first time before the Inquiry Officer only. With regard to the allegations of the petitioner having informed the persons who were involved in the flesh trade, it was argued that in case he had been supplying secret information to such persons, then accused in the aforesaid two FIRs would not have been apprehended. Thus, all the allegations levelled against the petitioner in the charge sheet were vehemently denied.

3. The Inquiry Officer, vide his report dated 30.4.2015 (Annexure P/2) held that *“although the involvement-charges of this employee, with regard to the prostitution business and leaking information to the police department, with the accused persons (who deals in prostitution business) have not been proved on record, but secret and oral complaints have been received from the Area In-charge against this employee, and the Area Officer was also conducted inquiry from him, by calling him office. Like this, during investigation (secret as well as oral) conducted by the Area In-charge from accused persons, the involvement of this employee with the persons who deals in prostitution business is came to light. Therefore, charges made in the charge sheet, against Head Constable Balbir Singh 62/SBS Nagar are proved.”*

4. Despite the fact that no clear cut or cogent evidence came to surface against the petitioner of his having been involved in the alleged act, still the punishing authority issued a show cause notice dated 12.5.2015 to the petitioner, proposing forfeiture of his 7 years' service permanently for future increment. The petitioner submitted the reply to the show cause notice denying all the allegations but still by order dated 26.5.2015 (Annexure P/4), the punishment as proposed was passed. Aggrieved against the order dated 26.5.2015, the petitioner preferred an appeal before the appellate authority—respondent No.2, who, vide order dated 28.12.2015 (Annexure P/4), partly accepted the appeal and reduced the punishment of forfeiture of 7 years' service of the petitioner permanently for future increments to 4 years' service, giving rise to the instant petition.

5. Learned counsel for the petitioner appearing on behalf of the

petitioner would contend that the impugned order is absolutely illegal and deserves to be set aside. It is submitted that once the Inquiry Officer has himself held that the allegations of involvement of the petitioner in the prostitution racket or allegation of leaking information of the police department to the accused persons (who were dealing in prostitution business) have not been proved on record, then the punishment of any kind is not permissible in law. It is submitted that no evidence was produced in order to substantiate the allegations levelled against the petitioner and, therefore, the petitioner ought to have been exonerated of the charges so levelled.

6. Per contra, learned counsel for the respondents—State would contend that after conducting thorough departmental inquiry, the Inquiry Officer came to the conclusion that secret and oral complaints were received from the Area In-charge against the petitioner regarding his intimacy with the persons who were involved in the business of prostitution. It is further stated that at all stages of the disciplinary proceedings, the rules of natural justice were scrupulously followed by the departmental authorities by giving sufficient opportunity to the petitioner to defend his case.

7. I have heard learned counsel for the parties and have gone through the record of the case carefully.

8. The evidence as gathered and relied upon against the petitioner is that there were some call records between him and the accused in FIR No. 179 of 2014. There is no direct evidence on the record to establish that the petitioner had any nexus with the accused or that he was supplying information to the persons running the prostitution racket. In fact, in the

departmental proceedings, the petitioner stated that he tried to effect a compromise between one Veena Rani and Himanshi @ Deepa as there was one complaint given that the said Himanshi, who had taken a LCD TV in the name of Veena Rani and the installments were not being paid by her. The petitioner had also stated that no person had given a statement against him under Section 161 of the Code of Criminal Procedure. Even in the cross-examination of Ms. Rupinder Kaur (who had conducted the raids at the address supplied regarding the prosecution racket), she did not elicit any such statement to establish that any person arrested in the FIRs had named the petitioner. The Inquiry Officer did notice these facts, that there is no material evidence, and also noticed the statements of the accused in FIR Nos. 178 dated and 179 both dated 19.12.2014, who denied knowing the petitioner, while one of them admitted that the petitioner tried to resolve the dispute pertaining to the LCD issue, but still proposed a punishment. At this stage, it would be appropriate to re-produce Rule 16.24 (iv) of the Punjab Police Rules, 1934 16.24 , which deals with the departmental inquiry:-

“16.24 Procedure in Departmental Inquiry

(i) to (iii) xx xx xx

(iv) When the evidence in support of the allegations has been recorded the enquiring officer shall, (a) if he considers that such allegations are not substantiated, either discharge the accused himself if he is empowered to punish him, or recommend his discharge to the Superintendent, or other officer, who may be so empowered, or (b) proceed to frame a formal charge or charges in writing, explain them to the accused officer and call upon him to answer them.”

A reading of Rule 16.24 (iv) clearly makes out that if the allegations levelled against the accused/delinquent are not substantiated, then the Inquiry Officer shall discharge such accused himself and if he is not empowered to do so, then he shall recommend the discharge to the officers, who are so empowered. In the instant case, the Inquiry Officer has himself held that *“although the involvement-charges of this employee, with regard to the prostitution business and leaking information to the police department, with the accused persons (who deals in prostitution business) have not been proved on record, but secret and oral complaints have been received from the Area Incharge against this employee, and the Area Officer was also conducted inquiry from him, by calling him office...”* Once no evidence was led by the department in order to substantiate the charges levelled against the petitioner, then the Inquiry Officer ought to have exonerated the petitioner.

In State of Haryana and another v. Rattan Singh, AIR 1977 Supreme Court 1512, it has been held that in a domestic inquiry, strict and sophisticated rules of evidence under the Evidence Act may not apply. But at the same time, the Inquiry Officer on the basis of such purported hearsay evidence (some call record and secret information, which have not been substantiated) and in the absence of any other evidence, legally admissible in disciplinary proceedings supporting the purported hearsay evidence, no reasonable and prudent person would have arrived at a finding/conclusion as has been reached by the Disciplinary Authority in the present case. Even, the Supreme Court in the case of **Roop Singh Negi Versus Punjab National Bank 2009 (3) RSJ 175** has held that hearsay evidence, as

recorded by the Inquiry Officer, is not admissible in law. It has been held as under: -

“The materials brought on the record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence which legally admissible. The provision of evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are as the report of inquiry officer was based on merely ipse dixit as also surmises and conjecture, the same could not be sustained the interference drawn by the inquiry officer were not supported by any evidence. Suspicion, as is well known however high may be, can under no circumstances be held to be a substitute for legal proof”

9. Therefore, in view of the law laid down by the Supreme Court in **RoopSingh Negi's case (supra)**, provisions of Rule 16.24 (iv) of the Punjab Police Rules, 1934 and the fact that no cogent evidence was led by the department in support of the allegations levelled against the petitioner, the instant writ petition is allowed and the impugned order dated 28.12.2015 (Annexure P/4) is set aside and the petitioner is exonerated of the charges levelled against him. As a consequence, the petitioner would be entitled to all the benefits, which the petitioner is otherwise entitled to, had no such penalty of withholding of forfeiture of service been imposed upon him.

May 20, 2022
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned : Yes
Whether Reportable : No